

COMPETITION COMMISSION OF INDIA

20th September, 2012

Combination Registration No. C-2012/07/64

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

1. On 5th July, 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 combination given by STARTV ATC Holding Limited (hereinafter referred to either as "**STARTV ATC**" or "**Acquirer**"), an indirect wholly owned subsidiary of News Corporation (hereinafter referred to as "**NWS**").
2. The notice was filed pursuant to execution of a Partnership Interest Purchase Agreement dated 5th June, 2012 (hereinafter referred to as "**PIPA**") entered into between ESPN Star Sports (hereinafter referred to as "**ESS**"), EGP Company (hereinafter referred to as "**EGP**"), ESPN Inc. (hereinafter referred to as "**ESPN**"), STARTV ATC, NWS and Yarraton Limited (hereinafter referred to as "**Yarraton**"). The proposed combination relates to the acquisition of the entire partnership interest of EGP in ESS by STARTV ATC. It has been stated in the notice that Yarraton, an indirect wholly owned subsidiary of NWS, currently owns 50 per cent of the partnership interest in ESS and the balance is being held by EGP, a group entity of The Walt Disney Company (hereinafter referred to as "**TWDC**"). It is stated in the notice that pursuant to the proposed combination, ESS would continue as a general partnership with the substitution of EGP as a partner of ESS by STARTV ATC.
3. As a result of the proposed combination, the partnership interest of NWS in ESS would increase from 50 per cent to 100 per cent and consequentially, NWS would acquire sole control over ESS, which is currently under joint control of Yarraton and EGP. Further, the change in ownership of 50 per cent of the partnership interest in ESS would also result in acquisition of sole control by NWS over the subsidiaries of ESS in India namely, ESPN Software India Private Limited ("**ESIPL**") and Scorpio Television India Private Limited ("**Scorpio**"). Pursuant to the proposed combination, NWS would also acquire control over 49 per cent interest of ESS in Premier Hockey Development Private Limited ("**PHDPL**"), a joint venture between ESS and the Indian Hockey Federation.
4. The proposed combination falls under Section 5(a) of the Act.
5. 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 13th July, 2012, the Acquirer was required to remove certain defects and provide information/document(s). The reply to the said letter was filed by the Acquirer on 30th July, 2012. Since the reply dated 30th July, 2012 was found to be incomplete, vide letter dated 31st July, 2012, the Acquirer was asked to furnish complete information/documents, as required vide letter dated 13th July, 2012. The Acquirer filed its reply on 13th August, 2012. In terms of sub-regulation (2) of Regulation 19 and sub-regulation (4) of Regulation 5 of the Combination Regulations, on 22nd August, 2012, the Acquirer was required to furnish additional information/documents. The reply to the communication dated 22nd August, 2012 was filed by the Acquirer on 6th September, 2012. Since the reply dated 6th September, 2012 was found to be incomplete, vide letter dated 6th September, 2012, the Acquirer was asked to furnish complete information/documents, as required vide letter dated 22nd August, 2012. The Acquirer filed its reply on 14th September, 2012.

6. STARTV ATC, a company incorporated under the laws of British Virgin Islands and an indirect wholly owned subsidiary of NWS, is stated to be engaged in making and holding investments. It has been stated in the notice that STARTV ATC currently does not have any assets or turnover in India or otherwise.
7. As per the information provided in the notice and information available in public domain, ESPN, a group entity of TWDC and the parent of EGP, is the world’s leading media sports entertainment company. EGP is stated to be a general partnership incorporated under the laws of the State of Delaware, United States of America (“USA”).
8. ESS, a general partnership under the laws of State of Delaware, USA, is stated to be established pursuant to the partnership agreement dated 3rd October, 1996 (hereinafter referred to as “**Partnership Agreement**”) entered into between ESPN, EGP, Star Entertainment Holdings Limited and Yarraton. As stated in the notice, ESS was established for the primary purpose of owning, operating and distributing pay television sports channels in certain territories in Asia, including India, in accordance with the terms of the Partnership Agreement. ESS has two indirect wholly owned subsidiaries in India namely, ES IPL and Scorpio. It has been stated in the notice that ES IPL holds the downlinking license(s) issued by the Ministry of Information and Broadcasting, Government of India (hereinafter referred to as “**MIB**”) for the ESS channels broadcasted in India namely, ESPN (SDF and HDF), Star Sports, Star Cricket (SDF and HDF) and ESPNews and also conducts the affiliate (distribution) and advertising sales for channels broadcasted by ESS. As stated in the notice, Scorpio was primarily involved in the production of enhanced cricket programming such as regional commentary and has stopped conducting business from April, 2011 onwards. It has been further stated that, in India, ESS has also set up a joint venture with the Indian Hockey Federation namely, PHDPL, which is presently not engaged in any business activity.



9. NWS, a corporation organised under the laws of the State of Delaware, USA, is stated to be a diversified global media company with operations principally in the United States of America, Continental Europe, the United Kingdom, Australia, Asia and Latin America. NWS's interests in India are primarily represented by its indirect wholly owned subsidiary Star India Private Limited (hereinafter referred to as "**SIPL**"), a private limited company incorporated under the provisions of the Companies Act, 1956. SIPL is stated to be primarily engaged in the business of broadcasting of television channels in India that are owned and operated by it and deals with channels that are owned and operated by its affiliates and that have been licensed to SIPL for distribution and/or conducting advertising sales (hereinafter SIPL and its affiliates are collectively referred to as "**Star Group**"). Further, it has been stated in the notice that Star Group does not operate in the broadcasting of sports channels in India. As per the information provided in the notice, other businesses of Star Group related to broadcasting of television channels in India, *inter-alia*, include the following:

- i) Tata Sky Limited ("**Tata Sky**"): Tata Sky, a company incorporated under the provisions of the Companies Act, 1956, is stated to be one of the Direct-to-Home (hereinafter referred to as "**DTH**") service providers through which the channels broadcasted by SIPL and other broadcasters are distributed to the end consumers. It has been stated in the notice that 20 per cent of the equity shareholding in Tata Sky is held by Network Digital Distribution Services FZ LLC, a company incorporated in Dubai and a group company of NWS. Further, NWS has an additional economic interest of approximately 9.8 per cent in Tata Sky by way of its 49 per cent investment in TS Investments Limited, which holds 20 per cent stake in Tata Sky.
- ii) Star Den Media Services Private Limited ("**Star Den**"): Star Den, a 50:50 joint venture between SIPL and Den Networks Limited, is stated to be currently engaged in the provision of placement and carriage services.
- iii) Media Pro Enterprise India Private Limited ("**Media Pro**"): Media Pro, a private limited company incorporated under the provisions of the Companies Act, 1956, is a joint venture formed pursuant to an agreement entered between Star Den, SIPL, Zee Turner Limited and Zee Entertainment Enterprises Limited. Star Den and Zee Turner Limited hold 50 per cent each in the share capital of Media Pro. Media Pro is stated to be engaged in the business of content aggregation and carries out the distribution of channels owned and controlled by SIPL and/or its affiliates, the Zee Group, and other third party channels, except for channels in sports genre, in which SIPL, Zee or Media Pro have acquired distribution rights.
- iv) The Board for Control of Cricket in India ("**BCCI**") rights: It has been stated in the notice that SIPL was awarded the media rights for international and domestic cricket matches in India for the period from 2012 to 2018 by the BCCI. Further, SIPL and ESS are stated to have entered into an arrangement whereby SIPL will



telecast, on the ESS sports television channels, cricket matches in respect of which media rights have been acquired by SIPL from the BCCI.

10. The proposed combination relates to broadcasting of sports channels in India. The permission for uplinking and downlinking of television channels in India is granted by the MIB. As per the latest information available on the website of MIB (www.mib.nic.in), 831 television channels are registered with the MIB. These channels provide a mix of content in various genres and languages and can be classified on the basis of various parameters such as reach i.e. national or regional viewership, language and different genres such as news, general entertainment, kids, sports etc.
11. It is observed that though the proposed combination results in transfer from joint control to sole control of NWS over ESS, it would not result in elimination of any competitor from the market as NWS and ESPN, the joint venture partners in ESS, are not competing with each other in the market for broadcasting of sports channels in India. Further, post-combination, ESPN can again consider an entry into the Indian market, after completion of the non-compete period specified in the PIPA. Further, the market share of a sports channel depends upon the sporting events broadcasted on that channel, which in turn is contingent upon the success of the broadcaster in the bidding process for obtaining broadcasting rights, undertaken by the sports authorities/associations for award of telecast rights of the respective sporting events.
12. It is further observed that the broadcasting sector in India is regulated by the Telecom Regulatory Authority of India (“TRAI”), which has framed various regulations which, *inter-alia*, make it obligatory for a broadcaster to provide signals of its television channels on a non-discriminatory basis to every DTH operator/ Multi-System Operator (hereinafter referred to as “MSO”) and not to enter into exclusive agreements with any MSO/distributor that prevents others from obtaining such television channels for distribution. In this regard, it is observed that the maximum rate that can be charged by a broadcaster for its television channels has been fixed by the TRAI. It is also observed that the Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007, provides that no content rights owner or holder and no television or radio broadcasting service provider shall carry a live television broadcast on any cable or DTH network or radio commentary broadcast in India of sporting events of national importance, unless it simultaneously shares the live broadcasting signal, without its advertisements, with the Prasar Bharati to enable it to re-transmit the same on its terrestrial networks and DTH networks in such manner and on such terms and conditions, as may be specified. In this regard, it is pertinent to note that in exercise of powers conferred under the said Act, the Central Government vide notifications dated 3rd October, 2007 and 8th February, 2008 had notified various events as sporting events of national importance such as, all official One-Day and Twenty-20 matches played by the Indian Men’s Cricket Team, semi-finals and finals of Men’s World Cup and International Cricket Council Championship Trophy, Summer Olympics, Commonwealth Games, Asian Games, etc. and therefore, in respect of such sporting



events, the broadcaster is required to share the live broadcasting signals with the Prasar Bharti, which may constrain the bargaining strength of the broadcaster vis-a-vis MSOs/DTH operators/advertisers.

13. In view of the foregoing and also considering the presence of other sports channels in India such as DD Sports, TEN Action Plus, TEN Sports, TEN Cricket, TEN Golf, Sony Six, Neo Sports Plus, Neo Prime, etc. the proposed combination is not likely to give rise to any adverse competition concern in India.
14. 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.
15. This approval is without prejudice to any other legal/statutory obligations as applicable.
16. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
17. The Secretary is directed to communicate to the Acquirer accordingly.



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