

CTK Associates

Advocates & Legal Consultants

1/5046-D, Lane 2, Balbir Nagar, Shahadara, Delhi-32
178-B, Pocket-B, Mayur Vihar-II, Delhi-110091
H-106, Ram Tara Bhawan, Patel Nagar-III, Ghaziabad (U.P.)

Gulab Chandra +91-9818220518
Jarnail Singh Tuli +91-9971574411
Vijay Kumar Kaushal +91-9818273181

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Dated 21 MAR 2012

To

Shri Sudhir Gupta

Pr. Advisor (MS)

Telecom Regulatory Authority of India,

New Delhi

Sub: Allocation of spectrum -Comments

Dear Sir,

CTK Associates comprises of a panel of highly experienced professionals who provide legal and regulatory consultancy to various sections of the society including the telecom community.

At the outset, we appreciate your prompt action of floating the Pre-Consultation paper on the auction of spectrum allocation in 2G band consequent to the Judgment of the Hon'ble Supreme Court and the Consultation Paper on Auction of Spectrum. We are confident that the entire exercise of making Recommendation by the Authority and subsequent actions by the Government with respect to the spectrum allocation in 2G band will be completed in a time-bound manner to safeguard the interest of the affected consumers and investors.

Please find enclosed are suggestions on the subject. We are of the opinion that the methodology adopted for the auction process shall ensure fair and equitable distribution of the national resource, as per the Court's direction. However, the methodology also has to ensure that the competition is not compromised, level playing field is maintained, and the Government gets adequate revenue commensurate with the current market value of the spectrum.

Yours sincerely,



J.S. Tuli

For CTK Associates

Place: New Delhi

Date: 21.03.2012

Comments on Consultation Paper 'Auction of Spectrum'

We, CTK Associates, are thankful to the Authority to offer the stakeholders the opportunity to share their views and put forward their concerns on this vital subject of Auction of Spectrum. Our views are as follows:

Re: Q1, Q2, Q3 of the CP

The Supreme Court vide para 81 of Judgment of dated February 2, 2012 on WRIT PETITION (CIVIL) NO. 423 OF 2010 and 10 of 2011, has given a directive to the Authority that, "Keeping in view the decision taken by the Central Government in 2011, TRAI shall make fresh recommendations for grant of licence and allocation of spectrum in 2G band in 22 Service Areas by auction, as was done for allocation of spectrum in 3G band."

In the same para, the Hon'ble Court has also said that,

"The licenses granted to the private respondents on or after 10.1.2008 pursuant to two press releases issued on 10.1.2008 and subsequent allocations of spectrum to the licensees are declared illegal and are quashed. The direction shall become operative **after four months.**"

"The Central Government shall consider the recommendations of TRAI and take appropriate decision **within next one month...**"

In the light of the above directive, we are of the view that-

- i. The purpose of the directive is to bring out a manner in which the licenses shall be granted and the spectrum be allocated through auction, in particular to rectify the illegal grant of licenses on or after 10.01.2008 and subsequent allocations of spectrum.
- ii. Secondly, the recommendation and the subsequent decision of the Central Government should be made **in a time-bound manner** as the licenses issued on or after 10.01.2008 are to be cancelled and subsequent allocations of spectrum to be quashed **after four months** from the date of judgment.
- iii. Thus, the Authority shall make recommendations for grant of license as well as allocation of spectrum in 2G band by Auction, in a timely manner to facilitate the Central Government to take appropriate decision in this regard.

As stated earlier in our comments, the Authority has already exhibited through its actions, i.e. publishing Pre-consultation on Allocation of spectrum in 2G band in 22 service areas through auction, Consultation Paper on Draft Guidelines on Unified Licensing Regime and migration of existing licenses, and now this consultation paper, that it is aware and conscious of the criticality of the task and its time bound nature. With this approach, we are confident that the Authority shall be able to complete the task in time. However, we feel that linking up issues like Auction of 700MHz band, Liberalisation, Trading, Mortgage of spectrum, etc will unnecessary introduce delay in the completion of this critical task in time.

The Court's directive clear cut mandates that recommendation be made for, (a) grant of licenses, and (b) the allocation of spectrum in 2G band by auction. The whole of the case revolves around

the issue that fresh competition was introduced in the Indian telecom market in the provisioning of 2G services. The licenses are subjected to cancellation as the method of issuance of new licenses and the subsequent allocation of spectrum has been adjudged as flawed and the exercise is to be undertaken afresh with properly formulated policies in the light of various principles outlined in the judgment and the decisions of the Central Government in 2011.

Therefore, the Authority should at the earliest recommend for the grant of license and auction of spectrum in 2G band and shall not club in more issues related to auction of other bands which will delay the decision in this regard.

We find that there are already so many issues encompassing the allocation of 1800MHz band, they should be addressed with the auction of spectrum in 2G band as they have a bearing on the quantum of spectrum available for auction and the base price for same. Also, we believe that the Department shall be recommended that the spectrum allocation in 900MHz and 1800MHz is uneven and inefficient within the telecom sector and the cleaning up shall be done within the sector before resorting to spectrum being currently used by I&B and Defence. We would like to bring forth few of such issues which can be resolved or discrepancies be rectified:

1. The distribution of 1800MHz spectrum till date is highly controversial. The spectrum allocation is pending for some of the players even for the start up spectrum and some of the players are allotted spectrum over and above the contractual limit of 6.2MHz and in some cases even above the prescribed limits of 8MHz/10MHz. The matter is under investigation by the Central Bureau of Investigation against some Government officials for excess allotment of spectrum to a few beneficiaries. There is a petition of an NGO pending in the High Court on the same issue since 2008, the petitioner has now moved to the Apex Court.

The UAS licenses issued for the provisioning of GSM/CDMA operations have set up limits for allocation to 6.2MHz/5MHz. Therefore, the allotment over and above these limits needs to be withdrawn at the earliest to meet the growing demand as the spectrum in 1800MHz band has an intrinsic value not only for allocation for GSM operations but also for refarming of Digital Dividend band.

Telecom Regulatory Authority of India (TRAI) in 2007, 2010 and 2011 had recommended the Department of Telecommunications to charge for any extra spectrum allocated to service providers. The Authority had also recommended that even after the payment of the charge the operator cannot retain more than 8MHz/10MHz in any circle. Despite these recommendations, DoT has not decided the policy as yet. The matter has been raised several times in Telecom Commission and the decisions of the TC are held up for some reasons, as stated in the Press Statement of the Hon'ble Minister dated 15th February, 2012. Based on the price recommended by the TRAI, the Comptroller and Auditor General, in its November 2010 report, had worked out a loss of Rs.36,993 crores to public exchequer on account of free allocation of spectrum beyond the contractual limits.

If the Government is of the opinion that the 2G services market requires fresh competition then it has to ensure that the new players get a level playing field. Many of the licensees of

before 2008 are still awaiting allocations of start-up spectrum or their applications are pending for additional allocation over 4.4 MHz due to this artificial scarcity created by uneven allotments. At one point new policies are being drafted to determine the price of spectrum, however the incumbents have been stuffed with whatever they have asked for. To the extent that in 2008-09 Bharti and Vodafone has been allotted almost 48MHz of spectrum in different service areas.

We appreciate the fact that the incumbents had taken the risks at the evolution stage of the Indian mobile market but they have been compensated well with free allocations of spectrum for almost two decades now. **There is an urgent need to withdraw the spectrum over the contractual limit of 6.2MHz to ensure a level playing field.**

The Hon'ble Supreme Court has stated in its said judgment that,

“As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources”

Thus, we suggest that in order to sufficiently incorporate the various principles outlined by the Hon'ble Supreme Court in various observations, TRAI in its Recommendation for Auction of Spectrum in 2G band shall also reemphasize on its recommendations for the withdrawal of excess spectrum held up by operators besides the levy of charges.

The Central Government has also in its Press Statement referred in the SC judgment has also separately urged the need to design an auction process for allocation of spectrum beyond 6.2MHz. We have said earlier also that allotment beyond 6.2MHz has a much higher value to the operator than the allocations of initial spectrum and therefore to have a fair and justified method of distribution

-the whole of the allocation till date beyond contractual limits of 6.2/5MHz for GSM/CDMA services should be first withdrawn.

-the withdrawn spectrum should then be if required be considered for the auction for new players and those whose licenses are cancelled and those who await initial allotment or need and are entitled to spectrum upto 6.2MHz

-TRAI has also highlighted multiple options for freeing 900MHz band, but shown the insufficiency of substitute spectrum i.e.1800MHz band. Therefore, the above withdrawal will help meet out this need to as some of the options suggested suffer from unjustified and unfair privilege to incumbents who have been hoarding the Digital Dividend bands for decades now that too for free.

-Any spare spectrum if any may be offered on fair and equitable basis to every player to hold beyond 6.2MHz upto prescribed limits with base prices commensurate with its intrinsic value which is higher than that for above purposes.

Reserve Price:

Re Q23

The Hon'ble Supreme Court has mentioned in its Judgment the prices of M&A transactions that have taken place consequent to the grant of license and spectrum in 2008. One may consider these transactions to derive a reserve price for 1800MHz band for 2G services which would be closer to the value determined by market determined process.

After the issuance of licenses and spectrum in 2008, many companies had sold off their equity stakes. The Enterprise value of these target companies may be determined from the deal value of the partial stake sold and then extrapolated the value to determine the pan-India level of per MHz of 1800MHz spectrum. Considering the transactions of Swan and Unitech and not the stake sale by TTSL/TTML to NTT DoCoMo as this also includes the value of other assets apart from the spectrum, following are the calculations:

Basis	Base Price
Swan (45%)	Rs. 7,876 crores (13 circles)
Unitech (60%)	Rs. 10,200 crores (21 circles)*

Note: *Swan 45% stake @ Rs. 3,544 crores in 2008; Unitech 60% stake @ Rs. 6,120 crores in 2009-10; Stake sale by TTSL/TTML to NTT DoCoMo are not considered as this also includes the value of other assets apart from the spectrum.

Source: SC Judgment dated Feb 2, 2012

Therefore, the Authority may consider this as reference for fixing the Reserve price for Auction of pan-India per MHz spectrum in 1800MHz band for 2G services.

If the auction is held considering all these crucial factors, the auction of 1800MHz for 2G services will stand alone meet the Estimates of Union Budget of Rs. 40,000 crores, which the Government estimates from 2G auction, Excess spectrum beyond 6.2MHz and Auction of 700MHz, all taken together.

Conclusion

To sum up, it is submitted that the Authority may kindly consider the directives of the Supreme Court in priority and make the Recommendation on the Auction of spectrum in 1800MHz band that too for 2G services. Thereafter, the Authority may recommend the Government to clean up the uneven allocations and inefficient utilisations of 900 MHz and 1800MHz band within the telecom sector before asking other industries like I&B and Defence for refarming.