सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/09/436)

13.01.2017

Notice filed under sub-section (2) of Section 6 of the Competition Act, 2002 jointly given by Sony Pictures Networks India Private Limited and Aqua Holding Investment (Pvt.) Ltd

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representative: M/s Cyril Amarchand Mangaldas

<u>Order under sub-section (1) of Section 31 of the Act</u>

1. On 29.09.2016, the Competition Commission of India ("**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") jointly given by Sony Pictures Networks India Private Limited ("**Sony India**") and Aqua Holdings

Investments Private Limited ("**NewCo**"). The notice was filed pursuant to the execution of (i) Share Sale and Purchase Agreement ("**SPA**") dated 31.08.2016 executed between Sony India, Taj Television (India) Private Limited ("**Taj India**") and Zee Entertainment Enterprises Limited ("**Zee**"); and (ii) Business Purchase Agreement ("**BPA**") dated 31.08.2016 executed between Taj TV Limited ("**Taj Mauritius**"), NewCo, ATL Media Limited ("**ATL**"), SPE Mauritius Holdings Limited and SPE Mauritius Investments Limited. (Hereinafter Sony India, NewCo, Taj India and Taj Mauritius are collectively referred to as the "**Parties**")

2. The proposed combination is an interconnected transaction involving: (i) acquisition of 100 percent shareholding of Taj India by Sony India from Zee; (ii) acquisition of Sports Broadcasting business (consisting of broadcast, distribution and syndication of sports content on the Ten1 HD, Ten Golf HD, Ten Cricket (Middle East), Ten 1, Ten 2, Ten 34 and Ten Cricket (Caribbean) channels (collectively referred to as "**Ten**")) of Taj Mauritius by NewCo; and (iii) merger of NewCo into Sony India. ("**Proposed Combination**").

3. In terms of Regulation 14 of 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 13.10.2016, the Acquirer was required to provide certain information by 20.10.2016. The Acquirer filed response to the aforesaid letter on 25.10.2016, after seeking extension of time. The Acquirer has also made additional submissions on 04.11.2016 and 06.12.2016.

4. Sony India, a private limited company, is an indirect subsidiary of Sony Corporation ("**Sony**"), which owns and operates Sony Pictures Entertainment network of television channels. It broadcasts 22 channels in India and of the same, distributes 4 channels (standard definition and high definition feeds) outside India through its subsidiary based in the United Kingdom. In addition to the distribution of television channels, Sony India also sub-licenses standalone content forming part of its linear channels across the world in the original language of production as well as in dubbed local languages for broadcast and transmission across various platforms.

5. NewCo, a private limited company incorporated in Mauritius, is an indirect subsidiary of Sony. At present, it does not carry out any business activities and has no presence in India.

6. Taj India, a private limited company, is a wholly owned subsidiary of Zee. Taj India functions as a distribution and advertisement selling agent in India for television channels broadcasted by Taj Mauritius.

7. Taj Mauritius, a private limited company, is a wholly owned subsidiary of ATL, a subsidiary of Zee. Taj Mauritius is engaged in broadcast and distribution of television channels across different parts of the world. It also syndicates television content to third parties across all media platforms in several countries.

8. The Proposed Combination relates to broadcast, distribution and syndication of television channels in India. Accordingly, it would be appropriate to consider the specificities of the sector before going into the competition assessment of the Proposed Combination.

9. The major players in the value chain of broadcasting industry include content owners, broadcasters and direct platform operators ("**DPOs**"). Content owners are entities who generate the content to be broadcast and own the rights for the broadcast of this content. The content owners may further be classified into the following three categories: (i) broadcasters who generate content-in-house through commissioning and other "work for hire" arrangements; (ii) entities such as production houses and television studios which produce and license their own television content (e.g. television shows, comedy shows, etc.) to broadcasters; and (iii) owners of content such as music, movies or sporting events, who license rights, they have acquired, to the broadcasters. The broadcaster's role in the supply chain includes transmitting or "up-linking" the broadcast signals to the satellite. These broadcast signals are then downloaded by the DPOs for distribution to the consumers. DPOs download the content signals from the satellites uploaded by broadcaster for distribution to the consumers. Different types of DPOs in India are Multi System Operators ("**MSOs**"), Local Cable Operators ("**LCOs**"), Direct To Home Services ("**DTH**"), Internet Protocol Television ("**IPTV**") and Headend-in-the-Sky ("**HITS**").

Further, Over The Top ("**OTT**") services which include applications and services accessible over the internet. Additionally, there is also a terrestrial television service provider which is owned and operated exclusively by the national public service broadcaster – Doordarshan, a division of Prasar Bharti.

10. As regards the revenue generation in the broadcasting industry, the Commission observed that there are two significant revenue streams for the broadcasters viz., the subscription revenue received from the DPOs and advertisement revenue from advertisers. The specificities of the broadcasting industry in terms of the value chain and the revenue streams make this a multi-sided market.

11. In order to identify the potential markets that can be affected by the Proposed Combination, the Commission considered the aforesaid specificities of the broadcasting industry and the areas of operations of the Parties. Considering the same, the Commission decided to assess the impact of the Proposed Combination in the following markets in India:
    i. Market for acquisition of rights for broadcasting of sports events;
    ii. Market for advertisement on sports channels; and
    iii. Market for wholesale distribution of sports channels to DPOs.

12. The Commission noted that there are 3 significant players in the market for acquisition of rights for broadcasting of sports events in India viz., Sony, Star and Ten. The Proposed Combination would have the impact of reducing the number of competitors to two viz., Sony and Star.

13. The Commission observed that market for rights for broadcasting of sports events in India is a bidding market as majority of the tenders are awarded through a tender process. Accordingly, the Commission examined the bidding data submitted by the Parties for the last five years and observed that Ten sports is not the closest competitor of Sony considering the overlapping bids and the analysis of bid prices. The Commission further noted that the other competitor Star India Private Limited ("**Star**") is definitely not less

preferred and has the potential to pose competitive constraints to Sony post the Proposed Combination. Further, it was observed that, the market for rights for broadcasting of sports events, to some extent, is also characterized by competition from new bidders. The Commission observed that there are minimum entry requirements to participate in the market from both the regulatory and the content owner sides and in this regard noted the past instances of bidding and entry by firms not present in exclusively the sports genre.

14. The Commission analysed the market shares of the Parties in terms of number and value of contract (considering the contracts in which either of the Parties have participated from 2013 till date), Gross Rating Points ("**GRPs**") and advertising revenue. The Commission observed that the market share of Sony in terms of number of contracts is in the range of 20%-25% and that of Ten is in the range of 30%-35%. Thus, the combined market share of the Parties is in the range of 65-70% whereas, the market share of Star is in the range of 30-35%. The assessment, in terms of contract value, indicated that the contracts won by Ten were of lower value as compared to others. In terms of value of the contract, Sony has market share in the range of 15%-20% while Ten has a market share of around 10%-15% leading to a combined market share in the range of 25%-35% with Star having a market share in the range of 65%-70%. The Commission noted that the value of sports contracts is a better parameter for the assessment of size and resources of the players.

15. Further, given the heterogeneity of content, the Commission also analyzed the market shares of the Parties in terms of Gross Rating Points[1], ("**GRPs**") (for the period starting from week 41 of 2015 through week 34 of 2016). The Commission noted that, market share in terms of GRPs indicate that Sony has a market share in the range of 25-30 percent, while Ten has market share in the range of 15-20 percent. Thus, the combined market share of the Parties is in the range of 40-50 percent, whereas market share of Star is in the range of 40-45 percent.

16. In terms of advertising revenue, the Commission noted that market share of Sony is in the range of 50-55 percent, whereas, market share of Ten is in the range of 0-5 percent. Thus,

[1] GRP data is for the period from week 41 of 2015 through week 34 of 2016

the incremental market share in the post-combination scenario is not significant to raise competition concerns.

17. The various market share estimates above point to the fact that Sony and Ten are not close competitors and Star being a significant competitor post the Proposed Combination

18. The Commission noted that Sony is not present in the DPO segment (linear broadcast) in India. However, the Commission considered it appropriate to examine feedforward impact, if any, of the Proposed Combination in this segment.

19. The Commission observed that the market for wholesale distribution of sports channels is regulated by the Telecom Regulatory Authority of India ("**TRAI**"). Telecommunication (Broadcasting and Cable) Services Tariff Order, 2004 issued by TRAI, puts a ceiling on the charges to be paid by the subscriber to the local cable operators ("**LCOs**"), LCOs to Multi System Operators ("**MSOs**") and MSOs to broadcasters. In the case of analog cable, TRAI, through an order dated 15.01.2004, imposed a ceiling on the charges payable by a LCO to a MSO and also MSO to broadcaster (the charges were frozen to those prevailing in 26.12.2003)[2]. Further, for digital cable, channels and bouquets are required to be offered at not more than 42 per cent of the corresponding rates applicable for analog cable. Broadcasters are mandated to provide their channel also on *a-la-carte* basis to the DPOs. TRAI. Through its order dated 15.01.2004, TRAI has also imposed conditions regarding pricing of a-la-carte channels and their bouquets. Broadcasters are required to publish Reference Interconnect Offer ('**RIOs**') describing technical and commercial conditions for inter-connection (i.e. rate card for a-la-carte and bouquet) on their websites and submit copies to TRAI. The broadcasters are allowed to change a published RIO only after prior intimation to TRAI. In view of the absence of Sony in this segment and aforesaid regulatory provisions, the Proposed Combination is not likely to cause adverse effects on competition in this market segment.

2 Order No. 301-3/2004-Eco.Order dated 15th January 2004

20. Based on the aforesaid factors, the Commission observed that although the Proposed Combination allows Sony to consolidate its position, it does not seem likely to cause an appreciable adverse effect on competition in any of the potential relevant markets in India.

21. Considering facts on record and details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission, approved the same under sub-section (1) of section 31 of the Act.

22. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.

23. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.

24. The Secretary is directed to communicate to the Parties accordingly.