NON CONFIDENTIAL

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2022/04/923)

4th October 2022

Notice under Section 6(2) of the Competition Act, 2002 (Act) given by Culver Max Entertainment Private Limited, Zee Entertainment Enterprises Limited, Bangla Entertainment Private Limited, and Essel Group Participants

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 29th April, 2022, the Competition Commission of India received a notice under 6(2) of the Act (**Notice**) given by Culver Max Entertainment Private Limited[1] (**CME**), Zee Entertainment Enterprises Limited (**ZEEL**), Bangla Entertainment Private Limited (**BEPL**), and Essel Group Participants (collectively, **Notifying Parties**). The Notice was given pursuant to the draft composite scheme of arrangement amongst CME, BEPL, ZEEL, and their respective shareholders and creditors dated 21st December 2021 (**Scheme**) and the Merger Cooperation Agreement amongst CME, BEPL, and ZEEL dated 22nd December 2021 (**Merger Agreement**).

[1] Earlier known as Sony Pictures Networks India Private Limited

2. In terms of Regulation 14(3) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**), *vide* letters dated 11th May 2022 (**First Defect Letter**) and 9th June 2022 (**Second Defect Letter**), the Notifying Parties were required to provide certain information / document(s). In response, after seeking extension of time, the Notifying Parties filed their reply to the First Defect Letter on 10th June 2022 and a partial reply to the Second Defect Letter on 17th June 2022, and the remaining response on 8th July 2022.

PARTIES TO THE COMBINATION

3. **CME**: CME is an indirect wholly owned subsidiary of Sony Group Corporation (**SGC**).[2] CME belongs to SGC group (**SGC Group**). It is engaged in the business of, *inter alia*, (a) creating, owning, operating, programming, providing, transmitting, distributing, and promoting linear and non-linear, non-news program services, including sports program services, delivered by any means, primarily to viewers in India and the Indian diaspora globally, and (b) production, exhibition, broadcast, re-broadcast, transmission, re-transmission or other exploitation of non-news audio-visual content, including sports content, in any format or in any language spoken in India (including English) for exploitation of such program services. It has several General Entertainment Channel (**GEC**), film, sports and kids entertainment channels in India. Sony LIV is CME's digital entertainment video service, which provides over-the-top (**OTT**) services in India and international markets. It reaches out to over 700 million viewers in India and is available in 167 countries.

[2] With effect from 1st April 2021, Sony Corporation was renamed Sony Group Corporation (**SGC**). SGC is a public company headquartered in Tokyo, Japan. It is engaged in the segments of games and network services, music, motion pictures, electronics products and solutions, imaging and sensing solutions, financial services and initiatives relating to artificial intelligence.

4. **BEPL**: BEPL also belongs to SGC Group. It is an indirect wholly owned subsidiary of SGC and part of SGC Group. It is broadly engaged in (a) acquisition of rights for motion pictures, events, and other TV content; and (b) generating advertising revenue from the telecast of TV content. BEPL has two regional channels – Sony AATH and Sony Marathi.

5. **ZEEL**: ZEEL is a media and entertainment company, listed on the BSE Limited **(BSE)** and the National Stock Exchange of India Limited (**NSE**). It is engaged in the business of *inter alia* TV content development, broadcasting of regional and international entertainment satellite television channels, movies, music, and digital business. ZEE5 is ZEEL's digital entertainment video service which provides OTT services in India and international markets.

6. **Essel Group Participants**: [redacted].

PROPOSED COMBINATION

7. The proposed combination entails the following:

   (i) Amalgamation of each ZEEL and BEPL with and into CME (**Resultant Entity**);

   (ii) Preferential allotment of certain shares by CME to Essel Holdings Limited now known as Sunbright International Holdings Limited (**Essel Mauritius**) and Sunbright Mauritius Investments Limited (**Essel Mauritius SPV**); and

   [redacted]

8. Upon the sanction of the Scheme and upon the Scheme coming into effect on the Effective Date, the following shall become effective and operative, in the sequence described below—

(i) Sub-division of the equity shares of CME in accordance with the Scheme;

(ii) Issuance and allotment of CME Bonus Shares[3] by CME to the CME Shareholder(s) by way of a bonus issue;

(iii) Issuance and allotment of CME Subscription Shares[4] by CME to the CME Shareholder(s) in consideration of the contribution of the CME Subscription Amount[5] by the CME Shareholder(s) to CME, on a rights issue basis;

(iv) [redacted];

(v) Amalgamation of ZEEL and BEPL with and into CME;

(vi) Transfer of the authorised share capital of each ZEEL and BEPL to the Resultant Entity and the consequential increase in the authorised share capital of the Resultant Entity;

(vii) Issuance and allotment of equity shares by the Resultant Entity to the shareholders of ZEEL and BEPL;

(viii) Appointment of Mr. Punit Goenka as the Managing Director and Chief Executive Officer of the Resultant Entity;

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[3] **CME Bonus Shares** shall mean 47,53,46,400 Equity Shares of CME having a face value of INR 1 each to be issued by way of a bonus issue.

[4] **CME Subscription Shares** shall mean 26,49,56,361 Equity Shares of CME having a face value of INR 1 each to be issued to the CME Shareholder(s) by way of a rights issue.

[5] **CME Subscription Amount** shall mean INR 79,48,69,08,300 being the aggregate consideration to be paid by the CME Shareholder(s) in accordance with Section I of the Scheme for subscription to the CME Subscription Shares.

[redacted]

(ix) Conversion of the Resultant Entity into a 'public company" post the amalgamation of each ZEEL and BEPL with and into CME;

(x) Dissolution without winding up of BEPL and ZEEL; and

(xi) Listing of equity shares of the Resultant Entity on the stock exchanges.

The steps above collectively constitute the **Proposed Combination**.

9. It has been submitted that, under the terms of the definitive agreements, CME will have cash balance of [redacted] at closing, including through infusion by the current shareholders of CME (through rights issue, i.e., CME Subscription Shares) and the promoters (founders) of ZEEL (through preferential allotment i.e., Essel Subscription Shares), to enable the combined company (i.e., the Resultant Entity) to drive sharper content creation across platforms, strengthen its footprint in the rapidly evolving digital ecosystem, bid for media rights in the fast-growing sports landscape, and pursue other growth opportunities.

Post-transaction shareholding

10. It has been submitted that, on conclusion of the Proposed Combination and basis the entitlement ratio, the majority shareholding of 50.86% in the Resultant Entity will be indirectly held by Sony Pictures Entertainment Inc., 3.99% of the shareholding of the Resultant Entity will be held by the promoters (founders) of ZEEL, and 45.15% of the shareholding of the Resultant Entity will be held by other public shareholders of ZEEL.

11. SGC Group shall effectively acquire control over the Resultant Entity. CME Shareholders will be the majority shareholder of the Resultant Entity, basis which the Resultant Entity will ultimately belong to the SGC Group.

Fair Competition
For Greater Good

Governance of the Resultant Entity

12. ***Management of the Resultant Entity:*** The board of the Resultant Entity shall comprise not more than nine directors, as follows:

    (i) 5 directors, who have been nominated by the CME Shareholder;
    (ii) 3 independent directors; and
    (iii) ZEEL director (i.e., Mr. Punit Goenka), who will act as the Managing Director and Chief Executive Officer of the Resultant Entity for a period of five years on and from the effectiveness of the Scheme.

13. The board of the Resultant Entity shall at all times comprise of a majority of directors nominated by the CME shareholder.

14. ***Observer and consultative rights***: As per the Resultant Entity Articles of Association (**AoA**), subject to Essel Group Participants and/ or its Affiliates holding at least 1% of the Share Capital of the Resultant Entity, Essel Group Participants shall be collectively entitled to nominate one non-voting observer, who shall be entitled to attend meetings of the board of the Resultant Entity. Additionally, until Mr. Punit Goenka is the Managing Director and Chief Executive Officer of the Resultant Entity and subject to the Essel Group Participants and/ or its Affiliates holding at least 1% of the Share Capital of the Resultant Entity, the decisions regarding all consultative matters will be taken after consultation with Mr. Punit Goenka, in the manner provided in the Scheme.

PRELIMINARY COMPETITION ASSESSMENT

15. It has been stated that the Proposed Combination concerns the media and entertainment sector (**M&E**), particularly the broadcasting of television channels in India. As per the submissions made in the Notice and response to the defect letters, the value chain, particularly television channels and digital platforms comprises the following:

a. Content production and aggregation, which involves the creation of Audio Visual (**AV**) content by production companies and acquisition of content from other producers or content owners;

b. Broadcasting, which involves the distribution of content using audio and video signals through linear TV channels; and

c. Content distribution, which involves the delivery of content to consumers either via cable, satellite or direct to home (**DTH**) services, internet protocol television (**IPTV**) and headend-in-the-sky (**HITS**) or increasingly via OTT services.

16. With rapid digitisation and technological advancements, larger broadcasting houses are seen to be venturing into allied activities covered within the above three segments. Such integrated business houses in India include Disney-Star, Zee, Sony, Viacom, Sun and Enter 10. While all of these were primarily engaged in the operation of television channels, they progressively increased the number of channels based on content classification, content production, and content distribution. The details of the activities of the parties and overlaps are as under:

Table 1: Activities of the Parties along with overlap

S. No.	**Relevant Segments**	**Sony**	**Zee - part of combination[8]**
A.	**TV channels in India**	✓	✓

[8] In terms of materiality thresholds set out in the notes to Form I, an entity has been considered as an affiliate of another entity if the other entity holds, (i) direct or indirect shareholding of 10% or more, OR (ii) a right or ability to exercise any right (including any advantage of commercial nature) that is not available to an ordinary shareholder; OR (iii) right or ability to appoint a director or observer (**Materiality Thresholds**). In relation to the Essel Group Participants, the only two entities meet the Materiality Thresholds, (i) Zee Media Corporation Limited (**ZMCL**) and its wholly-owned subsidiary Zee Akash News Private Limited (**ZANPL**); and (ii) Living Entertainment Enterprises Private Limited (**LEEPL**). Further, channels owned and operated by these entities are not getting transferred to the Resultant Entity.

S. No.	Relevant Segments			Sony	Zee - part of combination[8]
	1.	GEC		✓	✓
		a)	English GEC	X	✓
		b)	Hindi GEC	✓	✓
		c)	Regional GEC	✓	✓
		d)	Bengali GEC	✓	✓
		e)	Marathi GEC	✓	✓
	2.	Films		✓	✓
		a)	Hindi	✓	✓
		b)	English	✓	✓
		c)	Regional	X	✓
	3.	Kids		✓	X
	4.	Infotainment and Lifestyle		✓	✓
	5.	Sports		✓	X
	6.	Music		X	✓
	7.	News		X	X
B.	**Retail supply of over-the-top (*OT T*) AV content in India**			✓	✓
C.	**Supply of advertising airtime on TV channels in India**			✓	✓
D.	**Licensing of AV content in India**			✓	✓
	1.	Licensing of AV film-content		✓	✓

S. No.	Relevant Segments		Sony	Zee - part of combination[8]
	2.	Licensing of AV 'non-film and non-sports' content	✓	✓
E.	**Production and supply of films to third-party distributors and exhibitors for theatrical release in India**		✓	✓
	1.	English films	✓	X
	2.	Hindi/Bollywood films	✓	✓
	3.	Regional films	✓	✓
F.	**Licensing of music rights in India**		✓	✓
G.	**Live events in India**		X	✓

17. The Notifying Parties have submitted the following relevant markets at broad and narrower level:

    i. Operation and wholesale supply of TV channels in India that may be further segmented into the markets of
        a. Operation and wholesale supply of Hindi GEC in India;
        b. Operation and wholesale supply of regional GEC in India;
        c. Operation and wholesale supply of film channels in India;
        d. Operation and wholesale supply of infotainment and lifestyle channels in India;
    ii. Retail supply of OTT AV content in India;
    iii. Supply of advertising airtime on TV channels in India;

iv. Licensing of AV content in India and its further narrower segments licensing of AV Film Content in India; and licensing of AV 'non-film and non-sports' content in India;

v. Production and supply of films to third-party distributors and exhibitors for theatrical release in India;

vi. Licensing of music rights in India.

18. A brief about various business segments in which the activities of Notifying Parties overlap are discussed below:

Operation and wholesale supply of TV channels in India

19. Notifying Parties have submitted that they are present in the segment for the operation and wholesale supply of TV channels in India. TV broadcasters package content that they either acquire or produce in-house onto TV channels, which are then broadcasted over public airways. These TV broadcasts are picked up by the Distribution Platform Operators (**DPO**s), which distribute the channels to end-consumers through cable, DTH, IPTV, or HITS.

20. It has been submitted that, as per TRAI regulations, satellite-broadcasted TV channels are available in India through the following distribution platforms: cable TV, DTH, IPTV, and HITS. The distribution of broadcasted channels by Multi System Operators (**MSOs**) and HITS to the end consumer occurs through Local Cable Operators (**LCOs**), whereas distribution by DTH and IPTV operators is directly to the end-consumer. All these service providers together are commonly referred to as DPOs. Distribution of TV channels from the broadcaster to the consumer has two levels:

(i) the bulk or wholesale level – (the DPO obtains TV channels from the broadcaster); and

(ii) the retail level – (the DPO offers these channels to consumers, either directly or through the connected LCOs).

21. It has been submitted that TV channel distribution is heavily regulated by TRAI at both the wholesale and retail levels, with consumer interest at the centre of these regulations.

22. The overlapping activities of the Notifying Parties in the business of operation and wholesale supply of TV channels in India are as provided in the table below:

Table 2: Overlaps between Parties in operation and wholesale supply of TV channels in India

TV channels in India		**Sony**	**Zee - part of combination**
1.	GEC	✓ ➢ SET, SET HD, ➢ Sony Pal, ➢ Sony SAB, ➢ Sony SAB HD, ➢ Sony Aath, ➢ Sony Marathi	✓ ➢ Zee Cafe, ➢ Zee Café HD, ➢ &TV, & ➢ TV HD, ➢ Big Magic, ➢ Zee Anmol, ➢ Zee TV, ➢ Zee TV HD, ➢ Zee Telugu, ➢ Zee Tamil, ➢ Zee Kannada, ➢ Zee Bangla, ➢ Zee Marathi, ➢ Zee Sarthak, ➢ Zee Ganga, ➢ Zee Keralam,

TV channels in India			Sony	Zee - part of combination
				➢ Zee Punjabi, ➢ Zee Marathi HD, ➢ Zee Telugu HD, ➢ Zee Bangla HD, ➢ Zee Kannada HD, ➢ Zee Tamil HD, ➢ Zee Keralam HD
	a)	Hindi GEC	✓ ➢ SET, ➢ SET HD, ➢ Sony Pal, ➢ Sony SAB, ➢ Sony SAB HD	✓ ➢ &TV, ➢ &TV HD, ➢ Big Magic, ➢ Zee Anmol, ➢ Zee TV, ➢ Zee TV HD
	b)	Regional GEC	✓ ➢ Sony Aath, ➢ Sony Marathi	✓ ➢ Zee Telugu, ➢ Zee Tamil, ➢ Zee Kannada, ➢ Zee Bangla, ➢ Zee Marathi, ➢ Zee Sarthak, ➢ Zee Ganga, ➢ Zee Keralam, ➢ Zee Punjabi, ➢ Zee Marathi HD, ➢ Zee Telugu HD, ➢ Zee Bangla HD, ➢ Zee Kannada HD,

TV channels in India			Sony	Zee - part of combination
				➢ Zee Tamil HD, ➢ Zee Keralam HD
	b.i)	Bengali GEC	✓ ➢ Sony Aath	✓ ➢ Zee Bangla, ➢ Zee Bangla HD
	b.ii)	Marathi GEC	✓ ➢ Sony Marathi	✓ ➢ Zee Marathi, ➢ Zee Marathi HD
2.	Films		✓ ➢ Sony Pix, ➢ Sony Pix HD, ➢ Sony Max, ➢ Sony Max HD, ➢ Sony Wah, ➢ Sony Max 2	✓ ➢ &flix, ➢ &flix HD, ➢ &Prive HD, ➢ Zee Cinema, ➢ Zee Cinema HD, ➢ Zee Anmol Cinema, ➢ &Pictures, ➢ Zee Action, ➢ Zee Bollywood, ➢ Zee Classic & xplor HD, ➢ Zee Bangla Cinema, ➢ Zee Yuva, ➢ Zee Biskope, ➢ Zee Cinemalu, ➢ Zee Cinemalu HD, ➢ Zee Picchar, ➢ &pictures HD, ➢ Zee Talkies,

TV channels in India			**Sony**	**Zee - part of combination**
				➢ Zee Talkies HD, ➢ Zee Thirai, ➢ Zee Chitramandir
	a)	Hindi	✓ ➢ SET, ➢ SET HD, ➢ Sony Pal, ➢ Sony SAB, ➢ Sony SAB HD	✓ ➢ &TV, ➢ &TV HD, ➢ Big Magic, ➢ Zee Anmol, ➢ Zee TV, ➢ Zee TV HD
	b)	English	✓ ➢ Sony Pix, ➢ Sony Pix HD	✓ ➢ &flix, ➢ &flix HD, ➢ &Prive HD
3.	Infotainment and lifestyle		✓ ➢ Sony BBC Earth ➢ Sony BBC Earth HD	✓ ➢ Zee Zest, ➢ Zee Zest HD, ➢ LF HD, ➢ EZMall.com

23. The activities of the Parties largely overlap with respect to operation and wholesale supply of television channels in India. While Sony Group is an international business house, Zee is an Indian group engaged in businesses across the TV and digital platforms value chain. Both the Parties are well-known and prominent broadcasters, particularly of Hindi-based television content. The assessment would focus on the effect of the Proposed Combination on stakeholders such as viewers, advertisers, content producers, distributors, *etc*.

24. It is observed that the Parties have a relatively higher market share in relation to Hindi language-based television channels. The market shares of the Parties based on the Gross Rating Point (**GRP**) as estimated by the Broadcast Audience Research Council (**BARC India**) is given in the table below:

Table 3: Market shares of Parties and competitors in operation and wholesale supply of TV channels in India

S. No.	Relevant Market (All Wholesale)	Market Shares for FY 2021(%) (based on GRP)							
		Sony	Zee	Combined	Disney	Sun	Viacom	Others	Remarks
1.	Hindi GECs	20-25	20-25	**40-45**	25-30	NA	10-15	0-5	5-10 (Enter10)
2.	Hindi Films	15-20	25-30	**40-45**	20-25	NA	5-10	30-35	-
3.	Marathi GEC	5-10	35-40	**40-45**	35-40	NA	10-15		-
4.	GECs in India	10-15	20-25	**30-35**	25-30	10-15	5-10	15-20	-
5.	All films	5-10	20-25	**30-35**	20-25	5-10	5-10	25-30	-
6.	Bengali GECs	5-10	30-35	**40-45**	35-40	5-10	5-10	5-10	-
7.	TV channels in India	5-10	15-20	**25-30**	20-25	5-10	5-10	25-30	-
8.	English films	15-20	5-10	**20-25**	20-25	NA	NA		35-40 (Times), 10-15 (Turner)
9.	Regional GECs	0-5	20-25	**25-30**	25-30	15-20	5-10	15-20	-

S. No.	Relevant Market (All Wholesale)	Market Shares for FY 2021(%) (based on GRP)							
		Sony	**Zee**	**Combined**	**Disney**	**Sun**	**Viacom**	**Others**	**Remarks**
10.	Infotainment & lifestyle	0-5	0-5	**0-5**	NA	40-45	5-10	20-25	25-30 (Discovery)

25. The GRP ratings of BARC India are a commonly accepted metric for broadcasters and advertisers to gauge the popularity of a television channel in India and make their commercial decisions, including pricing, accordingly. Thus, the same is considered an appropriate metric for the computation of market share of the Parties and their competitors.

26. At the level up of the television channel industry as a whole, the market shares of the top five players together represented around [65-70]% [redacted] of the market during financial year 2020-21. While Star, Sony, ZEE and Viacom are the players having subscriber base at a pan India level, Sun Network is the next largest but it does not operate Hindi language television channels and therefore, is not a popular broadcasting house amongst Hindi-speaking populations. If one were to look at the market position of players having pan India viewership and content focusing Hindi-speaking populations, it is apparent that the above mentioned top four players (excluding Sun TV) contribute to around [65-70]% market share. In this context, the operation and wholesale supply of television channels broadcasted in India appears to be concentrated and the Proposed Combination would increase industry concentration further and reduce the number of top players in this segment.

Table 4: Market shares (in %) in the broad market of TV channels in India

Market Shares – All TV Channels FY 2021 (based on GRP)								**ICR**	
Sony	Zee	Combined	Disney	Sun	Viacom	Others		ICR 3	ICR 4
5-10	15-20	**25-30**	20-25	5-10	5-10	35-30		55-60	65-70

27. It is relevant to note that Hindi-speaking populations represent a substantial majority in India. Early movers in Hindi language based television channels business seem to have enjoyed a competitive advantage to make inroads into other language channels. Star Group, one of the major competitors that the Notifying Parties have averred to, with its global expertise and Hindi language based television channels, entered into regional language television channels through the acquisition of local players in those respective regional languages (Star – Maa, Star – Asianet, Star – Vijay). Zee, on the other hand, could enter different regional languages such as Tamil, Telugu, Kannada and Malayalam, etc., through its expertise in the industry and its availability of pan-India content. However, no regional player was seen to have been able to enter or expand to such scale in the Hindi language markets. While the industry has undergone consolidations in the past (Disney – Star, Star – Maa, Star – Asianet, Star – Vijay), no entry of competition significance is observed. In other words, the industry does not appear to have witnessed any entrant becoming a competitor of sufficient scale and scope, thereby becoming a credible competitive constraint to the incumbents. It is relevant that the content acquired by the incumbents (including the Parties) over a period of time appear to provide them with a significant market position, and entrants could suffer competitive disadvantage without the same.

28. HHI is the most common metric used to evaluate concertation levels and determine whether a combination require detailed investigation on potential harms to competition. In the present case, the delta HHI in the overall television channels market in India is

[300-350], and it is [300-350] in the market segment for licensing of music in India, after considering the adjusted market size adopted by the notifying parties.

29. Hindi language based television channels represent the highest viewership in the country. The market position of Sony and ZEEL are comparable at present, with Star and Viacom Groups being the next credible players. However, post the combination, the combined entity would have a market share of around [40-45]% in Hindi language based television channels and the next competitor viz. Star would be a distant second. Thus, the Proposed Combination would make the above markets further concentrated, and the cost of competition and entry in these markets is likely to be higher than prevailing market conditions.

30. This may merit examination of the potentials of the parties to raise prices to advertisers and influence DPOs to provide unfair advantages to the resultant entity

Retail supply of over-the-top (OTT) AV content in India

31. The Parties are present in this market segment though their respective OTT services and provide AV content to their viewers – ZEEL through its OTT service '**ZEE5'** and CME through its OTT services – '**SonyLiv**'.

32. It has been submitted that in broadcasting, OTT refers to any type of streaming media content delivered over the internet (i.e., online). It includes all internet streaming services where consumers can access AV content on-demand without having to go through a traditional satellite or cable provider. Through OTT services, viewers can watch AV content across a range of devices such as mobile phones laptops, tablets (such as iPads), internet-enabled set-top boxes, and internet-enabled TVs. It has been submitted that OTT services are at a nascent and experimental stage in India. OTT services are experimenting with different opportunities for viewer engagement and revenue generation. The demand

for OTT services has grown significantly over the past years; Indian broadband subscribers now have the highest average online video time, globally. This increasing gravitation towards OTT services is owing to unique advantages offered by them such as: (i) watching AV content as and when viewers want; (ii) huge collection of old and new movies, series and shows, premium originally-produced AV content and live sporting events; (iii) flexibility to watch over any internet-enabled device like mobiles, laptops, tablets etc.; (iv) allowing viewers to watch live TV on their internet-enabled devices; and, (v) allowing viewers to download AV content to view offline at a later stage.

Table 5: Overlaps between Parties in retail supply of OTT AV content in India

Sr.	Relevant Segment	Sony	Zee - part of combination
Retail Supply of OTT AV Content in India		✓	✓

33. The combined market share of the Parties in the above market segment is less than 10%. The other major competitors include MX Player and Disney+Hotstar.

Supply of advertising airtime on TV channels in India

34. Advertising allows advertisers to create awareness of brands, products, services and ideas amongst customers. Advertisements are a means by which advertisers can persuade target customers to buy products or avail services. They also help reinforce / maintain demand for products and services.

35. It has been submitted that the Parties operate and supply TV channels in India, and TV channels compete with all forms of entertainment for the time and attention of consumers. The attention garnered from viewers is monetised by the sale of advertising airtime on TV channels. The Parties are present in the business of supply of advertising

airtime on TV channels. Advertisers run advertisements on TV channels by acquiring airtime. The advertisements are broadcasted to audiences through cable and satellite TV, usually during shows and programs. The pricing of advertising airtime on TV channels in India is negotiated between advertisers and broadcasters of TV channels, based on various factors relating to the intended advertisement, such as: (i) duration of the advertisement; (ii) desired slot for airing the advertisement (e.g., prime time[9] or non-prime time and live or non-live content); (iii) availability of advertising airtime; (iv) scale of viewership offered by the supplier of advertising airtime taking into account viewership pattern; (v) historical pricing; (vi) advertisers' target group and desired market; (vii) sponsorships; (viii) volume and duration of the agreement; and (ix) frequency of advertisement campaigns undertaken by an advertiser with a particular broadcaster. Further, in terms of the desired slot of advertising, the factors considered for pricing of advertising airtime include (i) popularity of the content in terms of reach and appointment viewing and (ii) prime-time and non-prime time.

Table 6: Overlap between Parties in supply of advertising airtime on TV channels in India

Sr.	Relevant Segment	Sony	Zee - part of combination
Supply of advertising airtime on TV channels in India		✓	✓

36. The Parties have contended the market for supply of advertising airtime on TV channels in India as the relevant market, since advertisements are aired on a pan-India basis. It is further contented that, similar to the service of advertisement airtime offered by TV

9 A time slot that sees maximum TV channel viewership. Further, prime-time slot would vary by broadcaster and would typically depend on the hours of original programming. e.g., 6PM to 12AM.

channels in India, every mobile application/website operator, billboard operator, newspaper, magazine, etc., is a potential advertising medium, and therefore, there are thousands of suppliers in the said market segment. Thus, all different mediums of advertisements are substitutes. Furthermore, the presence of these players is said to substantiate that advertisers have several available choices and substitutes (and extensive multi-homing confirms that they do use those substitutes). Thus, it is observed that the Parties have taken a broad relevant market for the purpose of examining the issues relating to advertisements in television channels. The parties have alluded that all types of advertisements in any type of medium serve the same purpose, and therefore, all of them are substitutable with each other. However, the pricing details given by the Notifying Parties and material available in the public domain does not appear to validate these assertions. It appears that TV advertisement is still the preferred medium of advertisement in India, and other mediums seem to complement it. Further, it is revealed that the market for advertisement in TV channels is evolved, and categories of viewership are determined based on language, quality of streaming (HD/SD), time of advertisement, etc.

37. The pricing of advertisement time slots by both Zee and Sony Group shows that various aspects of television channel advertisement are differentiated and the cost of advertisement significantly varies across: (i) television channels of the same group; (ii) different programmes broadcasted in the same television channel; (iii) programmes broadcasted in different slots of times; and (iv) modes/quality of streaming. The pricing of Zee during prime and non-prime time slots are at times different by [redacted] than [redacted] times, even on average basis. Similarly, the price of advertisements during the same programme broadcasted at same time, in standard-definition mode and high-definition mode, are different by around [redacted] times in certain instances. A few instances of advertisement pricing by the Parties are given in the tables below:

Table 7: Differences in advertising pricing of various channels

ZEE GROUP - Advertising Pricing Details										
Genre	Standard Definition (SD)			High Definition (HD)			Difference in Price based on Time and Streaming basis			
	Channel	Per [redacted] sec		Channel	Per [redacted] sec		HD – SD Difference		Prime and non-prime	
		Prime	Non-prime		Prime	Non-prime	Prime	Non-prime	SD	HD
Hindi GEC	&TV	[redacted]	[redacted]	&TV	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zee TV	[redacted]	[redacted]	Zee TV	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Films	&flix	[redacted]	[redacted]	&flix	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Zee Cinema	[redacted]	[redacted]	Zee Cinema	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	&PICTURES	[redacted]	[redacted]	&PICTURES	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

SONY GROUP – Advertising Pricing Details										
Genre	Standard Definition (SD)			High Definition (HD)			Difference in Price based on Time and Streaming Basis			
	Channel	Per [redacted] sec		Channel	Per [redacted] sec		HD – SD Difference		Prime and non-prime	
		Prime	Non-prime		Prime	Non-prime	Prime	Non-prime	SD	HD
Hindi GEC	SET	[redacted]	[redacted]	SET HD	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	SAB	[redacted]	[redacted]	SAB	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Films	Pix	[redacted]	[redacted]	Pix	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
	Max	[redacted]	[redacted]	Max	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

38. Therefore, it is noted that the relevant market for advertisement in television channels should be delineated based on the above-discussed factors, and the afore-stated parameters to gauge the class and quantum of viewership, appear to be the fundamental consideration for advertisers to avail the services of broadcasters during a particular programme, time and mode of streaming. These *prima facie* reveal that the attributes of the market for advertising airtime on TV channels in India is not such as claimed by the Notifying Parties. Even the Parties have *inter alia* contented that "*the desired slot of advertising, the factors considered for pricing of advertising airtime include (i) popularity of the content in terms of reach and appointment viewing; and (ii) prime-time and non-prime time*".

39. The industry apparently uses the GRP rating of BARC as a metric to determine the popularity of the given television channel and content. The variables used by BARC to estimate GRP include the languages spoken at home, education of the highest educated individuals in the households and mode of signal reception. BARC's classification of television channels such as Hindi GEC, Hindi films, etc., primarily appear to be based on language and the nature of content. From a demand perspective, the said classification essentially represents the class of viewership relevant for the purpose of their marketing through advertisement. Thus, it cannot be said that the popularity and viewership base of one category of TV channel is substitutable with another. The preliminary assessment suggests that the relevant market for advertisement could not be no broader than the category of the channel, such as 'Hindi GEC' and 'Hindi Films'.

40. It is observed that, post-combination, the market of supply of advertising airtime on TV channels in India will be dominated by only two major players i.e., the Resultatnt Entity and Disney Star and advertisement rates for specific time slots/programmes varies for each advertiser and is negotiated between the broadcaster and advertising agency/advertiser. The Proposed Combination will increase market concentration and strengthen the Resultant Entity's market power in this segment vis-à-vis advertisers and may create incentive for the Resultant Entity to raise the prices of its advertisement slots, such that increased costs borne by advertisers will be passed on in the form of higher prices and lower quality for the products and services they purchase from those advertisers.

41. Further, given that Hindi-speaking populations constitute the substantial majority of the Indian population, Hindi language based television channels appear to constitute a significant portion of the overall broader market for wholesale supply of television channels in India. Besides eliminating one of the competitive advertisement options, the combination vests the Resultant Entity with a strong market position, such that it may lead the Resultant Entity to increase prices for advertisers. Thus, the Resultant Entity is likely to use its strong market position to increase the price of advertisements in channel

categories where the market is densely concentrated, particularly in Hindi GECs and Hindi Films. The Parties have a combined market share of [40-45]% in Hindi GEC, followed by Star-Disney with [25-30]% market share and Viacom with [10-15]%, during FY 2020-21. These three players together would constitute [80-90]% of the market (ICR3). Similarly, the combined market share of the Parties in Hindi Films category is [40-45]%, followed by Star-Disney [20-25]% and Viacom [5-10]%.

42. It is relevant to note that the Parties have emphasised the significance of advertisement during prime and non-prime time. It is evident that the capacity of the participants is constrained by the limited time slots available for advertisement. In such a case, it is likely that the second and third competitors in the densely concentrated market would follow the price raise by the market leader. In other words, in a capacity constrained scenario, competitors will not have the incentive to absorb the diverted demand (of advertisers) at their prevailing prices along with continuing to provide the same level of services to their existing advertising customers. Therefore, the Proposed Combination may strengthen the combined entity and also incentivises its limited competitors to follow the market leader in increasing the price of advertisement in Hindi GEC and Hindi Films channels, as advertisers may want advertisements to be placed on all popular channels across broadcasters for greater reach.

43. The Notifying Parties have claimed that their customers have countervailing buyer power. It is observed that Sony and ZEE are two out of four credible competitive options for advertisers in Hindi GEC and Hindi Films channels. The competition constraints imposed by these two players on each other as well as on other competitors appear to be credible on the basis of their comparable market shares. However, with the elimination of one of the competitive choices and the resultant loss in competition, advertisers would become more dependent on the incumbents. Thus, the Proposed Combination is likely to affect the bargaining power, if any, enjoyed by the buyers and would make them more dependent on the incumbents given that advisement time-slots are limited time inventory.

Fair Competition For Greater Good

44. It is observed that Hindi GEC and Hindi Films television channels do not appear to be substitutable with other media of advertisement as well as other categories of television channels from the perspective of advertisers. The provisions of the Act state that products or services that are substitutable or interchangeable form part of the same relevant market. However, such determination has to be realistic, and every shifting of consumers from one product or service to another need not necessarily indicate substitution. Similarly, it would be erroneous to group two things into the same market merely because the same customers buy both. It is observed that mechanical application of substitutability test, as advocated by the Parties, will lead to erroneous assessment and one has to always keep in mind that the purpose of defining the market is to determine whether two or more alternatives constrain each other.

45. One of the suggested tests to determine substitutability for the purpose of competition law is 'small but significant non-transitory increase in price' (SSNIP), where the reaction of consumers and producers to a 5-10% increase in price of the focal product is assessed. If such increase in price is unprofitable for the producer due to shifting of consumers to alternative products, such alternative will be included in the relevant market, as the focal product is constrained by the substitute[10]. Conceptually applied in the instant matter, given the characteristics, classification by BARC, consumer preference for Hindi GEC or Hindi Films, it is unlikely that advertisers would consider the viewers of said channels as substitutable with others and accordingly, advertisements across television channels of different genres are not interchangeable with each other.

46. There are various channels of advertising in India today such as TV, internet, billboards etc. Unlike in other nations, TV is still a primary source of entertainment in India. TV penetration is much higher, compared to other sources of entertainment, such as the internet. Even with the rapid growth of the internet currently, there is still a wide gap to fill.

[10] Page 26 of the order of the Commission under Section 27 of the Act in Case No. 61/2010.

47. The merged entity has more GEC channels, and thus, more engaged viewers, and they are aware that these channels cannot be ignored by advertisers. Since the advertising airtime provided by the merged entity increases significantly, if it decides to forgo certain amount of advertising airtime, the advertisement revenue thus forgone may be overcompensated by the positive increment in the feedback loop, attracting more viewers. It appears that this may prompt the merged entity to reduce supply and increase the price of advertising airtime. If this happens, other entities which compete with the merged entity for viewers will face a credible threat of losing customers to the merged entity, thus indirectly impacting their advertisement revenues. It also appears that as a consequence, when supply of advertising airtime is constrained, these competing entities may follow suit and decrease advertisement airtime and increase prices. Subsequently, the prices for advertisement airtime are likely to increase in the relevant market of supply of advertisement airtime in India.

48. The cost of advertising, like all other corporate business building activities, must be borne by someone in the buying chain, most obviously in the form of reduced profits for the advertiser, unless this cost is passed on in the form of higher prices to the consumer. The fraction of the advertisement cost which may be passed on to the consumer will be decided by the elasticity of demand of a particular product. If higher prices are paid by advertisers, then such higher costs, to some extent, are passed on to the final consumers.

Licensing of AV content in India

49. It has been submitted that production companies produce new AV content for either (i) broadcasting on their own TV channels and/or OTT services, and/or, (ii) licensing AV content to third-party TV channels and/or OTT services. Both Parties (directly and/ or through their group companies and affiliates) produce and license AV content to their group companies and to third-party TV channels and OTT services licensees. AV content

refers to (i) short films and feature films (including film music); (ii) documentaries; (iii) TV shows/ series; (iv) live events (including sports); and (v) originals. The changing market dynamics indicate that AV content can, and is licenced for TV channels, OTT services, and movie theatres. Most content is licensed in for a limited period, so that audiences get a fresh content feed on a continuous basis.

Table 8: Overlaps between Parties in Licensing of AV content in India

Sr.	Relevant Segments	Sony	Zee - part of combination
Licensing of AV Content in India		✓	✓
1.	Licensing of AV Film-Content	✓	✓
2.	Licensing of AV ‘Non-Film and Non-Sports’ Content	✓	✓

Production and supply of films to third-party distributors and exhibitors for theatrical release in India

50. It has been submitted that the Parties are present (directly and/ or through their group companies and affiliates) in the market segment of production and supply of films to third-party distributors and exhibitors for theatrical release in India. The films produce by the Parties are often being licensed to theatres, TV broadcasters, and OTT services in India.

51. The films for theatrical release market segment combines production, distribution and exhibition of films, for viewing by audiences, primarily for an entertainment experience in theatres.

Table 9: Horizontal overlaps in production and supply of films to third-party distributors and exhibitors for theatrical release in India

Sr.	Relevant Segments	Sony	Zee - part of combination
Production and supply of films to third-party distributors and exhibitors for theatrical release in India		✓	✓
1.	English films	✓	X
2.	Hindi/Bollywood films	✓	✓
3.	Regional films	✓	✓

Licensing of music rights in India

52. It has been submitted that the Notifying Parties (directly and/ or through their group companies and affiliates) are present in the music industry as licensors of music rights. Licensors of music rights produce and/or acquire rights of such music which is intended to be licensed. Typically, music licensors license out the entire bouquet of rights (consisting of the sound recording masters[11], along with rights to use underlying works such as lyrics/musical works etc.) associated with music. Under such a bouquet, music licensees ordinarily acquire the right to play the music and associated AV content (such as music videos) to the public across different forums and mediums. Music licensors are engaged in the licensing of a bundle of rights associated with music, through which, licensees ordinarily acquire the right to play the music and associated AV content such as music videos to the public across different forums. Music is distributed by licensees through a variety of mediums like the internet, TV, radio stations, public events, etc.

11 A 'master' recording is the official original recording of a song.

53. Further, it has been submitted that with advancements in technology, the public can now stream their desired music through digital music services such as Spotify, Apple Music, YouTube, Gaana, JioSaavn, Amazon Prime Music, Wynk Music, Resso, etc. and through devices such as smartphones, tablets, laptops, radio stations, and TVs. Music is typically licensed on a non-exclusive basis which reduces the ability of the licensee to block access to the public for music licensors. This incentivises a licensee to enter into arrangements for music from multiple music licensors.

Table 10: Horizontal Overlap in the Licensing of Music Rights in India

Sr.	Relevant Segment	Sony	Zee - part of combination
Licensing of Music Rights in India		✓	✓

54. The pricing for licensing of music rights in India is negotiated between market players on a case-to-case basis depending on various factors, such as, (i) popularity of the sound recording, musical work, composer(s), etc., (ii) costs associated with production/ acquisition of the music, (iii) potential of the music to generate fees/ royalties, (iv) scope of rights captured in the licensing deal, (v) duration of the license, etc. Thus, price lists, pricing plans, etc. are not available for the market segment of licensing of music rights in India.

<u>Vertical Overlaps</u>

55. The vertical overlaps between the activities of Parties are as shown in the table provided below:

Table 11: Vertical overlaps in activities of the Parties

	Description of Vertical Interface	Upstream/Downstream
(a)	Licensing of AV content rights	Upstream
	Retail supply of OTT AV content; Operation and wholesale supply of TV channels	Downstream
(b)	Advertising on TV channels	Upstream
	Sale of advertising airtime on TV channels in India	Downstream
(c)	Licensing of music rights	Upstream
	Sub-licensing of music	Downstream

56. Another area that merits examination is the potential behaviour of the combined entity with the DPOs.

57. The Proposed Combination would place the Resultant Entity in a strong position in India, which would enable it to enjoy increased bargaining power with its downstream partners such as DPOs. Apart from potential for differential pricing, the Resultant Entity could also increase the prices of channel bouquets offered to DPOs. Subscription to bouquets appears to be the prominent mode of subscription by DPOs and viewers compared to on an à-la-carte basis. TRAI has set the upper ceiling price for channels subscribed on à-la-carte basis and, in the pricing of bouquets of broadcasters, there appears to be room for competition in relative terms.

58. Post-combination, the combined entity will be the largest broadcasting house and an indispensable partner for DPOs, with the ability to increase the price of its channel bouquets to DPOs which, in turn would be recovered from the viewers at large.

PRIMA FACIE VIEW OF THE COMMISSION

59. Preliminary assessment of the Proposed Combination *prima facie* suggested that:

i. The Proposed Combination is a typical horizontal combination between two competing broadcasting houses present across the TV and digital platforms value chain;

ii. The Resultant Entity would be the largest broadcasting house in India with ~92 television channels, vast content, higher market shares in Hindi GEC, Hindi Films, Marathi GEC, and Bengali GEC. It is likely to enjoy un-paralleled dominant position and be an indispensable partner to downstream players, particularly DPOs;

iii. The Resultant Entity with a strong market position is likely to have the ability and incentive to increase the price of advertisers, DPOs, and viewers in the high market shares television channels categories; and

iv. The Resultant Entity would also have the ability and incentive to engage in differential pricing and behaviour with DPOs.

60. In view of the foregoing, it is observed that the Proposed Combination *prima facie* is likely to result in appreciable adverse effect on competition.

61. For reasons set out in the preceding paragraphs, the Commission formed the *prima facie view* that the Proposed Combination is likely to cause appreciable adverse effect on competition. Thus, it is considered appropriate to conduct further inquiry into the matter to verify the potential harm(s) to competition detailed above.

62. In view of the above, the Commission directed the Secretary to issue a notice in terms of Section 29(1) of the Act to the Notifying Parties to respond, in writing, within 30 days of receipt of this notice, as to why investigation in respect of the Proposed Combination should not be conducted. Accordingly, on 10th August 2022, notice (**SCN**) was issued to the Notifying Parties under Section 29(1) of the Act.

RESPONSE TO SCN

63. In the meantime, the Notifying Parties submitted certain voluntary submissions on 2nd September 2022 and 5th September 2022. Subsequently, on 9th September 2022, the Notifying Parties submitted their response to SCN. Without prejudice to the submissions that the Proposed Combination does not cause AAEC in India, the Notifying Parties offered a voluntary remedy proposal under Regulation 25(1A) of the of the Combination Regulations. The remedies proposed were in the nature of behavioural commitments. The Notifying Parties also sought an opportunity to present their case by way of an oral hearing prior to the Commission taking any decision in relation to the Proposed Combination.

64. In their Response to SCN, along with the arguments, the Notifying Parties provided updated data on market shares for the period FY 2021–22 and FY 2022–23 (Year Till Date – April 2022 to August 2022 (**YTD**)), for the markets of Hindi GEC, Hindi Films Channels, Bengali GEC, and Marathi GEC.

65. The contentions of the Notifying Parties are, *inter alia*, broadly as follows:

   a. There has been a consistent declining trend in the combined market shares of the Parties in the sub-segments of Hindi GEC, Hindi Films Channels, Bengali GEC, and Marathi GEC.

   b. The TV channels are redistributed and can be accessed on multiple mediums via multiple means.

   c. The content of OTT apps can be redistributed through different third-party apps via application programming interface, software development kit, or app-to-app integration, called the app aggregation model.

d. There is a significant boom in the production of content for viewing on OTT services across both small and large production houses.

e. DTH platforms and telecom service providers have also started entering the distribution of OTT services.

66. In relation to the potential narrower sub-segments of licensing of music rights in India, the presence of competitors such as Saregama and T-Series will constrain the conduct of the Resultant Entity. While ZEEL (with [10–15]% market share in FY 2021) has a wider offering across all regions and languages, Sony Group Entities (with [10–15]% market share in FY 2021) focus on Hindi and southern languages. The market share of the Resultant Entity is less than T-Series ([25-35]% market share in FY 2021), which has considerable offerings in Hindi language.

67. In relation to the potential narrower sub-segments of OTT AV content, competition dynamics are subject to alteration following the entry of international players such as Netflix, Amazon, Disney (through its acquisition of Star India), and Lionsgate, in Hindi and other languages. The combined entity would have less than 10% market share (by monthly active users in FY 2021), whereas competitors such as Disney+Hotstar, Netflix, and MX Player have greater than 15%, 10%, and 10%, respectively.

68. In relation to the incentive to increase bouquet prices to DPOs, it has been submitted that the sector is highly regulated. TRAI comprehensively regulates the broadcasting and distribution of linear TV channels in India. The relationships between various stakeholders of the Indian broadcasting sector (broadcasters, DPOs, etc.), especially those that involve pricing, discounts, and incentives (i.e., the issues identified by the Commission), are prescriptive and regulated. Regulated terms include:

i. bouquet formation and pricing;

ii. incentives which can be offered by a broadcaster to DPOs on a non-discriminatory basis, such as like logical channel number incentive, discount for penetration of channels and subscriber volume discount; and

iii. promotional schemes and the frequency of such schemes

69. The cost of switching between broadcasters' channels is nil to negligible. The lock-in period for a channel, broadcaster bouquet, or DPO bouquet is no more than 30 days, and certain DPOs have removed the lock-in period altogether. Consumers typically also have the flexibility to view the same content on TV channels or for free on OTT services shortly after its broadcast on TV. As such, because of the same content being broadcasted over TV channels and OTT services, TV channels face additional competitive constraints from OTT services. This reduces the incentive for broadcasters to increase prices.

70. Broadcasters are constrained by DPO-designed packs. DPOs can, separately decide on the composition of their self-designed packs and which channels/ bouquets to include, solely on the basis of their own business/market intelligence. Broadcasters have no role to play in this exercise. As per Interconnection Regulations, 2017, broadcasters are not permitted to stipulate, demand or offer incentives, directly or indirectly, for the packaging of their channel(s) in any particular pack offered by a DPO to its subscribers. The determination of channel composition of DPO packs is based on various factors including, but not limited to: (i) customer preference, (ii) potential to expand or retain the subscriber base, (iii) competition from other DPOs, and (iv) pricing of TV channels/bouquets. Accordingly, broadcasters' pricing of channel bouquets has to take into account the ability to be included in a DPO pack, especially considering that DPOs are well placed to understand their audience's local preferences and DPO-designed packs are mostly availed by the subscribers.

71. With respect to the Parties' ability or incentive to engage in differential / discriminatory pricing or behaviour with downstream partners such as DPOs, it has been submitted *inter*

alia that TRAI comprehensively regulates the relationship between broadcasters and DPOs. The Resultant Entity will not have the ability to engage in discriminatory and differential pricing/ treatment vis-à-vis DPOs due to TRAI's regulations prohibiting any differential or discriminatory pricing/ behaviour. All broadcasters (such as the Parties and what would be the Resultant Entity) are required to provide DPOs with signals of TV channels on a non-discriminatory basis (also referred to as the 'must provide' principle) upon receiving a written request from a DPO or upon signing the reference interconnection agreement (*RIO*) with the DPO, as the case may be. The MRP of *à-la-carte* channels and channel bouquets is required to be uniform for all DPOs. Offer of discounts on TV channels and bouquets, if any, to DPOs are required to be on FRAND terms, and such parameters of discounts must be measurable and computable. The offer of discounts on carriage fee, if any, by DPOs must be on the basis of FRAND terms.

72. India is a must-carry regime, and all DPOs are required to carry the TV channels of the broadcasters. There is access to uplinking and downlinking licenses, provided that entrants satisfy all requirements laid down under the policy guidelines for uplinking and downlinking of TV channels from India. Most broadcasters operating and supplying regional TV channels already operate and broadcast their channels on a pan-India basis, have existing relationships with DPOs, and benefit from the 'must carry' provision in TRAI's regulations. They possess the technical expertise to operate a TV channel, including production and acquisition of content, and effective distribution of channels.

73. In relation to the advertising side of the market, it has been submitted that advertising agencies and advertisers exert countervailing buying power and can easily switch to other competitors. Advertisers can enter advertising arrangements either directly with broadcasters or through advertising agencies. Established advertising agencies would negotiate on behalf of the advertisers with the Parties. Further, the Parties' top advertisers are established manufacturers of fast-moving consumer goods. Advertising agencies and advertisers have the ability to switch to digital and other forms of advertising. Advertisers are increasingly shifting towards digital advertising. Further, TV content is made available

on advertisement supported free services such as YouTube shortly after the initial telecast on TV. Advertising agencies are experienced and established players and their key role is to devise the most efficient and effective media plan for their advertisers by negotiating the right pricing/platform for brand communication. Advertising agencies are thus, aggregators whose main objective is to reach the relevant audience at the optimum price for their clients i.e., the advertisers.

74. There is countervailing market power in the market segment of operation and wholesale supply of TV channels in India because of the presence of a large number of DPOs. In the broadcasting sector, TV channels are supplied to DPOs through cable TV operators, DTH, IPTV, HITS etc. Accordingly, the customer base in this market segment is marked by the presence of large DPOs such as Tata Sky (now Tata Play), Airtel, Jio, Hathway, etc. DPOs possess bargaining power and avail discounts and incentives which are governed by the RIO agreement between DPOs and broadcasters. Under the TRAI regulatory regime, every broadcaster must provide its TV channels to all willing DPOs, without any discrimination. Provisions of the NTO 1.0 and NTO 2.0 ensure that all DPOs have non-discriminatory access to the broadcaster's channel.

75. From the updated market share data provided, the Commission observed as follows:

76. In the market for Bengali GEC, CME has comparatively limited presence and the incremental market share is relatively limited. Further, Disney-Star appears to be a very close competitor in this segment, whose market share has steadily increased to a comparative level of the combined entity.

Table 12: Market shares in % for Bengali GEC

	FY2019	FY2020	FY2021	FY2022	FY2023 (YTD)
CME	5-10	5-10	5-10	5-10	5-10
ZEEL	40-45	40-45	30-35	35-40	30-35
Combined	45-50	45-50	40-45	40-45	35-40
Disney-Star	35-40	35-40	35-40	40-45	40-45
Viacom18	5-10	5-10	5-10	0-5	0-5
Sky B	5-10	5-10	0-5	0-5	0-5

77. In the market for Marathi GEC as well, the incremental market share is relatively limited compared to the two major players Zee and Disney-Star. Further, the Combined Entity will continue to be constrained by the presence of Disney-Star, which is a stronger and larger competitor in this segment, and its market share has steadily increased to a level higher than that of the combined entity.

Table 13: Market shares in % for Marathi GEC

	FY2019	FY2020	FY2021	FY2022	FY2023 (YTD)
CME	0-5	5-10	5-10	5-10	5-10
ZEEL	55-60	55-60	35-40	20-25	15-20
Combined	**55-60**	**55-60**	**40-45**	**30-35**	**25-30**
Viacom18	15-20	20-25	15-20	15-20	15-20
Disney-Star	15-20	15-20	35-40	45-50	50-55
Sun TV	0-5	0-5	0-5	0-5	0-5

78. In the market for Hindi GEC, the market share of Zee has been steadily decreasing from [25-30]% in FY2019 to [20-25]% in FY2022. In FY2023 (YTD), it is further decreasing to [20-25]%, while the market share of the other party CME has remained relatively stable between [20-25]% to [20-25]%. At the same time where the market shares of the three large players have been decreasing or remaining stable, the market share of a relatively smaller player has seen an increase to [15-20]% in FY2023 (YTD), while Disney-Star and Viacom18 continue to remain the two major competitors of the combined entity.

Table 14: Market shares in % for Hindi GEC

	FY2019	FY2020	FY2021	FY2022	FY2023 (YTD)
ZEEL	25-30	20-25	20-25	15-20	15-20
CME	20-25	20-25	20-25	20-25	20-25
Combined	**45-50**	**45-50**	**40-45**	**40-45**	**35-40**
Disney-Star	25-30	20-25	25-30	25-30	20-25
Viacom18	15-20	10-15	10-15	15-20	10-15
Enter 10	5-10	15-20	5-10	5-10	15-20

79. In the market for Hindi Films Channels, the market share of CME has been steadily decreasing from [25-30]% in FY2019 to [10-15]% in FY2022, and is showing signs of further decline to [10-15]% in FY2023 (YTD). This has resulted in the combined market share of the Parties declining from [50-55]% in FY2019 to [35-40]% in FY2022, with signs of further decline to [30-35]% in FY2023 (YTD). The market share of the closest competitor has also been steadily declining from [25-30]% in FY2019 to [20-25]% in FY2022, with signs of further decline to [20-25]% in FY2023 (YTD). During the same period, a new entrant emerged in FY2021 with market share of [5-10]%, which increased to [10-15]% in FY2022, showing signs of further increase to [15-50]% in FY2023 (YTD). In addition, there are multiple other smaller players in this market segment.

Table 15: Market shares in % for Hindi Films Channels

	FY2019	**FY2020**	**FY2021**	**FY2022**	**FY2023 (YTD)**
CME	20-25	15-20	15-20	10-15	10-15
ZEEL	25-30	20-25	25-30	20-25	20-25
Combined	**50-55**	**40-45**	**40-45**	**35-40**	**30-35**
Disney-Star	35-30	20-25	20-25	20-25	20-25
Viacom18	5-10	5-10	5-10	10-15	10-15
MKG Printing Works	0-5	0-5	5-10	10-15	15-20

80. On 16th September 2022, the Notifying Parties made yet another submission requesting grant of an opportunity for oral hearing. The Notifying Parties reiterated that the voluntary remedy proposal addresses the *prima facie* concerns identified in SCN. The said submission also mentioned that, "*in order to facilitate the review process of the Hon'ble Commission, the Parties are considering supplementing the response to the SCN and will fully co-operate and engage with the Hon'ble Commission*."

81. The Commission in its meeting held on 19th September 2022, considered the response to SCN submitted by the Notifying Parties on 9th September 2022, and their submission made on 16th September 2022, and decided as follows:

i. In view of the submission of the Notifying Parties that they are considering supplementing the Response to the SCN, the Notifying

Parties may submit their supplemental response, if any, latest by 27th September 2022; and

ii. The Notifying Parties may also appear for oral hearing before the Commission, through their duly authorised representatives, on 29th September 2022 at 10:00 AM.

82. The Notifying Parties did not file any submission until 27th September, 2022. The Commission heard the Notifying Parties on 29th September, 2022. During the course of hearing, they undertook to offer certain structural remedies in the matter latest by 30th September 2022. The Commission noted that such submission to be filed would be a supplementary response to the SCN and the date of such filing would be the Response to the SCN.

83. The Notifying Parties made their submissions on 30th September 2022, which included the details of structural modifications to the Proposed Combination. The Notifying Parties made further voluntary remedy submission on 4th October 2022, superseding the previous voluntary remedy submissions filed on 9th September 2022 and 30th September 2022. The voluntary remedies proposed on 4th October 2022 excluded the behavioural commitments offered earlier.

REMEDIES

84. The Notifying Parties requested the Commission to reconsider their assessment in light of all the submissions made by the Parties on the, (i) new information (i.e., declining trend in market shares), (ii) stringent regulatory framework, (iii) evolving and dynamic nature of broadcasting industry, (iv) significant boom in production of content for viewing on OTT services, (v) significant competitive constraints posed by various large competitors with entrenched presence, and (vi) constraints posed by OTT services.

85. However, in the event the Commission rejects the Parties' submissions even after fully considering them and the new information provided by the Notifying Parties, without prejudice to their submissions that the Proposed Combination does not cause AAEC in India, the Notifying Parties offered a voluntary remedy to alleviate the potential *prima facie* concerns in the SCN and expedite the approval process.

86. The Notifying Parties further submitted that any remedies in addition to those offered in the Remedy Proposal on 4th October 2022 will severely jeopardise the intended business sustainability model of the Resultant Entity, especially given the decline in market shares (by GRP) in the two TV channel sub-segments (i.e., Hindi GEC and Hindi Films Channels) in the prevailing competitive market and can lead to substantial losses.

87. The revised market shares after considering the modifications proposed in the submission on 4th October 2022 and the updated data provided for FY 2021-22 and FY 2022-23 (YTD) are as provided in the following tables:

Table 16: Market shares (in %) of Parties and near competitors in Hindi GEC

Entity	Hindi GEC		
	FY21	**FY22**	**FY23 (YTD)**
Notifying Parties (pre- modification)	40-45	40-45	35-40
Notifying Parties (post-modification)	35-40	35-40	35-40
Disney-Star	25-30	25-30	20-25
Viacom18	10-15	15-20	15-20
Enter10	5-10	5-10	10-15

Table 17: Market shares (in %) of Parties and near competitors in Hindi Films Channels

Entity	Hindi Film Channels		
	FY21	FY22	FY23 (YTD)
Notifying Parties (pre-modification)	40-45	35-40	30-35
Notifying Parties (post-modification)	40-45	35-40	30-35
Disney-Star	20-25	20-25	20-25
Viacom18	5-10	10-15	15-20
MKG Printing Works	5-10	10-15	10-15

88. Considering the material on record, details provided in the Notice given under sub-section (2) of Section 6 of the Act, response submitted by the Notifying Parties on 9th September 2022 to the Show Cause Notice issued by the Commission under section 29(1) of the Act on 10th August 2022, submissions made by the Notifying Parties during the oral hearing on 29th September 2022 followed by written submissions made on 30th September 2022 and 4th October 2022, and factors provided under sub-section (4) of Section 20 of the Act, the Commission is of the opinion, that the composite voluntary remedy proposed by the Parties under Regulation 25(1A) of the Combination Regulations, addresses the *prima facie* concerns of a likely appreciable adverse effect on competition (AAEC) as laid down in the SCN and the Commission decided not to further proceed with investigation. The Commission, hereby, approves the proposed combination under sub-section (1) of Section 31 of the Act, subject to compliance of modifications offered by the Notifying Parties under Regulation 25(1A) of the Combination Regulations, *vide* submission dated 4th October 2022.

89. The Commission may at any time request information from the Parties that is reasonably necessary for the effective implementation of the order.

90. The Annexure and Schedules annexed to the order shall form an integral part of the order.

91. In carrying out the aforesaid modification, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.

92. In case the Notifying Parties fail to comply with the voluntary modifications submitted, as provided in the Annexure, the Proposed Combination would be deemed to have caused appreciable adverse effect on competition in India and the concerned Parties shall render themselves liable for being proceeded under the relevant provisions of the Act.

93. This order may be revoked if, at any time, the information provided by the Notifying Parties is found to be incorrect.

94. The Notifying Parties have claimed confidentiality over certain information furnished by them from time to time. It has been inter alia claimed that: (i) the concerned documents including the remedy proposal contains information which is strictly confidential and commercially sensitive and is not available in public domain; (ii) the concerned information/documents are known only to limited employees i.e., key managerial personnel, and other relevant parties involved with the Parties' businesses; (iii) the parties have taken adequate measures to guard the secrecy of the information/document; and (iv) the information/document cannot be acquired or duplicated by others. The Commission notes that the Notifying Parties have *inter alia* claimed confidential treatment over the identity of the divestment business, BARC data on GRP and the inferences and opinion of the Commission based on the submission of the parties and material available on record. However, the BARC data and market share estimates derived therefrom are accessible to competitors and advertisers also; the opinions, views, analysis, and assessment of the Commission cannot be confidential; and the remedies offered by the parties and accepted/ ordered by the Commission form part of substantial information of the order and in the facts and circumstances of the instant matter, disclosure of the details of the remedies is required for their effective implementation. The identity of divestment assets has not been granted confidential treatment, in general, for the purposes of effective

and transparent implementation of the remedies/ order of the Commission. In the instant matter, the Commission, on a holistic appreciation of the facts and circumstances, considers it necessary to disclose the identity of divestment assets in this order. On the other hand, certain information that are claimed confidential by the parties and are considered by the Commission as not required to be disclosed for the purposes of the Act are redacted in this pubic version of the order. This includes information about the timelines relating to the divestment and pricing.

95. It is made clear that nothing disclosed in this order shall be deemed to be confidential as the same has been used for the purposes of the Act, in terms of the provisions contained in Section 57 of the Act.

96. The Secretary is directed to communicate to the Notifying Parties accordingly.

REMEDY PROPOSAL

I. THE COMMITMENT TO COMPLETE THE TV CHANNELS DIVESTMENT

1. The Parties commit to divest, or procure the divestiture of, the Divestment Business by the end of the First Divestiture Period as a going concern to an Approved Purchaser on terms of sale approved by the Hon'ble Commission in accordance with the procedure described in this Remedy Proposal.

2. To carry out the divestiture, ZEEL and/or the Resultant Entity (as the case may be) shall commit to enter into a final binding business transfer agreement(s) for the Sale of Divestment Business within the First Divestiture Period. If ZEEL and/or the Resultant Entity (as the case may be) has not entered into such an agreement at the end of the First Divestiture Period, the Resultant Entity shall grant the Divestiture Agency an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 5 in the Second Divestiture Period.

II. NO REACQUISITION OF SHARES / INTEREST, ETC.

3. The Parties and/or the Resultant Entity (as the case may be) shall, for a period of 5 years from date of Sale of Divestment Business, not acquire any stake or the possibility of exercising any influence (by way of shareholding, change in the charter documents, or by exercising affirmative rights or right to appoint a director on the board of the Approved Purchaser who acquires the Divestment Business or otherwise) over the whole or part of the Divestment Business.

III. FIRST DIVESTITURE PERIOD

4. As mentioned above, the Parties and/or the Resultant Entity (as the case may be) shall commit to divest the Divestment Business within a period of [redacted] from the date of receipt of the Order, which is extendable by [redacted] subject to a reasonably sufficient cause, or such extended period as may be agreed by the Hon'ble Commission, which will constitute the First Divestiture Period.

IV. SECOND DIVESTITURE PERIOD

5. In the event that the Sale of Divestment Business does not close within the First Divestiture Period then the Second Divestiture Period shall commence and will last for a period of up to [redacted] (or such extended period as may be agreed by the Hon'ble Commission) for carrying out the proposed divestment through the Divestiture Agency, as further detailed at paragraphs 19 to 21.

V. APPROVED PURCHASER CONDITIONS

6. The purchaser proposed by the Parties for acquiring the Divestment Business, shall—

   (i) be independent of and with no connection whatsoever with the Resultant Entity and its affiliates—

   (ii) not be either a past or present employee or director (or spouse or child of such employee or director);

   (iii) have the financial resources, expertise and incentive to maintain and develop the Divestment Business as a viable and active competitor to the Parties and/or the Resultant Entity in the relevant market;

   (iv) not be Star India Private Limited or Viacom18 Media Private Limited (including their respective affiliates); and

   (v) neither be likely to create any *prima facie* competition concerns, nor give rise to a risk that the implementation of the Order will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition and operation of the Divestment Business.

   The conditions enlisted in paragraph 6 (i) to (v), above are collectively referred to as ***Purchaser Requirements***.

VI. HON'BLE COMMISSION's PRIOR APPROVAL OF THE AGREEMENTS BETWEEN THE PARTIES AND/OR THE RESULTANT ENTITY (AS THE CASE MAY BE) AND APPROVED PURCHASER

7. The final binding agreements, including all ancillary agreements, relating to the Sale of Divestment Business shall be conditional on the Hon'ble Commission's approval during the First Divestiture Period or the Second Divestiture Period, as the case may be.

8. Within a period of [redacted] from the execution of the agreement with the Approved Purchaser, the Parties and/or the Resultant Entity (as the case may be) shall submit a copy of the final agreement(s) to the Hon'ble Commission.

9. The Parties and/or the Resultant Entity (as the case may be) shall further demonstrate to the Hon'ble Commission that the Approved Purchaser fulfils the Purchaser Requirements and that the Sale of Divestment Business is consistent with the Hon'ble Commission's Order.

VII. TRANSITIONAL SUPPORT

10. The Resultant Entity shall provide such reasonable transitional support as may be required by the Approved Purchaser to effectively implement the Sale of Divestment Business.

VIII. REPORTING

11. The Parties and/or the Resultant Entity (as the case may be) shall submit written reports in relation to the status and progress of the Sale of Divestment Business to the Hon'ble Commission no later than [redacted] after the end of every [redacted] following the date of receipt of the Order of the Hon'ble Commission.

12. Within [redacted], following the date of receipt of the Order, the Parties will appoint an officer, who will act as a single point of contact (***Nodal Officer***) to supervise the implementation of the Remedy Proposal. The Nodal Officer shall

ensure that the Hon'ble Commission is kept fully informed about the process and progress made in relation to implementation of the Remedy Proposal.

IX. DIVESTITURE AGENCY

13. The Parties shall divest or seek to complete the Sale of Divestment Business within the First Divestiture Period. However, if the divestiture does not take place within the First Divestiture Period, the Hon'ble Commission may, under Regulation 27 of the Combination Regulations, appoint an independent agency as the Divestiture Agency for the purpose of supervising the Sale of Divestment Business during the Second Divestiture Period.

14. The appointment of the Divestiture Agency shall take effect from the commencement of the Second Divestiture Period or the day of its appointment, whichever is later.

15. Upon receipt of the notice of the Hon'ble Commission regarding the appointment of the Divestiture Agency, the Resultant Entity must execute or procure their affiliates to execute, within the period prescribed by the Hon'ble Commission, a comprehensive power of attorney in favour of the Divestiture Agency to effect the Sale of Divestment Business and all actions and declarations which the Divestiture Agency considers necessary or appropriate to achieve the Sale of Divestment Business, including the power to appoint advisors to assist with the sale process. The power of attorney shall include the authority to grant sub-powers.

16. During the Second Divestiture Period, the Divestiture Agency shall have the sole authority to complete the Sale of Divestment Business at no minimum price. Upon request of the Divestiture Agency, the Resultant Entity shall cause the documents required for effecting the Sale of Divestment Business, to be executed.

17. The Sale of Divestment Business shall not be affected by the Divestiture Agency unless and until the Hon'ble Commission has approved the terms of the business transfer agreement(s), including any ancillary agreements, and the purchaser proposed by the Divestiture Agency (as detailed above).

18. A copy of the Divestiture Agency Agreement shall be provided to the Parties and the Parties shall use their best efforts to support the Divestiture Agency in the performance of its duties and obligations provided in the Divestiture Agency Agreement.

X. SALE DURING THE SECOND DIVESTITURE PERIOD

19. Within the Second Divestiture Period, the Divestiture Agency shall complete the Sale of Divestment Business through a transparent sale process at no minimum price.

20. The Divestiture Agency shall have full discretion as to the manner in which it sells the Divestment Business. The Divestiture Agency shall include in a business transfer agreement(s), or other disposal arrangement, (as well as in any ancillary agreements)—

    (i) such terms and conditions as it considers appropriate for an expedient disposal in the Second Divestiture Period; and

    (ii) such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Agency shall protect the legitimate interests of the Resultant Entity, including commercial interests, subject to the Resultant Entity's unconditional obligation to divest at no minimum price in the Second Divestiture Period.

21. During the Second Divestiture Period, the Divestiture Agency shall provide the Hon'ble Commission with a comprehensive monthly (or otherwise at the Hon'ble Commission's request) report on the progress of the divestiture process. The monthly reports shall be submitted within 7 days after the end of every month and a non-confidential copy to the Parties.

XI. DUTIES AND OBLIGATIONS OF PARTIES

22. The Parties and/or the Resultant Entity (as the case may be) shall provide and shall cause their advisors to provide the Hon'ble Commission and Divestiture

Agency with such co-operation, assistance and information as the Hon'ble Commission / Divestiture Agency may reasonably require to perform its tasks. The Hon'ble Commission / Divestiture Agency (as the case may be) shall have full and complete access to any of the books, records, documents, management or other personnel and technical information necessary of the Divestment Business for fulfilling its duties, to the extent the Parties and/or the Resultant Entity (as the case may be) can provide such access under applicable law. The Parties and/or the Resultant Entity (as the case may be) shall provide the Hon'ble Commission / Divestiture Agency upon request with copies of any document required by the Hon'ble Commission / Divestiture Agency, as the case may be and as available with the Parties and/or the Resultant Entity (as the case may be).

23. The Resultant Entity shall make available to the Divestiture Agency one or more offices on their premises, if required and shall be available for meetings in order to provide the Hon'ble Commission and the Divestiture Agency with all necessary information for the performance of their task.

24. The Resultant Entity shall provide the Divestiture Agency with the managerial and administrative support that it may reasonably request in relation to the Sale of Divestment Business.

25. The Parties and/or the Resultant Entity (as the case may be) shall indemnify the Divestiture Agency and its employees and agents and hold each indemnified party harmless against any liabilities arising directly out of the performance of the Divestiture Agency's duties under the Order, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the indemnified party.

XII. COSTS

26. The payment to the Divestiture Agency appointed by the Hon'ble Commission in relation to the services provided for the Sale of Divestment Business shall be made by the Parties and/or the Resultant Entity (as the case may be).

XIII. REMOVAL OF DIFFICULTY / REVIEW CLAUSE

27. The Hon'ble Commission may either on its own motion or based on a reasoned application filed by the Parties and/or the Resultant Entity (as the case may be), pass such order or direction as it deems fit, to address any unforeseen circumstances or difficulties in implementing the Order by the Parties and/or the Resultant Entity (as the case may be).

XIV. CONCLUSION

28. As explained in detail above, the remedy sufficiently addresses all potential competition concerns in India.

SCHEDULE – A

29. The Divestment Business consists of ZEEL's and/or the Resultant Entity's (as the case may be) ownership interest in Big Magic[1] which is engaged in the Hindi GEC market segment and Zee Action[2] and Zee Classic[3] which are engaged in the Hindi Films channels market segment.[4]

The ZEEL TV channels listed above shall be referred to as the ***Divestment TV Channels***.

30. The Divestment TV Channels, shall include—

(i) license for trade-marks, channel names and logos for a reasonable period agreed with the Approved Purchaser;

(ii) applicable licenses, permits and authorisations;

(iii) the applicable agreements concerning the licensing of content as stated in paragraph 31 below from the relevant licensor entity(ies); and

(iv) the employees exclusively dedicated and working for the Divestment TV Channels.

31. The Resultant Entity shall transfer, the applicable TV rights in content as on the date of Closing of the Divestment TV Channels (i.e., Big Magic[5], Zee Action[6]

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1 In FY21, Big Magic had a GRP of [redacted] and market share of [0-5]%. Thereafter, in FY22, Big Magic had a GRP of [redacted] and market share of [0-5]%. Further, in FY23 (YTD), Big Magic has a GRP of [redacted] and market share of [0-5]%.

2 In FY21, Zee Action had a GRP of [redacted] and market share of [0-5]%. Thereafter, in FY22, Zee Action had a GRP of [redacted] and market share of [0-5]%. Further, in FY23 (YTD), Zee Action has a GRP of [redacted] and market share of [0-5]%. The name of the channel may change.

3 In FY 21, Zee Classic had a GRP [redacted] and market share of [0-5]%. Thereafter, in FY 22, Zee Classic had a GRP of [redacted] and market share of [0-5]%. Further, in FY 23 (YTD), Zee Classic has a GRP of [redacted] and market share of [0-5]%. The name of the channel may change.

4 As a result of this Remedy Proposal, the combined market share (by GRP) of the Parties will fall in both sub-segments in the period FY21 to FY23 (YTD). This change in market shares has been captured in Annexure 1.

5 Content on the Divestment TV Channel 'Big Magic' includes Pyaar Mohobbat Happy Lucky; Dhamakedaar Rancho; Chimpoo Simpoo; Bandbudh Aur Budbak; Bablu Dablu; Shoorveer Sister; Chhoti Si Zindagi; Ek Mutthi Aasmaan; Sapne Suhane Ladakpan Ke; Kanha Ki Radhika; Kripa Maa Lakshmi Ki; and Swarajya Rakshak Sambhaji. This is an illustrative list based on the electronic programming guide.

6 Content on the Divestment TV Channel 'Zee Action' includes Premi Dushman; Heeralal Pannalal; Vidhaata the Supremo; Khel Power Ka; Khoon Kaa Rishta; Gopi Kishan; and Dil Daar - The Arya; Rajput and Fighting the Sky. This is an illustrative list based on the electronic programming guide.

and Zee Classic[7]), which is directly attributable and/or inherently attachable to the Divestment TV Channels only, on terms and conditions equivalent to those at present afforded to these entities. From the date of receipt of the Order and until the Sale of Divestment Business, the Resultant Entity shall ensure that the applicable TV rights in content which is directly attributable and/or inherently attachable to the Divestment TV Channels only, shall remain intact to ensure their continued economic viability, marketability and competitiveness.

32. In the event the Approved Purchaser is not an existing TV channel broadcaster and hence does not have the customary and necessary infrastructure to run the Divestment TV Channels, then during the agreed transition period, the Parties and/or the Resultant Entity (as the case may be) shall offer all services which are customary and necessary for the operation of the Divestment TV Channels by the Approved Purchaser.

[7] Content on the Divestment TV Channel 'Zee Classic' includes Mera Haque; Dream Girl; Ghar Jamai; Alag Alag; Khoon Bhari Maang; Jugnu; Gopichand Jasoos; Sujata; and Pyar Kiye Ja. This is an illustrative list based on the electronic programming guide.

DEFINITIONS

Approved Purchaser: A third-party purchaser or purchasers of the Divestment Business complying with the conditions detailed in paragraph 6.

BARC: Broadcast Audience Research Council.

Closing: As defined under clause 1.1 of the Merger Agreement.

CME: Culver Max Entertainment Private Limited, a company incorporated under the Companies Act, 1956 with corporate identity number U92100MH1995PTC111487, and having its registered office at 4th Floor, Interface, Building Number 7, Off Malad Link Road, Mumbai 400064, India.

Combination Regulations: The Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011.

Competition Act: The Competition Act, 2002.

Commission: The Competition Commission of India.

Divestiture Agency: One or more natural or legal person(s) who is/are approved by the Hon'ble Commission with the duty to complete the Sale of Divestment Business.

Divestiture Agency Agreement: The agreement executed by and between the Hon'ble Commission and the Divestiture Agency.

Divestment Business: The Divestment TV Channels, as detailed in Schedule A, which the Parties and/or the Resultant Entity (as the case may be) commit to divest.

First Divestiture Period: The period of [redacted] from the date of receipt of the Order, which is extendable by [redacted] subject to a reasonably sufficient cause, or such extended period as may be agreed by the Hon'ble Commission

FY: Financial Year.

GEC: General Entertainment Channels.

GRP: Gross Rating Point, as published by BARC.

Merger Agreement: The Merger Cooperation Agreement dated 22 December 2021 amongst CME, BEPL and ZEEL.

Order: The final order of the Hon'ble Commission approving the Proposed Transaction under the relevant provisions of Section 31 of the Competition Act.

Proposed Transaction: The transaction notified by the Parties by way of the notification form filed in Form II under Section 6(2) of the Competition Act bearing registration number C-2022/04/923.

Remedy Proposal: The instant submission being filed with the Hon'ble Commission on 4 October 2022 providing voluntary remedy to address the *prima facie* concerns raised by the Hon'ble Commission in the SCN (as defined below).

Resultant Entity: As defined under Clause 1.1 of the Merger Agreement, Resultant Entity means CME after giving effect to the Scheme in accordance with the terms of the Scheme.

Sale of Divestment Business: The sale of the Divestment Business to an Approved Purchaser.

SCN: Show Cause Notice dated 3 August 2022 issued by the Hon'ble Commission (received by the Parties on 10 August 2022).

Second Divestiture Period: The period of [redacted] from the elapse of the First Divestiture Period or such extended period as may be agreed by the Hon'ble Commission.

ZEEL: Zee Entertainment Enterprises Limited, a company incorporated under the Companies Act, 1956 with corporate identity number L92132MH1982PLC028767, and having its registered office at 8th Floor, A-Wing, Marathon Futurex, N.M. Joshi Marg, Lower Parel, Mumbai 400013, India.

ANNEXURE 1

PRE AND POST REMEDY PROPOSAL

MARKET SHARES OF THE PARTIES AND THEIR KEY COMPETITORS IN THE SUB-SEGMENTS OF HINDI GEC AND HINDI FILMS CHANNELS IN FY21, FY 22 AND FY23 (YTD)

HINDI GEC

COMBINED MARKET SHARES OF THE PARTIES IN THE SUB-SEGMENT OF HINDI GEC IN FY21	
PRE-REMEDY PROPOSAL	[40-45]%
POST-REMEDY PROPOSAL	[35-40]%
MARKET SHARES OF CERTAIN COMPETITORS IN THE SUB-SEGMENT OF HINDI GEC IN FY21	
DISNEY-STAR	[25-30]%
VIACOM18	[10-15]%
ENTER10	[5-10]%

COMBINED MARKET SHARES OF THE PARTIES IN THE SUB-SEGMENT OF HINDI GEC IN FY22	
PRE-REMEDY PROPOSAL	[40-45]%
POST-REMEDY PROPOSAL	[35-40]%
MARKET SHARES OF CERTAIN COMPETITORS IN THE SUB-SEGMENT OF HINDI GEC IN FY22	
DISNEY-STAR	[25-30]%
VIACOM18	[15-20]%
ENTER10	[5-10]%

Combined market shares of the Parties in the Sub-Segment of Hindi GEC in FY23 (YTD)	
Pre-Remedy Proposal	[35-40]%
Post-Remedy Proposal	[30-35]%
Market Shares of Certain Competitors in the Sub-Segment of Hindi GEC in FY23 (YTD)	
Disney-Star	[20-25]%
Enter10	[15-20]%
Viacom18	[10-15]%

Hindi Films channels

Combined market shares of the Parties in the Sub-Segment of Hindi Films channels in FY21	
Pre-Remedy Proposal	[40-45]%
Post-Remedy Proposal	[40-45]%
Market Shares of Certain Competitors in the Sub-Segment of Hindi Films channels in FY21	
Disney-Star	[20-25]%
Viacom18	[5-10]%
MKG Printing Works	[5-10]%

Combined market shares of the Parties in the Sub-Segment of Hindi Films channels in FY22	
Pre-Remedy Proposal	[35-40]%
Post-Remedy Proposal	[35-40]%
Market Shares of Certain Competitors in the Sub-Segment of Hindi Films channels in FY22	
Disney-Star	[20-25]%

Combined market shares of the Parties in the Sub-Segment of Hindi Films channels in FY22	
MKG Printing Works	[10-15]%
Viacom18	[10-15]%

Combined market shares of the Parties in the Sub-Segment of Hindi Films channels in FY23 (YTD)	
Pre-Remedy Proposal	[30-35]%
Post-Remedy Proposal	[30-35]%
Market Shares of Certain Competitors in the Sub-Segment of Hindi Films channels in FY23 (YTD)	
Disney-Star	[20-25]%
MKG Printing Works	[15-20]%
Viacom18	[10-15]%