CUTS COMMENTS

CONSULTATION PAPER BY TRAI (O4/2012)

AUCTION OF SPECTRUM

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1. **What are the key objectives to be kept in mind in the auction of the spectrum?**

   These should be in consonance with principles of equality and public trust to ensure that no action is taken which may be detrimental to public interest and should, therefore reflect constitutionalism of the resource. Arbitrariness and discretion should therefore be avoided to ensure competition.

2. **What should be the structure of the auction process?**

   The structure of the auction process should be such as to hedge against perceived drawbacks of auction enunciated by many. One of them is that maximization of public revenue would be better in a revenue-sharing method. The design of the process could to a large extent incorporate auction of revenue sharing which should be reassessed periodically. This 'hybrid' auction has also been advocated. It should also be borne in mind that the National Telecom Policy 2011 states as its first objective "provide high quality, affordable and secure telecommunication services to all citizens" which should not be sight of.

   Secondly auctions have been discredited with the possibility of successful bidders declaring themselves bankrupt and failing to roll out networks, services, etc. For this the auction structure could incorporate submission and analysis of a detailed business plan clearly showing availability of funds.

3. **Who should be eligible to participate in the auction?**

   Only licensees whose licences have been cancelled;
   Only eligible applicants as on 10.01.2008;
   Only licensees whose licences have been cancelled and all new eligible entrants at the time of auction; or
   Open to all including the existing licensees.

   The spirit of the observations of the Supreme Court (specifically those relating to principles of equality and the need to avoid arbitrariness) calls for the eligibility be open to all including the existing licensees.

4. **Can spectrum be allowed to be mortgaged for raising capital for telecom purposes?**

   It is a good idea subject to legal examination. Mortgages in India by banks and other financial institutions are against immovable properties such as land (a natural resource) and buildings that have a clear and unencumbered title of ownership in favour of the

person intending to borrow (or a guarantor) there against or provide it as a collateral security. One of the major aims of the banks/financial institutions for mortgaging is procuring collateral security that could be legally sold to adjust part or full amount of possible default.

Spectrum is a different kind of natural resource where title (or ownership) may not be legally established through auction. The Supreme Court has observed that natural resources belong to the people but the state legally owns them on behalf of its people and from that point of view natural resources are considered as national assets, more so because the state benefits immensely from their value. Further, spectrum would not be as easily 'encashable' by the financing institutions as the apparently more tangible land and/or buildings.

5. **Should there be a cap on amount of spectrum one can bid?**

Yes, there should be cap on amount of spectrum one can obtain through auction route. Since only limited spectrum is available, it may be ensured that no operator takes more than one block. This will ensure enough competition in the market and consumer benefit.

6. **Should there be a separate cap on the total amount of spectrum one can hold?**

Yes, there should be a limit on total amount of spectrum that a service provider can hold. It can be determined by the market share of the service provider.

7. **What should be the period of validity of spectrum?**

The validity period of the auctioned spectrum should be for atleast 15-20 years (from the date of award of right to commercially use the allocated spectrum block), as was done in the 3G Auction. When the spectrum is provided through auction, it is advisable that it must be granted for a longer term as the telecom sector requires huge investments and the payback takes time.

8. **Should the government allow deferred payment schedule of the spectrum auction fee, or should the payment be upfront in nature?**

It has been a practice of the Government to collect auction and bidding amount upfront. We recommend that this practice should be continued and operators should be required to pay the auction fee upfront. It will ensure that only the serious operators participate in the auction process.

9. **Should spectrum trading be allowed in India?**

Spectrum sharing should be the preferred options for enabling efficient spectrum utilization in the long run. However, in the instance that spectrum Trading becomes inevitable, the same should be undertaken with the objective of ensuring efficient spectrum utilization while at the same time discouraging spectrum hoarding and market monopolization. Spectrum is a limited national resource and therefore it is imperative to ensure its optimal utilization. Spectrum Trading essentially involves the transfer of rights

and associated obligations for the usage of spectrum to those who can generate the greatest value with that spectrum; and therefore, ensures optimal utilization. Spectrum Trading provides a decentralized market mechanism to revise and update initial spectrum allocations. This mechanism can be more effective than re-farming, re-auctioning. Allowing Spectrum trading provides the licensees an option to align their spectrum holdings with their spectrum requirements. For example, a licensee could sell or lease a sub-block of spectrum or its use in a particular geographical area, where the same is not being efficiently used for its internal consumption purposes.

Globally, there are numerous examples of using spectrum trading being adopted by numerous countries as a preferred mechanism for spectrum consolidation, including US, UK and Australia. Ofcom introduced spectrum trading in the UK at the end of 2004 as a key element in its programme of market based reform. Since then trading has been progressively extended to a broader range of licenses.

European Union - Within the EU, the NRF allows spectrum trading. In 2004, certain member states and the European Commission commissioned an independent study regarding the conditions and options of introducing spectrum trading. The report recommended the implementation of spectrum trading and further liberalization of spectrum use.

United Kingdom - The United Kingdom has already allowed spectrum trading for certain types of licensed transmissions, and is expected to expand to more types of licences. Furthermore, the United Kingdom has introduced measures to liberalize spectrum by, among other things, reducing obligations of current licences and allowing them to modify their spectrum use provided they do not cause interference.

10. a) Among the various models discussed above, in your opinion which model of spectrum trading is best suited for India?

Spectrum trading permits the purchaser to change the use to which the spectrum was initially put while maintaining the right to use. Spectrum trading refers to the ability of licensees to sell or trade their spectrum rights. Countries may decide to limit spectrum trading for specific uses or technologies or to allow unlimited trading except for requiring adherence to rules regarding interference. One of the most successful models so far is an Australian model as Australia spectrum licences are tradable and technology neutral. Spectrum licences authorize the use of spectrum and licensees are free to use any device and technology within their spectrum, provided that such devices comply with the conditions of the licences and the advisory guidelines established for the corresponding bands.

To avoid interference, the Australian Communications Authority (ACA) creates a document called "interference management framework" for each auction in which it sets forth the rules for spectrum use. In addition, in Guatemala, the 1996 Telecommunications Law introduced private spectrum rights that are granted in frequency usage portions, which have technical limitations to protect against interference (e.g., maximum power transmission and emission). These private rights are limited for a period of time (15 years plus an additional 15 year extension if requested), but they can be

traded without limitation other than the technical condition related to each TUC to protect against interference.

11. What should be the eligibility criteria to trade the spectrum?

Spectrum should be permitted to trade if following conditions are fulfilled:

- The interested service provider should have a license to operate in the respective circle.
- If the operator already has spectrum, he can only trade for further spectrum, if he is using the spectrum efficiently. Also, the total spectrum of the receiver, after trading should not exceed a prescribed limit.
- If the operator is sharing the spectrum, then both the giver & receiver of the spectrum are not allowed to participate in any of the spectrum trading in that region.
- The "Roll out Obligation" has to be then fulfilled by the receiver of the spectrum.

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