

December 28, 2018

To:

Ms. Harcharan Kaur
Under Secretary (BP&L),
Ministry of Information and Broadcasting,
Room No. 134, A Wing, Shastri Bhawan,
New Delhi-110001.
Email – harcharan.kaur@nic.in

Subject: Submission on the Draft Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) (Amendment) Bill, 2018 (“Bill”)

Dear Ma’am,

I write to you on behalf of The Sports Law and Policy Centre, Bengaluru (“SLPC”) in response to your request for comments on the proposed Bill. It is heartening that our broadcasting laws are constantly being evaluated for relevance and impact and that feedback is being sought from stakeholders and the public prior to material amendments being legislated upon.

Our organisation, the SLPC, is an independent think-tank focused on interdisciplinary research, scholarship, education and institutional support for public and private enterprises in areas relating to the legal, policy and ethical issues affecting professional and amateur sports in India. For more details about us and the work we do, please refer to our website at www.sportslaw.in.

Earlier this year, at the Second Annual Sports Law & Policy Symposium, 2018 at New Delhi, we released our research report titled, *A Wider Spectrum – Balancing the Many Interests in Sports Broadcasting Regulation in India*. Our report (“**Report**”) provided a historical overview of the evolution of Indian sports broadcasting law and regulation, explored the Indian market for sports broadcasting rights, studied the evolution of the sports broadcaster’s role and recommended areas in which we believe a review of laws, regulations and practices is appropriate. A copy of the Report is attached to this submission and certain sections of the Report referred to inline.

Significance of Sports Broadcasting Rights

Indian sport is undergoing rapid transformation. One of the significant drivers of this has been the growth of the Indian sports broadcasting market. India is now a highly competitive, technologically advanced and financially aggressive market,

especially for media rights in cricket. The sale of broadcasting and media rights has emerged as a key revenue stream in the business of sport and serves as the foundation upon which various sports are built and sustain their financial viability and health.

Federations, event organisers and governing bodies are able to utilise the revenues received from the sale of broadcast rights to invest back into sport, host sporting events, promote grassroots participation, remunerate players and coaching/training staff, offer pension schemes and insurance, maintain, build and upgrade facilities and distribute revenues to teams and participants for their development in the form of compensation, grants, fees and prize money. These revenues enable sports federations to achieve financial independence and reduce dependency on government grants and assistance from public funds.

Access to training infrastructure and systems, opportunities to participate in competitions and events and enhanced professional compensation from sport, in turn, provide athletes greater avenues to earn livelihoods and plan careers in sport. This incentivises greater participation in sports and access to a wider talent pool, thereby creating a virtuous cycle.

The broadcast and dissemination of event content across multiple platforms also enables the on-ground sponsorship structure of the event to have value through wider exposure, and event organisers are able to deliver value to event sponsors. The live nature of sport also gives broadcasters an audience, which in turn enables them to attract advertising revenue.

The media and broadcast rights ecosystem places a premium on exclusivity, incentivises broadcasters to bid for events and ensure coverage of a sports event and enables fans to connect with the athletes they support or admire and to take up sports and active lifestyles themselves.

Please refer to **Chapter III (pp. 69-79)** of our Report for a more detailed overview of the Indian Sports Broadcasting Landscape.

Role of Public v Private Broadcasters

We understand that the Ministry of Information and Broadcasting (“**MIB**”) is currently evaluating whether the outcome of the Supreme Court case in *Union of India v. BCCI & Ors.*¹ should be reversed through legislation.

In the aforementioned case, the Hon’ble Supreme Court of India had held that the ‘must share’ obligation under The Sports Broadcasting Signals (Mandatory Sharing with Prasar Bharati) Act, 2007 (“**The Sports Broadcasting Act**”) was

¹ Civil Appeal No. (S) 10732-10733 of 2017

independent from the ‘must carry’ obligation under The Cable Television Networks (Regulation) Act, 1995 (“**The Cable Networks Act**”) and, therefore, postulated that while Prasar Bharati could air the shared feed it receives from private sports broadcasters on Prasar Bharati’s terrestrial network and DTH platform, it could not do so on private cable networks and other DTH networks in India.

With a view to alter the legal position that emerged after this decision of the Hon’ble Supreme Court of India, the MIB has proposed the Bill, which intends to amend The Sports Broadcasting Act. The Bill requires private sports broadcasters to share the live television broadcast of sporting events of national importance, without advertisements, with Prasar Bharati to enable re-transmission by Prasar Bharati not only on its own terrestrial network and DTH network but also on private cable and DTH networks.

The Bill raises the key question of the role of private broadcasters’ *vis-a-vis* the public broadcaster in relation to sporting events. Private broadcasters would like the opportunity to allow the market to find the price and to retain control over how to market, distribute and monetise the rights without interference or dilution. On the other hand, the public broadcaster seeks to facilitate free engagement by viewers with broadcasts of major sports events that might form part of national culture, be the subject of key conversations and help create shared memories that build the national identity. These objectives are sought to be achieved by providing access to live sporting events to those who may not have the means to access pay television but whose participation in the viewing experience serves the interests of the community and the nation.

Mandatory sharing legislation recognises that most premium sports content is likely to migrate to private channels, which will be subject to subscription fees that could act as barriers to viewing and participation. As Paul Smith describes in his extensive writing on public service broadcasting, conceptually underlying such legislation is the wider public interest in the form of “cultural citizenship” made possible by having specific sporting events on free-to-air television.² Implicit in this is the role of common and shared experiences, including those around watching sport, in nation building.

“Listed events” and “anti-siphoning” legislations are a feature of various jurisdictions where private sports broadcasting is widespread. **Chapter I, Section D (pp. 19-25)** of our Report deals in detail with the distribution and the mandatory sharing obligations on private broadcasters, drawing from comparative examples in the United Kingdom, European Union, Australia, the United States of America, among other jurisdictions.

² Paul Smith, ‘Playing Under Pressure: Sport, Public Service Broadcasting and the British Broadcasting Corporation’ (2017) *The International Communication Gazette*, Vol. 79(2) 203–216, <http://journals.sagepub.com/doi/abs/10.1177/1748048517692907> accessed 26 December 2018.

Impact of Bill

While evaluating the proposed amendments contained in the Bill, it is pertinent to view the impact they will have on the development of sports in the country. In the short-term, the proposed amendment may indeed promote wider viewership of sports among a larger demographic by increasing the number and type of platforms on which sporting events of national importance are viewable for free. Concurrently, there would be increased viewership of Prasar Bharati's Doordarshan channels.

However, in the long-term it is our submission that the Bill would:

- (i) materially impact subscription revenues by reordering the negotiating position between private sports broadcasters and the private cable and DTH operators – given that the content will also be available on a free-basis on Doordarshan on the same platform, the broadcaster's position to receive subscription fees from viewers and carriage/interconnection fees from the platforms would be severely weakened; and
- (ii) materially impact advertising revenues by diluting the exclusivity of the private sports broadcaster's channels, causing ratings to fall and thereby negating the premium on advertising slot rates.

These consequences directly impact the primary sources and means of sports rights monetisation. Limiting the ability to monetise rights will reduce the price broadcasters would be willing to pay for rights in the future. This is likely to have a direct negative impact on the value of rights purchased from sports event owners and, consequently, on the value that will be available for reinvestment into the sport as described above.

We also wish to submit that, as we have described above, the original intent of mandatory sharing legislation was to ensure that those with limited financial means, who may not be able to access pay television, are provided means to access major sporting events without charge. The law's underlying basis is to facilitate content availability to a wide population rather than to promote free viewership to the largest number of viewers by converting paying subscribers of private channels into free viewers. Extending the scope of mandatory sharing, as proposed in the Bill, appears to fall in the latter category and, when seen in the context of its impact on the sports ecosystem, requires careful consideration.

A Fine Balance

With television penetration and internet access continuing to increase across the country, the present focus and priority for both Indian sports organisations/federations and broadcasters must be to extend the reach of their events to the

widest possible audience in India, including such demographic groups as well as regions that may have been previously ignored.

At the same time, it is important to find the right balance between dissemination and wider public access of sports content on the one hand and maintaining adequate financial incentive structures for private investment in sports broadcasting and media rights on the other. A failure to find the appropriate balance could strike at the very heart of sustainability and health of the Indian sports ecosystem.

Undoubtedly, the viewer is and should remain the primary stakeholder of broadcasting regulation. Broadcasters act as the intermediaries between the fan and the sport. Sports law and regulation must be designed to incentivise and promote the prioritisation of public interest through a balanced mélange of regulations that are enabling as well as visionary.

Finding the fine balance between the present and the future of sports development is critical. Sports broadcasting regulation, while promoting the public's right to view marquee sports events, must also be cognizant of the vital need to promote long-term investments, protect the integrity of these investments and provide a predictable and fair climate that facilitates the ease of doing business and the monetisation of sports content.

In carefully crafting sports broadcasting regulation, there is a tremendous opportunity to capture the true and inclusive value of sport by enabling the dissemination of content to our large and diverse population, using both traditional and new technologies. It is important that we approach this issue with caution and foresight.

The balance in the sports broadcasting market is a fine one; one between the interests of various stakeholders in the present, and between short-term and long-term interests of sports development. We would like to respectfully submit that these considerations receive due regard and the passage of the Bill in the proposed form be reconsidered.

Thank you once again for providing us the opportunity to present our feedback on the Bill. Do contact us at the details provided below in the event that you have any questions or require any clarifications in relation to our submission or if we can be of any other assistance in this matter.

Yours sincerely,



Shan Kohli
(On behalf of The Sports Law & Policy Centre, Bengaluru)

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