Consultation Paper No. 5/ 2008

Telecom Regulatory Authority of India

Consultation Paper

on

Foreign Investment limits for Broadcasting Sector

March 3, 2008

Mahanagar Door Sanchar Bhawan, Jawahar Lal Nehru Marg,
Next to Dr. Zakir Hussain College, New Delhi – 110 002

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Preface

1. Liberalization of Indian economy has yielded positive results in terms of accelerated economic growth. With the opening up of Indian economy, significant foreign investment has been flowing into the country in different sectors. These investments (both Foreign Direct Investments and Foreign Institutional Investments) are an important source of funding in the country. The permissible limits of foreign investment in different sectors are regulated by the Government for various reasons.

2. Presently, the policy regarding Foreign Investment (FI) is not uniform across different segments of broadcasting sector. In view of the divergence in FI limits for different segments, the need to undertake a review of the FI policy for the broadcasting sector has been highlighted time and again by the Authority through its recommendations. This is necessary for consistency in policy and a level playing field among competing technologies in view of convergence of broadcasting and communication technologies.

3. Ministry of Information & Broadcasting has requested the Authority to give its recommendations on Foreign Investment limits for various segments of Broadcasting Sector. This consultation paper raises issues relating to foreign investment limits for broadcasting sector. The Telecom Regulatory Authority of India (TRAI) solicits the views of all the stakeholders on the issues raised in the consultation paper.

4. Written comments on the issues raised for consultation may please be furnished to Secretary, TRAI by 28th March, 2008. The comments may preferably be sent in electronic form. [E-mail: traicable@yahoo.co.in or rakesh.rakeshgupta@gmail.com]. The Fax numbers of TRAI are 011-23220442/ 011-23213294.

(Nripendra Misra)
Chairman, TRAI

List of Abbreviations

ADR	American Depository Receipts
DIPP	Department of Industrial Policy and Promotion
DTH	Direct To Home
FCCB	Foreign Currency Convertible Bonds
FDI	Foreign Direct Investment
FI	Foreign Investment
FII	Foreign Institutional Investment
FIPB	Foreign Investment Promotion Board
FM radio	Frequency Modulated radio
GDR	Global Depository Receipts
GMPCS	Global Mobile Personal Communications Services
GoI	Government of India
HITS	Headend-In-The-Sky
HRD	Human Resource Development
HUF	Hindu Undivided Family
ICT	Information and Communication Technologies
IPTV	Internet Protocol Television
MNC	Multi National Corporations
NRI	Non Resident Indian
OECD	Organisation for Economic Co-operation and Development
PIO	Persons of Indian Origin
PMRTS	Public Mobile Radio Trunked Services
RBI	Reserve Bank of India
V-Sat	Very Small Aperture Terminal

Chapter 1: Introduction

1.1 Foreign investments have a major role in the development of any economy. Foreign investment is not just a large and growing source of equity investment for developing economies, it also brings with it considerable benefits: technology transfer, management know-how, and access to export markets. It gives a boost to production, contributes to technological advancement, boosts employment and generates exports. At the same time the country has to adopt a cautious approach in promoting and encouraging foreign investments because the domestic market requires transition time for adjusting to the changed scenario.

1.2 The policy regarding Foreign Investment (FI) today is not uniform across sectors, applications and technologies. The convergence of technologies is rapidly blurring the boundaries between telecommunications and broadcasting and it is necessary for the policy framework to adjust to this change. This would also help in facilitating competition.

1.3 The Telecom Regulatory Authority of India has raised the issue of divergent FI limits for different sectors in its earlier recommendations. In the recommendations on "Issues Relating to Convergence and Competition in Broadcasting and Telecommunications" dated 20th March 2006, the Authority had observed:-

> ***"4.1.6.C. Foreign Direct Investment.***
>
> *The rules regarding Foreign Direct Investment are today highly divergent across sectors, applications and technologies. Thus delivery of television signals through satellite based technology (DTH) has a FDI cap of 20%. The same product when delivered through cables attracts a FDI cap of 49%. No cap has been specified for IPTV which can be delivered on telecom infrastructure. However, the FDI cap for telecom companies who will offer IPTV is 74%. While there could be a case for restricting FDI on certain technologies, it is not clear if the full implications*

of these variations have been understood and acknowledged. Here again unintended distortions could take place in the market unless there is a well thought out scheme which requires such divergences on account of other factors. In this context it must be noted that broadcasting is a highly regulated sector all over the world and even today in most countries the restrictions on broadcasting and media are more severe than on telecommunications."

1.4 In view of the divergence in FI limits for different services, the need to undertake a review of the FI policy for the broadcasting sector has been highlighted time and again by the Authority through its recommendations. Extracts of these recommendations are enclosed as Annexure - I to this Consultation Paper. This is necessary for consistency in policy and a level playing field among competing technologies in view of convergence of technologies. With increasing digitalization and convergence, it is possible for the broadcasting and cable service providers as well as telecom service providers to provide "triple play" services (voice, video and data) to their subscribers.

1.5 The Ministry of Information and Broadcasting has sought recommendations of the Authority on Foreign Investment limits for various segments of Broadcasting Sector vide letter dated December 11, 2007. The letter specifically mentions teleport, DTH, satellite radio, HITS, cable operators and FM radio. A copy of the letter is placed as Annexure – II to this Consultation Paper.

1.6 This consultation paper is being issued by the Authority to have the benefit of the views of the stake-holders before it gives its recommendations to the Government.

1.7 The need for foreign investments in the country's economy and its pros and cons are given in Chapter – 2 of this Consultation Paper. Chapter - 3 of the Consultation Paper gives the current limits for Foreign Investments in different segments of the broadcasting sector. It has also dealt with the ongoing consultation processes and existing recommendations of the Authority relating to Foreign Investment limits. Chapter – 4 of this Consultation Paper discusses the need for having a re-look at foreign investment limits for Broadcasting Sector in the context of level playing field consideration. Chapter -5 of this Consultation Paper lists the main issues for consultation relating to foreign investment limits for different segments of broadcasting sector.

Chapter 2: Need for foreign investments

2.1 Foreign investments in any enterprise can be of two different types, namely, Foreign Direct Investment (FDI) and Foreign Institutional Investment (FII). Foreign Direct Investment (FDI) occurs when an investor based in one country acquires an asset in another country ***with the intent to manage the asset.*** Foreign Institutional Investment (FII) or Portfolio investment represents passive holdings of securities such as foreign stocks, bonds, or other financial assets, none of which entails active management or control of the securities' issuer by the investor. However, there are occasions when a foreign institutional investor seeks representations on the board of directors of a company in which investments are being made.

Foreign Direct Investment (FDI)

2.2 Foreign Direct Investment (FDI) is an integral part of the global economic system and a catalyst of development. Foreign Direct Investment (FDI) has the potential to generate employment, raise productivity, transfer skills and technology, enhance exports and contribute to the long-term economic development of the world’s developing countries. There are three types of foreign direct investment, i.e.

- ***Equity Capital*** (the value of share investment of a Multi National Corporations (MNC) in shares of an enterprise in a foreign country)
- ***Reinvested earning*** (Profit reinvested)
- ***Other capital*** (short and Long- term borrowing & lending of funds between the MNC and the affiliate)

Advantages of FDI

2.3 The positive side to the contribution of FDI in general to the economic development needs no elaboration. Economic literature has comprehensively documented the contribution of FDI to economic development in general. The mechanism of the relationship has been through infrastructure and technology transfers, enhancement of human capital, improvement in the quality of the factors of production, inflow in investment funds (benefits to the balance of payments), faster growth of output and employment, consumer benefits, increase in exports, increase in savings and investment, enterprise restructuring and increased productive efficiency due to influence of competition in host country markets.

Disadvantages of FDI

2.4 Equally important is the apprehension that the entry of foreign firms may raise the level of concentration in host country markets which can impede competition. It can have a negative effect on the balance of payments as profits are repatriated (albeit often offset by incoming FDI). It may lead to crowding out of domestic industry in case of credit constraints in an economy. It may discourage the development of technical know-how and may be detrimental to the growth of domestic producers. It may result in unaccounted social costs (net loss of jobs) and environmental and natural resource costs especially in the extractive and heavy industries.

2.5 Moreover, some host country authorities perceive an increasing dependence on internationally operating enterprises as representing a loss of political sovereignty. Even some expected benefits may prove elusive if, for example, the host economy, in its current state of economic development, is not able to take advantage of the technologies or know-how transferred through FDI. FDI in Broadcasting and Television services may also have implications regarding perceived outside influence (news) and politico-strategic interests of the country.

Factors affecting FDI

2.6 The most important factor in favour of a particular country for inflow of FDI is the quality of the domestic institutional environment. For the effective, smooth and efficient functioning of the economy, issues like economic freedom, good governance, judicial credibility and effectiveness, and transparency are important. Human resource development (HRD) is another key factor influencing the volume of FDI inflows. An effective education and training system upgrades the skill level of the workforce and improves the socio-political climate in the country. Other factors that affect FDI inflows include infrastructure availability, quality of the banking system, market size, repatriation of profits, characteristics of trade and competition policy and public security. Last but not the least, policy consistency and predictability are also important determinants of attractiveness of a location for FDI inflows.

Foreign Institutional Investment (FII)

2.7 Foreign Institutional Investment (FII) or Portfolio investment represents passive holdings of securities such as foreign stocks, bonds, or other financial assets. FII is also sometimes referred to as 'hot money', given the tendency of such flows to suddenly reverse direction in response to adverse market sentiments and thus precipitating large capital outflows. While theoretically 'herd' behaviour by FIIs and concomitant withdrawal cannot be ruled out, such possibilities are limited if the fundamentals of the economy are strong, the market is well regulated and the participants are mainly pension funds, life insurance companies and mutual funds, which are more involved with long term investments.

FDI vs. FII

2.8 The advantages regarding inflow of infrastructure and technology transfers, enhancement of human capital, improvement in the quality of the factors of production, enterprise restructuring and increased productive efficiency due to influence of competition associated with FDI are not available for investments received as FII. However, the concerns related to FDI, especially those about loss of political sovereignty, national identity, national security concerns, economic espionage and problems of law enforcement may not arise in case of FII. FDI takes place in the primary market and the funds go into the company's coffers. However, FII happens in the secondary market, that is stock exchanges, and as a result the funds do not go into a company's coffers.

2.9 Thus, foreign investment is an important economic tool, which can help in growth of an economy if channelised properly. For this purpose, it is important to have a well thought out foreign investment policy so as to maximize the positive effects of foreign investment while ensuring that the negative effects are minimized. Such a policy is more important for a sector like Broadcasting and Cable services, which is regulated in some form or the other in many countries from the national interest considerations. The policy on foreign investment needs to clearly lay down the limits for FDI and FII as well as the methodology for the computation of the same.

Chapter 3: Current status of limits on foreign investments

3.1 The current limits for Foreign Investment in different segments of broadcasting sector are tabulated below:-

Sub-sector	Limit	Entry Route
FM Radio	20 % (FDI + FII)	FIPB approval required
Cable network	49 % (FDI + FII)	FIPB approval required
DTH	49 % (FDI + FII) FDI component not to exceed 20 %	FIPB approval required
Uplinking Hub/ Teleports	49 % (FDI + FII)	FIPB approval required
News & Current Affairs TV Broadcaster	26 % (FDI + FII)	FIPB approval required
Non-News TV Broadcaster	No limits laid down	FIPB approval required

3.2 The definitions of FDI adopted by various reporting agencies is not uniform. The Indian definition of FDI differs from that of the International Monetary Fund and the United Nations Conference on Trade and Development. With a view to bringing the present FDI reporting system of RBI in alignment with the international reporting system, the Government, in consultation with RBI, had constituted a Committee comprising officials from RBI and the Department of Industrial Policy and Promotion (DIPP), Government of India (GoI) in May 2002 to study the conceptual and methodological issues, including data gaps involved and make necessary recommendations to strengthen the collection, compilation and reporting of FDI data. The extracts of the report of the Committee are enclosed as Annexure-III to this consultation paper.

3.3 Further, the Authority has already recommended that the total foreign investment limit including FDI for Headend-In-The-Sky (HITS) should be 74% as in case of telecom sector in view of convergence of technologies (its recommendations on Headend-In-The-Sky (HITS) sent to the Government on October 17, 2007.). Prior to this, in its recommendations on issues relating to Satellite Radio Services sent to the Government on

27th June, 2005, the Authority had recommended that 100% foreign ownership should be permitted. However, the Authority did not recommend any specific limit for foreign investments in Private Terrestrial Television in its recommendations dated August 29, 2005 while recommending that rules regarding foreign investment needed to be reviewed to bring about a greater consistency in the rules of various segments of the media sector.

3.4 In its recommendations on Mobile television service sent to the Government on January 23, 2008, the Authority has reiterated its earlier recommendation for a complete review of the FDI policy relating to carriage aspects of electronic media and recommended composite foreign investment limit including FDI of 74% for mobile television service.

3.5 The Authority has recommended enhancement of composite foreign investment limit for FM Radio broadcasting permission holders in its recommendations dated 22nd February, 2008. It has been recommended that the composite foreign investment limits for FM radio broadcasting permission holders, who are interested to broadcast news should be raised to 26% from present 20% in view of FDI provision of 26% in news and current affairs in Television (TV) Broadcasting. The composite foreign investment limit for FM Radio broadcasting permission holders, who do not opt for news broadcasting, should be increased to 49% from the present 20%. It has further been recommended that the composite foreign investment limit for FM Radio broadcasting permission holders should be revised as and when Government takes any further decision to revise foreign investment limits for TV broadcasting including news and current affairs.

3.6 As against the limits for foreign investments listed above, the Foreign Direct Investment ceiling for certain telecom services (such as Basic, Cellular, Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services) was enhanced from 49 per cent to 74 per cent in 2005. Total composite foreign holding limit was retained at 74 per cent and it was laid down that FDI upto 49 per cent would continue to be on automatic route. Foreign Investment Promotion

Board (FIPB) approval is required for FDI in the Licensee Company/ Indian promoters/ investment companies including their holding companies if it exceeds 49 per cent but is within the overall ceiling of 74 per cent. While approving the investment proposals, FIPB has to take note that investment is not coming from unfriendly countries.

Growth of Foreign Investments in the country

3.7 There has been significant increase in foreign investments in India in recent years. As per the data given in the Economic Survey 2007, the foreign investments in the country have gone up from US$ 5862 Million in 2000-2001 to US$ 17224 Million in 2005-2006 and total capital account inflows have increased from US$ 8535 Million in 2000-2001 to US$ 24238 Million in 2005-2006. This growth roughly translates into an annual growth rate of 23-24%.

3.8 The details of Foreign Direct Investment inflows ascertained from the Department of Industrial Policy & Promotion, Government of India, indicate that there have been wide fluctuations in FDI in Information & Broadcasting Sector (including print media) over the past six-seven years. The FDI in Information & Broadcasting Sector (including print media) has gone up from US$ 81.50 Million in 2000-2001 to US$ 202.72 Million in 2007-2008 (till October 2007). Time series data on FDI is tabulated below-

<u>FDI Data</u>

Total FDI equity inflows in Indian Economy (all sectors) (US$ in Million)							
Year	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
FDI	2908	4222	3134	2634	3755	5546	15730

FDI inflows in the Telecom Sector (US$ in Million)							
Year	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
FDI	178	873*	192	112	125	624**	478

* This five fold increase over the previous year corresponds to increase in foreign investment limits in some segments of Telecom sector in May 2001

** This five fold increase over the previous year corresponds to further increase in foreign investment limits in most segments of Telecom sector in November 2005.

FDI inflows in the Information & Broadcasting Sector (including print) (US$ in Million)							
Year	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07
FDI	82	5	37*	14	10	56**	44

* This increase corresponds to opening up of print media sector for FDI up to 26% in June 2002.

** This increase corresponds to permission for portfolio investments in print media sector in July 2005

3.9 A perusal of time series data on Foreign Direct Investment inflows indicates that even as there have been large variations in FDI inflows over the years, the peaks in FDI inflows are linked with some policy decisions relating to change in foreign investment limits. Therefore, it appears that in order to increase the inflow of foreign investments in the broadcasting sector, some policy initiatives may be required. However, the sole policy objective can not be increase in FDI inflows as foreign investments entail other serious considerations.

Chapter 4: Need for review of existing Foreign Investment limits

4.1 The variation in foreign investment limits in similar services may give unfair advantage to certain technologies/ service providers over others even though the end service being provided to the consumer may be same. For example cable TV services and IPTV services through telecom licensees have different foreign investment limits even though the end service is the same.

4.2 Considering the fact that when the same service provider can offer different services with different technologies either through the use of the same infrastructure or through a combination of business models, it is imperative that regulatory framework should ensure level playing field to allow the new convergent technologies the freedom to exploit market opportunities. This is also important for overall efficiency and the competitiveness in the sector.

4.3 An examination of the historical experiences of the developed markets of the Organisation for Economic Co-operation and Development (OECD) countries in general shows that foreign investment had been subjected to severe restrictions when it suited their national interests. Different sectors have been subjected to different policies with respect to FDI even at the same point in time[1]. Similarly, foreign investments in broadcasting sector in India have also been subject to restrictions. However, it has been seen from the experience of other sectors in the Indian Economy that a policy of liberalization results in acceleration of economic growth. Therefore, one point of view can be that the foreign investment limits for broadcasting sector should also be reviewed.

4.4 As already mentioned, the need to undertake a review of the FDI policy for the broadcasting sector has been highlighted time and again by the Authority through its recommendations. Of all the issues that have been raised by the stakeholders in this matter in India in the past, the most important one relates to the need for uniformity in the

[1] "Foreign Investment Regulation in Historical Perspective", Ha-Joon Chang, University of Cambridge, 2003.

treatment of FDI policy with respect to the entire Information, Communication and Technology (ICT) Sector. Differential levels of restrictions have been imposed in India in the media sector (see table in para 3.1). The Government (Ministry of Information and Broadcasting) in their reference to TRAI has suggested retaining the differential caps of foreign ownership with the hike in certain segments on various grounds. Reasons propounded by them for the proposed limits include parity in treatment, social sensitivity, the level of growth and competition, etc.

4.5 One of the major reasons for the need to review the foreign investment limits for broadcasting sector is the growth of convergence. Convergence often means different things to different people and it covers provision of different services through the same technology as well as provision of the same service through different technologies and platforms. Thus convergence can either mean converging technologies or converging services. There is convergence of technologies in telecom and broadcasting on account of digitalization and increasing use of IP technology. This 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. The present foreign investment limits in the fields of broadcasting and telecommunications have been set at different times. This was understandable when broadcasting and telecom were two distinct technologies. However, with growing convergence and the consequential blurring of boundaries, the need to have a relook at the foreign investment limits arises so as to ensure level playing field conditions. Disparities in foreign investment limits are significant factors in any decisions by any overseas operators to provide services in a converged environment. The degree of differences in foreign investment limits associated with one technology or another to provide similar services will override considerations of efficiency and effectiveness in the decision making process, with the result that the outcomes are not the best decisions for the converged industry, the economy as a whole, and the consumer.

4.6 Of all the sectors, the policy governing Foreign Ownership restrictions of electronic media have attracted maximum attention of investors, current and potential, besides other stakeholders, the reasons for which are not far to seek. Media sector particularly in developing countries was primarily driven by government ownership. Liberalization in the economies of emerging markets has resulted in opening up of sector for private participation like other sectors of the economy. Countries in general have been cautious in relaxing restrictions of Foreign Ownership in the media sector for a number of reasons and important ones among them include nationalist explanations (i.e. preserving cultural knowledge/ practices, social and cultural values) and national security concerns. Primary concern of the host country in justifying FDI restrictions is that foreign owned/ controlled firms may serve as an indirect route through which foreign governments could influence the host country[2]. Countries therefore use these arguments to raise barriers to foreign firms from entering the home markets.

4.7 Though foreign ownership restrictions have been eased in many countries, they continue to exist even in liberalized markets mainly on account of the concerns regarding national identity, security, economic espionage, damage to law enforcement interception capabilities etc. It is noteworthy that such restrictions on foreign ownership may be direct as well as indirect[3].

4.8 In the Indian context, as in many emerging markets, different types of services within the ICT sector are governed by different licensing framework. Terms and conditions including entry regulations governing these services are different despite the technological possibility of convergence. Except, the regulation of carriage part, different types of ICT services are continued to be differently regulated because of multiplicity of rules/procedure and agencies responsible for the sector. There exist a large number of legacy issues because of the different types of licensing frameworks that existed at different points of time.

4.9 One other consideration generally kept in view for deciding the question of the levels of restrictions in foreign ownership within a sector could be the market definition.

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[2] S.S.Pandya, October, 2006, Industriousness: On the Sources of Cross-Industry Variation in Foreign Direct Investment Restrictions, Harvard University

[3] ICT Regulation Toolkit, 2007, *Infodev.*

From the perspective of competition analysis, level playing field argument is relevant and applicable only when all the services in question are said to be in the same 'relevant market'. In terms of market analysis, the specific segments like FM Radio, Cable TV, DTH, and Broadcasting of TV Channels may or may not fall within the purview of the same 'Relevant Market'.

4.10 An important factor regarding reckoning of levels of foreign investments is the methodology for computation of FDI and FII in a particular enterprise. Currently, the method for calculating the foreign investment levels in a News & Current Affairs TV channel as given in the Uplinking guidelines of December 2005 is reproduced below:-

"3.1 Eligibility Criteria.

3.1.1 Foreign Equity holding including FDI/FII/NRI investments should not exceed 26% of the Paid Up equity of the applicant company. However, the entity making portfolio investment in the form of FII/NRIs deposits shall not be "**persons acting in concert**" with FDI investors, as defined in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The Company, permitted to uplink the channel shall certify the continued compliance of this requirement through its Company Secretary, at the end of each financial year.

3.1.2 Permission will be granted only in cases where equity held by the largest Indian shareholder is at least 51% of the total equity, excluding the equity held by Public Sector Banks and Public Financial Institutions as defined in Section 4A of the Companies Act, 1956, in the New Entity. The term largest Indian shareholder, used in this clause, will include any or a combination of the following:

(1) In the case of an individual shareholder,

(a) The individual shareholder.

(b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.

(c) A company/ group of companies in which the individual shareholder/HUF to which he belongs has management and controlling interest.

(2) In the case of an Indian company,

(a) The Indian company

(b) A group of Indian companies under the same management and ownership control.

For the purpose of this Clause, "Indian company" shall be a company, which must have a resident Indian or a relative as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% of the shares.

Provided that in case of a combination of all or any of the entities mentioned in Sub-Clause (1) and (2) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

3.1.3 While calculating foreign equity of the applicant company, the foreign holding component, if any, in the equity of the Indian shareholder companies of the applicant company will be duly reckoned on pro-rata basis, so as to arrive at the total foreign holding in the applicant company. However, the indirect FII equity in a company as on 31st March of the year would be taken for the purposes of pro-rata reckoning of foreign holdings."

4.11 As against this, Press Note No. 5 (2005 Series) Dated 3rd November, 2005 issued by SIA (FC Division) of the Department of Industrial Policy & Promotion (Ministry of Commerce & Industry) which enhanced the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in the Telecom sector prescribed half yearly compliance report for foreign investments in the Telecom sector. The relevant portion of the press note is reproduced below-

"In pursuance of the Government's commitment to liberalise the FDI regime, it has been decided to enhance the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in certain telecom services (such as Basic, Cellular, Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services), subject to the following conditions:-

A. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/ investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company. Hence, the

> remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of Indian public sector banks and Indian public sector financial institutions will be treated as 'Indian' holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis."

Therefore, while comparing foreign investment limits, it is necessary to keep in mind the different methodologies laid down for calculation of foreign investments in different sectors and it may be a good idea to standardize the methodology for monitoring of sectoral foreign investment caps.

4.12 As already mentioned FII is also sometimes referred to as 'hot money' given the tendency of such flows to suddenly reverse direction in response to adverse market sentiments and precipitating large capital outflows. Even if the overall flow of FII does not change direction, the foreign investors keep changing their portfolio of holdings regularly. This results in large sectoral variations in level of foreign investments on a daily basis.

4.13 The Reserve Bank of India monitors the ceilings on Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), and Persons of Indian Origin (PIOs) investments in Indian companies on a daily basis. For effective monitoring of foreign investment ceiling limits, the Reserve Bank has fixed cut-off points that are two percentage points lower than the actual ceilings as explained ahead. Once the aggregate net purchases of equity shares of the company by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), and Persons of Indian Origin (PIOs) reach the cut-off point, which is 2% below the overall limit, the Reserve Bank cautions all designated bank branches so as not to purchase any more equity shares of the respective company on behalf of Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), and Persons of Indian Origin (PIOs) without prior approval of the Reserve Bank. The link offices are then required to intimate the Reserve Bank about the total number and value of equity shares/convertible debentures of the company they propose to buy on behalf of Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), and Persons of Indian Origin (PIOs). On receipt of such proposals, the Reserve Bank gives clearances on a first-come-first served basis till such investments in companies reach 10 / 24 / 30 / 40/ 49 per cent limit or the sectoral caps/statutory ceilings as applicable. On reaching the aggregate ceiling limit, the Reserve Bank advises all designated bank branches to stop purchases on behalf of their Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), and Persons of Indian Origin (PIOs) clients. The Reserve Bank also informs the general public about the `caution' and the `stop purchase' in these companies through a press release.

Chapter 5: Issues for Consultation

5.1 The reference received from the Government of India (enclosed as Annexure-II) has proposed certain foreign investment limits in different segments of broadcasting sector and given its reasons for the proposed limits. The Government has sought recommendations of the Authority under section 11(1)(a) of the Telecom Regulatory Authority of India Act, 1997 on the proposals. The existing foreign investment limits for different segments may be revised or retained as follows:-

S. No.	Segment	Existing limit	Proposed limit
1.	Teleport (Hub)	49% (FDI+FII)	74% (FDI+FII)
2.	DTH	49% (FDI+FII) Within the composite limit, the FDI component not to exceed 20%.	74% (FDI+FII)
3.	Satellite Radio	No Policy as on date*	74% (FDI+FII)
4.	HITS	No Policy as on date **	74% (FDI+FII)
5.	Cable Network	49% (FDI+FII)	49% (FDI+FII)
6.	FM Radio	20% (FDI+FII)	24% (FDI+FII)
7.	TV Channels (News & Current Affair channel)	26% (FDI+FII)	26% (FDI+FII)
* Approval to one foreign Satellite Radio operator given through FIPB route. ** Permission for HITS operation given to two Teleport licensees (49% foreign investment limit).			

5.2 Therefore, the main issues for consultation are:-

5.2.1. Whether the foreign investment limits need to be revised as proposed.

5.2.2. Whether the proposed limits are acceptable for the reasons given in the reference or there are some other reasons? Any other reasons in favour of the proposed limits may please be elaborated.

5.2.3. **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.**

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.**

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?**

5.3 However, apart from the issues arising from the proposal of the Government, there are other issues which relate to the need for a comprehensive policy on foreign investment limits for different segments of the broadcasting sector. These are:-

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.**

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.**

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.

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.

Annexure-I

Extracts from relevant recommendations of the Authority wherein a review of FDI policy has been recommended

A. In its recommendations on “2nd Phase of Private FM Radio Broadcasting” dated 11th August, 2004, the Authority had pointed out **“…** The rules regarding FDI vary from segment to segment in the media sector. … This leads to anomalies in media policy – whereas foreign news channels can be seen even for news, FDI is not permitted even for pure entertainment FM radio.” The Authority had recommended “…It is therefore necessary for the Government to review the policy in a holistic manner and bring about a greater degree of consistency in the rules for various segments.”

B. Thereafter, in its recommendations on “Issues relating to Broadcasting and Distribution of TV Channels” dated 1st October, 2004 the Authority recommended “…The Foreign Direct Investment limit in Cable TV as well as related sectors like DTH should be reviewed and a consistent policy adopted.”

C. The issue was again covered in the recommendations on “Issues Relating to Private Terrestrial TV Broadcast Service” dated 29th August, 2005 by the Authority. Regarding FDI for private terrestrial television, the Authority recommended “…In the case of terrestrial TV, a decision would have to be taken on this issue as there has been no such service in the past. This could be kept at 20% to be on par with FM radio since both involve terrestrial broadcasting and have wide reach. However it may be better to take a consolidated view of all media related sectors – in addition note would have to be taken of the likely convergence in this sector with the telecom services also.

Thus as has been recommended earlier by the Authority in the context of Private FM Radio, the rules regarding foreign investment need to be reviewed to bring about a greater consistency in the rules of various segments of the media sector. Given the interest of the telecom sector in this area, this review would also need to take note of the likely convergence in future between telecommunications and broadcasting."

D. The recommendations on Digitalization of Cable Television dated 14th September 2005 reiterated the earlier recommendations on the issue by stating "…The Authority has already stated in its recommendation on "Issues relating to Broadcasting and Distribution of TV channels" that there should be consistency in policy and level playing field between competing technologies and therefore had recommended that there is need for a complete review of the FDI policy so that it is consistent across all sectors. This would ensure that policies are not a stumbling block where there is a natural convergence of technologies. This recommendation is reiterated in the context of digitalisation also."

E. The recommendations on "Issues Relating to Convergence and Competition in Broadcasting and Telecommunications" dated 20th March 2006 referred to earlier recommendations on the issue and stated "…The Authority has already taken a view on this issue in several of its recommendations and would again urge the Government to undertake a complete review of the FDI policy for the various sub sectors in telecommunications and broadcasting so that there is consistency in policy and a level playing field between competing technologies."

Annexure-II

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सचिव
SECRETARY
सूचना और प्रसारण
INFORMATION & BROADCASTING
भारत सरकार
GOVERNMENT OF INDIA

D.O. No. 18/15/2007-BP&L (Pt.)

Office:
Diary No. 3041
Date 14/12

नई दिल्ली-१, तारीख २००
Dated New Delhi-1, the December 11. 2007

Dear Shri Mishra,

Telecom Regulatory Authority of India in its various recommendations with respect to broadcasting service has been suggesting that foreign investment limits need to be reviewed to bring about greater consistency in the rules pertaining to various segments of media sector especially in view of the likely convergence in future of telecommunications and broadcasting services.

2. The matter has since been reviewed at the Ministry in consultation with Department of Industrial Policy and Promotion. It is felt that the broadcasting network service providers, except the cable operators, which include teleport/hub/earth station, DTH broadcasting network, satellite radio broadcasting network and HITS operators can be kept at a level of a composite cap of 74% for FDI and FII investment including the indirect foreign investments. Though TRAI has recommended 100% foreign investment to be allowed in the satellite radio sector, the Government is of the view that to provide parity, the satellite radio broadcasting network should also be kept at the level of 74% for the time being to enable entry of Indian companies in a relatively new sector.

3. As far as Cable operators are concerned, it will not be proper to raise the foreign investment limit from 49% to 74% at present as the control does not then remain in Indian hands and shifts to the foreign partner. Cable television with a reach of approximately 68 million households is still the most pre-dominant mode of distribution of broadcast channels. In the absence of alternative modes of delivery to the subscriber it would not be desirable to increase the level beyond 49% and allow the management control to pass on to the foreign investors. It is also seen that as of now, it has not been attracting even 49% of the foreign investment limit prescribed so far. Thus in the light of the sensitivity involved and the nation wide distribution through cable, for the time being, it is not proposed to increase the foreign investment limit from the present level of 49%.

4. On the FM Radio side, it is felt that this sector has been opened up only recently and has had a good response from domestic players. The FM channels are still in the process of being operationalised and uptill now 150 private FM channels have become operational out of a total of 266 channels permitted. It is felt that Indian players need adequate gestation time to enable then to grow and compete with the foreign broadcasters. Moreover, the level of investment required is not so high that the sector cannot grow without foreign investment. However, as per discussions with the Deptt. of Industrial Policy and Promotion, the Ministry may have no objection to increasing the level from the present 20% to 24% as no additional rights will accrue to the foreign shareholders as per the Company Law and it will ratrionalise the FDI regime from the point of view of Deptt. of Industrial Policy and Promotion.

5. There is no change proposed in the existing level of 26% foreign investment (FDI+FII) in the news and current affairs channels.

6. In light of the above. TRAI is requested to send its recommendations on the proposal as provided under Section 11(1)(a) of the TRAI Act.

Best regards,

Yours sincerely,

(ASHA SWARUP)

Shri Nripendra Mishra
Chairman
Telecom Regulatory Authority of India
Mahanagar Doordarshan Bhavan
Jawaharlal Nehru Marg (Old Minto Road)
New Delhi - 110002

Annexure-III

Extracts from the report of the Committee on Compilation of Foreign Direct Investment in India (October 2002)

Definition of Foreign Direct Investment

1. FDI is the process whereby residents of one country (the home country) acquire ownership of assets for the purpose of controlling the production, distribution and other activities of a firm in another country (the host country).

IMF Definition

2. According to the BPM5, foreign direct investment is the category of international investment that reflects the objective of obtaining a lasting interest by a resident entity in one economy in an enterprise resident in another economy. The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence by the investor on the management of the enterprise.

UNCTAD Definition

3. The WIR02 defines FDI as 'an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the FDI enterprise, affiliate enterprise or foreign affiliate. FDI implies that the investor exerts a significant degree of influence on the management of the enterprise resident in the other economy. Such investment involves both the initial transaction between the two entities and all subsequent transactions between them and among foreign affiliates, both incorporated and unincorporated. Individuals as well as business entities may undertake FDI.

4. Flows of FDI comprise capital provided (either directly or through other related enterprises) by a foreign direct investor to an FDI enterprise, or capital received from an FDI enterprise by a foreign direct investor. FDI has three components, viz., equity capital, reinvested earnings and intra-company loans.

- Equity capital is the foreign direct investor's purchase of share of an enterprise in a country other than its own.

- Reinvested earnings comprise the direct investors' share (in proportion to direct equity participation) of earnings not distributed as dividends by affiliates, or earnings not remitted to the direct investor. Such retained profits by affiliates are reinvested.
- Intra-company loans or intra-company debt transactions refer to short-term or long-term borrowing and lending of funds between direct investors (parent enterprises) and affiliate enterprises.

OECD Benchmark Definition of Foreign Direct Investment (Third Edition)

5. FDI reflects the objective of obtaining a lasting interest by a resident entity in one economy (direct investor) in an entity resident in an economy other than that of the investor (direct investment enterprise). The lasting interest implies the existence of a long-term relationship between the direct investor and the enterprise and a significant degree of influence on the management of the enterprise. Direct investment involves both the initial transaction between the two entities and all subsequent capital transactions between them and among affiliated enterprises, both incorporated and unincorporated.

6. As is evident from the above definitions, there is a large degree of commonality between the IMF, UNCTAD and OECD definitions of FDI. Since the IMF definition is followed internationally, the Committee is in favour of following the IMF definition.