



सत्यमेव जयते



## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2020/05/745)

08<sup>th</sup> July, 2020

### Notice under Section 6(2) of the Competition Act, 2002 filed by Eros International Plc, STX Filmworks, Inc. and Marco Alliance Limited

#### CORAM:

Mr. Ashok Kumar Gupta  
Chairperson

Ms. Sangeeta Verma  
Member

Mr. Bhagwant Singh Bishnoi  
Member

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

1. On 19.05.2020, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), jointly filed by Eros International Plc (**Eros Plc**), STX Filmworks, Inc. (**STX**) and Marco Alliance Limited (**Marco**) (hereinafter, Eros Plc, STX and Marco together will be referred to as **Acquirers**). The Notice has been filed pursuant to an Agreement and Plan of Merger dated 17.04.2020 (**Merger Agreement**) entered into among Eros Plc, England Holdings 2 Inc, England Merger Corp (**Merger Sub**) and STX. (STX, and together with Eros Plc, will be referred to as the **Parties**).
2. The proposed combination envisages *inter alia*, the following:
  - a. Merger Sub (an indirect wholly-owned subsidiary of Eros Plc) will merge with and into STX, with STX continuing as the surviving entity, and as “Merged STX” (**Proposed Merger**). Post the Proposed Merger, Merged STX will be an indirect wholly owned



subsidiary of Eros Plc, and Eros Plc will be renamed 'Eros STX Global Corporation' (the **Combined Company**).

- b. Eros Plc and certain investors entered into a PIPE Subscription Agreement (**PIPE SA**) dated 17.04.2020. The PIPE SA contemplates certain investment in Eros Plc by certain investors. Further, the rights accruing to the investors as a result of the Merger Agreement and the PIPE SA have been substantially agreed in the form of an "**Investors' Rights Agreement**".
  - c. Marco Alliance Limited (**Marco**), an existing investor in STX, will subscribe to certain shares in Eros Plc, pursuant to the PIPE SA. It is further stated that as a result of the Merger Agreement, the PIPE SA and the Investors' Rights Agreement, Hony Group Management Limited (**Hony Capital**) (through Marco) is expected to directly or indirectly acquire an economic interest and voting interest along with board nomination rights and certain contractual rights in the Combined Company (collectively referred to as the **Proposed Hony Transaction**).
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* email dated 11.06.2020, the Acquirers were required to provide certain information/ clarification (s) in relation to the Proposed Combination; response to the same was received on 17.06.2020 (**Response**). Certain clarifications were sought in relation to Response, reply to the same was received on 25.06.2020.
  4. Eros Plc, stated to be a company incorporated in the Isle of Man, and listed on the New York Stock Exchange (**NYSE**), is the ultimate entity controlling the Eros group of companies (the **Eros Group**). It is stated that Eros Plc is engaged in *inter alia*, acquisition, co-production and distribution of Indian films in formats such as cinema, television and digital new media. It also owns and operates the Over-The-Top (**OTT**) platform 'Eros Now' which owns rights to films across Hindi and regional languages.
  5. England Holdings 2, Inc. is a corporation incorporated in Delaware, USA and is an indirect, wholly owned subsidiary of Eros Plc, incorporated for the purposes of the Proposed Merger.



6. As stated earlier, Merger Sub, a corporation incorporated in Delaware, USA, for the purposes of the proposed combination, is stated to be an indirect wholly owned subsidiary of Eros Plc.
7. STX is a company incorporated in Delaware, USA and is the ultimate parent entity of the STX group of companies. Presently, neither STX nor its group entities have any physical presence in India. In India, STX is engaged solely in the licensing of *English language film content* to third parties for theatrical and non-theatrical exploitation through its subsidiary, STX Financing LLC. The activities of STX are: (i) licensing of film content to Third Party distributors for theatrical exhibition; (ii) licensing of film content to Third Party distributors for television broadcasting (linear and non-linear), through digital formats (rental and purchase), including on OTT platforms, and through physical formats (rental and purchase), such as on BluRay.
8. Marco, an entity incorporated under the laws of the British Virgin Islands, is an investment holding company and a wholly owned subsidiary of Hony Capital Fund V., L.P. (**Hony Fund V**). Hony Fund V is controlled by Hony Capital. Hony Capital is an investment management firm that *inter alia*, is engaged in private equity buyout and has presence in areas including real estate, hedge fund, mutual fund, and innovation investment.
9. Further, it is stated that Marco is an investment holding vehicle and apart from holding the existing investment in STX, it has no other operations or investments. It is submitted that Hony Capital does not have any direct or indirect operations in India, or investments in any company incorporated in India. However, it is stated that Hony Capital has investment in PCCW International OTT (Cayman Islands) Holdings Limited (**PCCW OTT**), a company established under the laws of the Cayman Islands. It is submitted that PCCW OTT operates in India through the following entities: (a) Vuclip Digital Media Private Limited (India) – this entity is currently inactive; and (b) Vuclip (India) Private Limited (India) – this is a back office which provides engineering support services to the business operations of PCCW OTT in India.
10. In relation to above, it is submitted that Hony Capital indirectly holds a minority equity stake in PCCW OTT which is primarily engaged in the provision of OTT streaming services under the brand name Viu across various countries. It is also stated that in 2016, PCCW OTT launched its OTT platform i.e., Viu in India, and in December 2019, PCCW OTT announced that they had decided to shut down operations in India.



11. With regard to identification of horizontal overlaps, it is noted that business activities of Hony Capital's portfolio investment company PCCW OTT (which operates Viu), and the Combined Company (which will operate the OTT Eros Now), in India have overlaps in the overall OTT segment in India (**OTT Platform Segment**).
12. It is also observed that, both STX and the Eros Group are engaged in Media and Entertainment Sector (**Indian M&E**). Further, based on the submissions, it is noted that both STX and Eros (through subsidiary/ies) have presence in the narrower segment of Indian M&E at (i) *Production and supply of films to third-party distributors and exhibitors for theatrical release in India* (the **Theatrical Production Market**) and (ii) *Licensing of audio-visual content in India* (the **AV Licensing Market**).
13. With regard to segmentation on the basis of the language of the film i.e., English, Hindi and Regional Films, it is submitted in the notice that STX is engaged in the production and supply of only English language films for exhibition, whereas, Eros Group does not produce and distribute any English language films for theatrical release. It is observed, that, the AV Licencing Market may be sub-segmented on the basis of the nature of the content, that is, "film content", "sports content", and "non-film and non-sport content" or mode of distribution i.e., television, digital or physical format.
14. With respect to vertical relationship, it is submitted in the notice that STX is present in production and supply of Film Content to third-party distributors for exhibition in India (**Theatrical Licensing Market/Upstream Market-1**) while Eros Plc, through its subsidiaries is present in distribution of Audio – Visual Film Content to Exhibitors for Theatrical release in India (**Theatrical Distribution Market/Downstream Market-1**). Further, STX is active in Licensing of Audio – Visual Content in India (**AV Licensing Market/Upstream Market-2**) while Eros Plc through its subsidiaries is present in Retail Supply of Audio – Visual Content in India (**OTT Market/Downstream Market-2**).
15. The Commission decided to leave the delineation of the relevant market open as it is observed that the proposed combination, for the reasons detailed in ensuing paragraphs, is not likely to cause an appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.



16. On the basis of information provided in the notice it is observed that PCCW OTT had decided to shut down operations in India and considering its presence in the OTT Platform Segment, it appears that this overlap is not likely to raise competition concerns.
17. Based on the submissions, it is observed that the market share of Acquirers individually and combined is insignificant and that the incremental market share is also miniscule in Theatrical Production Market. Further there are other players such as DreamWorks UTV, Wave, Red Chillies Entertainment, Amir Khan Productions, Bhansali Productions, Vinod Chopra Films, RK Films, Nadiadwala Grandsons Entertainment, Dharma Productions and Reliance Entertainment, etc., who will pose competitive constraints on the Acquirers in the market for Theatrical Production Market.
18. In relation to the AV Licensing Market, it was observed that, combined market share of Eros Plc and STX is in the range of [5-10] percent and that the incremental market share is insignificant. It is also observed that there are other players such as Yash Raj Films, Excel Entertainment, T-series, Rohit Shetty Films Pvt Ltd and Nadiadwala Grandsons Entertainment, Viacom Inc., and The Walt Disney Company present in the AV Licensing Market.
19. With regard to vertical relationship, it is observed that STX has negligible presence in both the upstream segments viz: Theatrical Licensing Market and AV Licensing Market whereas the presence of Eros Plc is not significant in any of the downstream segments viz: Theatrical Distribution Market and OTT Market, to raise any competition foreclosure concern.
20. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.
21. This order shall stand revoked if, at any time, information provided by Acquirers is found to be incorrect.
22. The information provided by Acquirers is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.



Combination Registration No. C-2020/05/745



23. The Secretary is directed to communicate to the Acquirers, accordingly.