



RAJEEV CHANDRASEKHAR
MEMBER OF PARLIAMENT
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Member of Standing Committee on Finance
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12 November, 2009

Dear Dr. Sarma,

Sub. : Move to facilitate consolidation and M&As in the Telecom Sector

This is with reference to the recent TRAI Consultation Paper on "Overall Spectrum Management and Review of License Terms and Conditions" dated 16 October, 2009.

This initiative by TRAI to "facilitate easier consolidation and M&As in the telecom sector" clearly points towards a decision of allowing M&As across the board in telecom, and it seems that the questions are framed to extract responses which will facilitate a decision favoring mergers and acquisitions, thereby reducing the number of telecom operators.

This move is in sharp contrast to everything that the DoT has said over the last two years while defending themselves against the allocation of spectrum to 120 Loh holders at 2001 prices on 10th January 2008. In multiple press releases, the DoT has justified the decision to give away these Lohs as late as 19th October 2007, and 10th January 2008. The TRAI decision for no cap (increasing competition) was the reason behind its decision.

Moreover, the Hon'ble Minister of Communications and IT has said in multiple press conferences and interviews that he has given away 120 Lohs at 2001 prices to break cartels that existed, and that 7 – 8 operators per circle was not sufficient level of competition. He has also justified these actions by saying that the only way to bring down prices is to introduce more competition and therefore by giving away new licenses in 2008, he is doubling the level of competition, to reduce tariffs and ensure that rural telephony objectives of the country are met. In fact, he has done so to justify fragmenting spectrum for multiple operators.

Further, M&A guidelines were issued in April 2008 and note for Telecom Commission in November 2008 to prevent M&As and sale of promoters' equity – all ostensibly aimed at ensuring that competition is protected and that windfall gains are not attributed to licensees who received mobile licenses and spectrum in 2008 at 2001 prices.



I would also like to point out that not a single new GSM operator has launched service since the licenses were given. No price reduction has taken place on account of new competition. All existing price wars are being led by incumbents since the new entrants are yet to enter the market. So essentially, everything that the Hon'ble Minister has stood for and used as an explanation for giving away cheap spectrum is being reversed under the garb of policy review.

If this occurs, then not only will it be a U-turn on policy, but also a clear indication that any proposed M&A/Sale will in effect serve the purpose of helping these new companies to get windfall gains from sale of their licenses / promoters' equity.

Moreover, this will not only lead to reduction in the level of competition, but will eventually increase prices. Several CEOs are already on record saying that the prices will increase in the future. Further, with India looking to reach 1 b subscriber mark by 2014, this market can prima-facie support and be viable for at least 10 – 12 operators with 80 – 120 million subscribers each. Unlike other countries, India can easily afford to have 10 plus operators in every service area, and in fact, needs those many operators to promote robust competition, infrastructure investment etc - at least for the next 3 – 5 years.

I believe that in order to maintain consistency with the objectives of increased competition, consumer benefit and creating a healthy, transparent consolidation roadmap for the sector, the following needs to be done :

a. Make Real consumer benefit the core principle of all its recommendations

The TRAI must ensure that that no part of their recommendations impact adversely (even minimally) the basic principle of Consumer benefit and protection of consumer interest. The Regulator's role is NOT to maximize investor and promoter returns. TRAI must intervene in cases of tariff cartelization and not rely on forbearance as an excuse to abrogate its role in tariff reduction.

b. Ensure that Consolidations, if permitted, still leave at least 9 to 10 operators per market

Given the size of the Indian market (800 million -1 billion by 2015), each of the 10 operators will have significant size and scale of almost 100 million each - which would put all 10 amongst the largest in the world.

c. Windfall taxation on all sale of new licenses/spectrum

If any of the new licensees are going to sell their licenses, the profits on the sale must be taxed at a special tax rate – a kind of windfall tax. Since these licenses were obtained cheaply and without auctions for spectrum (and therefore, foregoing potential revenue to Government) in the name of consumer interest, if the same operator was going to exit the business without



rolling out infrastructure and creating a substantial business, then it is only appropriate that the profits accruing should be to the account of the Government and people of India and not the operator/investor alone. More importantly, vast majority of this profit should accrue to the Exchequer in case of an M&A from the seller. Also, the rules and the percentage on how the windfall gains will be divided should be clearly articulated beforehand and take care of any attempt to circumvent this by making payments using non-traditional means etc.

This is an extremely serious issue and the only way M&As can be justified to bring 14 operators down to 9 or 10 will be by making sure that the Exchequer and the people of India, and not companies, benefit. Please take into consideration that the Apex Court has ruled that spectrum is a scarce resource and belongs to the people, and so clearly the proceeds from its sale must be received by the State and redistributed for appropriate social and infrastructure investments.

In summary, the issues are as follows :

- The TRAI recommendations of 28th August, 2007 – “no cap” on the number of Access Service Providers in a service area - was the basis of justifying government policy, announced by a press release on 19th October, 2007, and implemented through a press release on 10th January, 2008.
- The basis and rationale for removal of cap was to introduce more competition and reduce prices by increasing the number of operators. This was the subject matter of challenge and is, in fact, still pending in the Supreme Court (and I believe the First Come First Serve issue is pending in the Delhi High Court). An enquiry is also ongoing by the CVC. The present Consultation Paper seeks to link spectrum management with change in M&A guidelines. This would provide an escape route to new licensees. The objectives of the Authority’s earlier recommendations and consequent government policy are yet to be realized.
- The tone, direction and philosophy of the current Consultation Paper (seeking changes), in fact, runs contrary to the earlier recommendations of the Authority and will be self defeating/self contradictory to the recommendations of August 2007 and multiple press releases of the government.
- The genesis of the consultation process, therefore, is fundamentally flawed and is fraught with serious consequences for a proper and orderly growth of the Telecom sector, apart from offering a financial bonanza to new companies who have failed to roll out services, thus rewarding the defaulters and hitting the government / consumer twice over. First, because they get UAS license / spectrum cheap, and second, they can sell without rolling out [which itself is contrary to the recommendations of TRAI, section 5.27 (iv) of August 2009].



- The Authority must therefore first examine whether its earlier recommendations have been complied and its beneficiaries have discharged their obligations to delink management (which is vital and necessary) from any change in the M&A guidelines. At any rate, the terms and conditions of license relating to transfer of license and merger and acquisition including lock-in provisions, offer a necessary safeguard in the present scenario.
- The Authority would be well advised to first ensure that these terms and conditions are being scrupulously adhered to and followed before embarking on any fresh consultation. The issue of consolidation should be considered only after the above exercise is completed and should await the final outcome of the Supreme Court (in the challenge to the 2G allocation process since it has a direct bearing on the new consultation process).
- The Consultation Paper therefore defies logic and is legally flawed as it would enable defaulting licensees (new service providers) from wriggling out of their contractual obligations which is not in public interest.

To conclude, any fears of duplication of infrastructure can be addressed through policies of infrastructure and spectrum sharing. But any attempt to force consolidation in the market will be a reversal of policy.

Please treat this letter as my response to your Consultation Paper as well.

I urge you to kindly look into the matter.

Thanking you,

Very truly yours,

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