

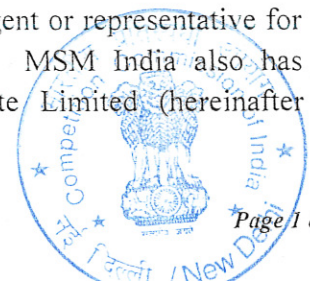
COMPETITION COMMISSION OF INDIA

9th August, 2012

Combination Registration No. C-2012/06/63

Order under Section 31 (1) of the Competition Act, 2002

1. On 18th June, 2012, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) relating to the proposed acquisition of equity shares of Multi Screen Media Private Limited (hereinafter referred to as “**MSM India**”) by SPE Mauritius Holdings Limited (hereinafter referred to as “**SPE Holdings**”) and SPE Mauritius Investments Limited (hereinafter referred to as “**SPE Investments**”) from Grandway Global Holdings Limited (hereinafter referred to as “**Grandway**”) and Atlas Equifin Private Limited (hereinafter referred to as “**Atlas**”).
2. The notice was given pursuant to SPE Singapore Holdings Inc. (hereinafter referred to as “**SPE Singapore**”) executing two separate share purchase agreements with Atlas and Grandway respectively, on 12th June, 2012. The rights of SPE Singapore under the said share purchase agreements were assigned to SPE Holdings and SPE Investments (SPE Holdings and SPE Investments shall hereinafter collectively referred to as “**Acquirers**”) on 12th June, 2012. It has been stated in the notice that the Acquirers are wholly owned subsidiaries of SPE Singapore.
3. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 29th June, 2012, the Acquirers were required to remove defects and furnish certain information/documents in relation to the notice. The Acquirers filed their reply to the said letter on 16th July, 2012. Since the reply dated 16th July, 2012 was found to be incomplete, vide letter dated 18th July, 2012, the Acquirers were asked to furnish complete information/documents as required vide letter dated 29th June, 2012. The Acquirers filed their reply on 30th July, 2012.
4. The proposed combination relates to the acquisition of 20.28 per cent and 12.11 per cent of the equity shares in MSM India by the Acquirers from Grandway and Atlas, respectively.
5. MSM India is a private limited company incorporated under the provisions of the Companies Act, 1956. It has been stated in the notice that MSM India is engaged in the production of television programs in Indian languages primarily for export; sale and distribution of audio-visual content in India, including cable and satellite owned and telecast by MSM Satellite (Singapore) Pte. Limited (hereinafter referred to as “**MSM Singapore**”) and Sony Pictures Entertainment Inc. (hereinafter referred to as “**SPE**”) as well as content distributed through new media; and acting as an agent or representative for the sale of advertising time in India for the above channels. MSM India also has subsidiaries namely MSM Singapore, MSM Discovery Private Limited (hereinafter



referred to as “**MSM Discovery**”), MSM Asia Limited and MSM North America, Inc. that are engaged in distributing, marketing and administering advertising of television channels across different parts of the world.

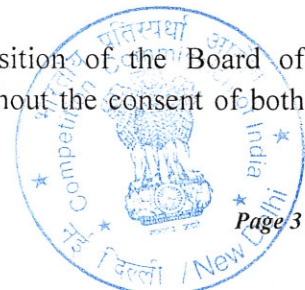
6. The Acquirers i.e. SPE Holdings and SPE Investments are companies incorporated under the laws of Mauritius and are wholly owned subsidiaries of SPE Singapore. SPE Singapore is stated to be indirect wholly-owned subsidiary of SPE, which in turn, is a wholly-owned subsidiary of Sony Corporation (hereinafter referred to as “**Sony**”). Sony is a Japan based listed company engaged in a wide range of businesses activities including manufacture and sale of electronic products; production and distribution of movies and television programmes; manufacture and sale of mobile phones etc. Sony has various subsidiaries across the world to undertake its business activities (Sony and the companies controlled by it shall collectively be referred to as “**Sony Group**”). It has been stated in the notice that the Acquirers collectively hold 62 per cent of the equity shares in MSM India.
7. As regards the business of Sony Group in India, it has been stated in the notice that Sony Pictures Entertainment Inc. (hereinafter referred to as “**SPE**”) is engaged in the production and/or distribution of English-language motion pictures, television programming, and other filmed entertainment for theatrical distribution, and via new media, and physical home entertainment; and – through its ownership or contractual relationship with MSM India and MSM Singapore – television distribution via cable and satellite. SPE is also involved in TV telecasting and advertisement sales of its English-language general entertainment channel (AXN and Animax) and Bengali-language general entertainment channel (Aath) through its contractual relationship with MSM India. In addition, Sony Group, directly or indirectly, offers electronic products and music recordings and related advertising in India.
8. Grandway and Atlas are companies incorporated under the laws of India and Mauritius, respectively. It has been stated in the notice that Grandway and Atlas are both special purpose vehicles just to hold shares in MSM India. As per the details provided in the notice, Grandway and Atlas collectively hold 32.39 per cent of the equity shares in MSM India.
9. Regulation 4 of the Combination Regulations states that notice under sub-section (2) of Section 6 of the Act need not normally be filed in respect of the categories of combinations mentioned in Schedule I as those combinations are ordinarily not likely to cause appreciable adverse effect on competition. One such category, Item 2 of Schedule I, is acquisition of shares or voting rights, where the acquirer, prior to acquisition, has fifty per cent or more shares or voting rights in the enterprise whose shares or voting rights are being acquired except in cases where the transaction results in transfer from joint control to sole control. The Acquirers have submitted in the notice that the shareholders of MSM India had entered into an agreement dated 24th May, 2000 as amended from time to time (hereinafter referred to as “**Shareholders Agreement**”). The Shareholders Agreement provides certain rights to the Acquirers, Grandway and Atlas over MSM India. It has been stated in the notice that the rights of Grandway and Atlas pursuant to the Shareholders Agreement maintain at the most only limited (and mostly statutory) minority investor protection and the same do not rise to the level of joint control over MSM India. Further,



the Acquirers already have sole control over MSM India and therefore, further acquisition of shares, purely for the purposes of consolidation, would fall under Item 2 of Schedule I of the Combination Regulations.

10. With respect to the above submission of the Acquirers, it is observed that:

- (a) Joint control over an enterprise implies control over the strategic commercial operations of the enterprise by two or more persons. In such a case, each of the persons in joint control would have the right to veto/block the strategic commercial decision(s) of the enterprise which could result in a dead lock situation. Joint control over an enterprise may arise as a result of shareholding or through contractual arrangements between the shareholders. However, careful scrutiny is required to differentiate mere investor protection rights from those rights which result in a situation of joint control. The assessment of joint control over an enterprise would depend on the facts and circumstances of each case with due consideration of relevant factors such as statutory and contractual rights of the shareholders.
- (b) In response to the specific query raised in Commission's letter dated 18th July, 2012, the Acquirers have submitted that they were informed by Grandway and Atlas that the composition of the shareholder groups controlling each of Grandway and Atlas is such that the two companies are under common control. Further, it is also evident from some of the documents furnished by the Acquirers that Grandway and Atlas have been acting together/collectively in representing/enforcing their rights in MSM India.
- (c) The Acquirers collectively hold 62 per cent of the equity shares in MSM India and have the right to nominate three directors on the Board. Grandway and Atlas, collectively, hold 32.39 per cent of the equity shares and have the right to nominate two directors on the Board. The remaining 5.61 per cent equity shares are held by Foreign Institutional Investors (FIIs) who do not have the right to nominate any director on the Board.
- (d) The Shareholders Agreement provides for certain actions of MSM India that could be undertaken only with the approval of the shareholders representing at least seventy five per cent of the total shareholders' interest, where such approval is required under the applicable law; or three-fourth of the Directors, in all other cases. Such actions include, (a) MSM India engaging in any new business or opening locations in cities other than Mumbai, Delhi, Bangalore and Chennai; and (b) the hiring or termination of the chief executive officer, chief financial officer, head of marketing, head of programming and general counsel or other counsel of MSM India or any other employee whose salary is or is proposed to be greater than US\$30,000 per year and the material terms of the employment of such officers and the material terms of employee benefit plans applicable to employees of MSM India.
- (e) Under the existing shareholding pattern and the composition of the Board of Directors, MSM India cannot undertake certain actions without the consent of both



the Acquirers and the Sellers i.e. Grandway and Atlas. In other words, the Acquirers and Sellers have to agree with each other to make MSM India undertake certain actions mentioned in the Shareholders Agreement.

- (f) It is observed that the collective shareholding of the Sellers to the extent of 32.39 per cent is sufficient to block/veto any action that requires special resolution under the provisions of the Companies Act, 1956. Further, the actions for which consent/approval of Grandway and Atlas is required pursuant to the Shareholders Agreement include certain strategic commercial decisions of MSM India and the same cannot be considered as mere minority investor protection rights. This is more particular with respect to the issue of opening of new offices and hiring or termination of key managerial personnel and any other employee whose salary is greater than US\$ 30, 000 and who could be responsible to manage the day to day operations of MSM India. Considering the collective shareholding and the rights of Grandway and Atlas pursuant to such shareholding (including those pursuant to the Shareholders Agreement), it is observed that the facts and circumstances of the case envisage joint control by the Acquirers and Sellers over MSM India.
11. Upon consummation of the proposed combination, the shareholding of the Acquirers in MSM India would increase from 62 per cent to 94.39 per cent and thereafter, the Acquirers could make MSM India undertake any action including those mentioned in the Shareholders Agreement for which currently the consent/approval of the Sellers i.e. Grandway and Atlas would be required. In view of the foregoing, the proposed combination results in transfer from joint to sole control for the purposes of the Combination Regulations and therefore, the proposed combination would not fall within the nature of transaction mentioned in Item 2 of Schedule I to the Combination Regulations.
12. The proposed combination results in transfer from joint control to sole control of the Acquirers over MSM India. It is noted that combinations resulting in transfer from joint to sole control may give rise to adverse competition concern in certain circumstances. For instance, when the acquirer and the acquired enterprise are competing with each other and the competition between them is lost as a result of the combination.
13. It is observed that other than the television channels operated by MSM India and its subsidiaries, the Sony Group, through SPE, also operates three television channels (AXN, ANIMAX and Aath) that are viewed by Indian consumers. However, the Acquirers which are the enterprises belonging to Sony Group already hold 62 per cent of the equity shares in MSM India and the businesses of SPE in India, stated earlier, are conducted through MSM India and its subsidiaries. Moreover, the Indian broadcasting sector is characterized by large number of channels, broadcasters and aggregators which provide enough choice to consumers.
14. In view of the foregoing, the proposed combination is not likely to give rise to any adverse competition concern in India.



15. Considering the facts on record and the details provided in the notice, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.
16. This approval is without prejudice to any other legal/statutory obligations as applicable.
17. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
18. The Secretary is directed to communicate to the Acquirers accordingly.



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