

**COUNTER-COMMENTS ON STAKE-HOLDERS'S COMMENTS ON TRAI CONSULTATION
PAPER ON "AUCTION OF SPECTRUM" DATED MARCH 07, 2012**

ISSUE – 1 (A): As per DoT press Note dated 29th January 2011, in future there will be no concept of initial or Start up spectrum therefore, spectrum block size suggested at 1 MHz or in its multiples.

Response and Comments:

In this context the Central Government decision is based on the DoT press note dated 29th January 2011 ("Press Note") has been fallaciously quoted by some respondents and stakeholders to state that the initial or start up spectrum as a concept has been done away with. Therefore they have argued that spectrum block size should be 1 MHz or so.

- We feel the very premise of the referred Central Government decision via Press Note was based on presence of ample competition in the telecom markets in 2011.
- The judgment of Hon'ble Supreme Court's dated 2nd February 2012 ("Judgment") and the Press Note have both lent clarity on the issue of eligibility of participants and the spectrum block size.
- The Para 81 (iii) of the Judgment states:

"Keeping in view the decision taken by the Central Government in 2011, TRAI shall make fresh recommendations....."

- TRAI Consultation paper dated March 7th, 2012 Page 5 point B, 1.7 has clearly listed tenets of the DoT Press notes dated 29.1.2011 and dated 15.2 2012.
- However, in the context of the Judgment, the Central Government decision in 2011 has only been referred to hence, we restrict our comment on the Press Note for our comments below to enhance the perspective.
 - a. Enough competition is referred to in the referenced Press Note, however, the Para 1.7 of the Consultation Paper has not carried any reference of the same. Para 5 of the Press Note had stated there was **enough competition** in 2011 which is extracted below:

*".....there is **enough of competition** to warrant a market driven process for allocation of 2G spectrum"*

- a. This was the premise for starting future allocation of spectrum through an auction as also removal of the concept of initial or startup spectrum as suggested by the referred decision of Central Government in 2011.
- b. **In January 2011 there were 12-13 UASLs in each Licensed Service Area.** By this date the Hon'ble Supreme Court was hearing PIL 423 of 2010 and neither was order reserved nor the final order passed. Therefore, enough competition was only taken at the level of 12-13 operators LSA wise.
- c. **After the Judgment** the number of players will potentially be **reduced to 6-7** per Licensed Service Area, effective in 4 months of the said Judgment.

- d. Hence, the context of the Press Note cum decision of the Central Government should only be read in conjunction with the number of already granted UASLs by **January 2011** i.e; Telecom market having **12-13 UASLs per LSA**.
- b. In view of the above for the fresh recommendations the Authority should consider the decision of Central Government in 2011 in the following manner:
- i) To restore “enough competition” i.e. **12-13 operators in each LSA**. Therefore, consider allocation of **4.4 MHz to new entrants** but, through an auction as per directions of the Judgment. It would also ensure a level playing field and meet the main premise of the Press Note to dispense with the rest of the tenets of this decision. *Extract from Para 5 of the Press Note are given above.*
- ii) To maintain a level playing field between existing operators and to ensure additional assignment of the balance of contracted spectrum i.e. 1.8 MHz spectrum to only those operators holding 4.4 MHz start up spectrum. *Extract from Para 7 of the Press Note are given below.*
- “.....Additionally assignment of balance of contracted spectrum may need to be ensured for the existing licensees who have so far been allocated only the start-up spectrum of 4.4 MHz....”*
- iii) To ensure adequate competition for auction of spectrum beyond 6.2 MHz. This will be achieved if the above 2 steps have been implemented. The main aim of the Press Note was to ensure **adequate competition in spectrum auction beyond 6.2 MHz**. This objective can be achieved well if **12-13 operators bid for excess spectrum beyond 6.2 MHz**. *Extract from Para 8 of the Press Note are given below.*

“... the adoption of an auction process for allocation and pricing of spectrum beyond 6.2 MHz while ensuring that there is adequate competition in the auction process.”

Conclusion: To deal with the issue of eligibility for participation and the block size of spectrum to be auctioned our suggestion made for a three phase auction process made in the response to the consultation and its correlation to the Press Note and the Judgment is tabulated below for reference:

Phase for Auction	2G GSM Band Auction Block Size	Eligibility	Applicability of 29 Jan 2011 & Judgment
Phase I	4.4 MHz	New entrants/Quashed Licensees	To ensure enough competition. Fresh Licenses and Spectrum to be granted by Auction.
Phase II	1.8 MHz	Holding 4.4 Mhz	Additional spectrum upto contracted spectrum to ensure

			level playing field.
Phase III	1 MHz	Holding 6.2 Mhz	To ensure adequate competition for auction of spectrum beyond 6.2 MHz

Issue – 1 (B): Context of the Judgment in eligibility for Auction in 2G Band

Comments:

1. The Authority’s Consultation Paper raises questions on who should be considered eligible to participate in the auction. There are several other questions in the consultation like re-farming, liberalization, auction of 700 MHz band etc. which are being linked by many respondents and stakeholders to the 2G Auction. That in our views this will jeopardize the execution of the Judgment which fundamentally seeks for the licenses granted in 2008 to now be auctioned. To refresh, these licenses under question were granted for provision of Unified Access Services across 22 Licensed Service areas and spectrum was allocated in GSM and CDMA bands for the same respectively.
2. The Judgment is clear in its directions and the matters that need to be dealt with in the auction for 2G spectrum.
3. As per Para 81 of the its aforesaid judgment, The Hon’ble Supreme Court has cancelled and quashed all licenses granted on or after 10.01.2008 and ordered for the allocation of fresh license and spectrum through auction. As the matter of competition in the sector has neither been raised nor adjudged in the respective PIL and Judgment, it substantiates the intent that competition should not be sacrificed. Hence, the impending auction for the part under the directions of the Hon’ble Supreme Court should be for fresh licenses and thereby only for new entrants.
4. We would further like to point out that as per the Para 78 of the Judgment

“.....who have got licenses between 2001 & 24/09/2007 are not parties to these petitions and legality of the license granted to them has not been questioned before this court.”

Therefore the context of the Judgment is fundamentally for the 2G Licenses granted in 2008 only and thereby do not make any of the existing licensees (*prior to 24th September 2007*) to fall a part of the spectrum auction process as per the Judgment. Hence, to be inline with the Judgment the spectrum auction in its first phase should only be for new eligible entrants and quashed licensees only.

5. As some of the incumbent operators have submitted a view for an **open and a single auction** in which all eligible entities i.e. all new entrants as well as existing licensees seeking spectrum can participate. In reference to this we wish to quote Para 69 of the Judgment pertaining to allocation of natural resource; public goods which has been only partially quoted in one such response.

*“.....that the procedure adopted for distribution is just, non-arbitrary and transparent and **that it does not discriminate between similarly placed parties.**”*

6. To ensure competition between similarly placed private parties (Para 69 of the Judgment), in our response to the Authority’s Consultation Paper, we have suggested that the auction be actually held in 3 phases. Phase I under directions of the Judgment and Phase II & III between parties that subsequently fall in similar categories to compete in an auction as soon as Phase I is over.

7. Considering the above facts, we are of the view that :
- (a) the distribution of natural resources must be consistent with constitutional principles including doctrine of equality and larger public good. Hence, for the participation in spectrum auction process, a level playing field for all parties must be maintained and all parties participating in the auction should be similarly placed prior to the various auction stages.
- (b) To provide substantial competition and to uphold prime principle of the opportunity for equal competition, it is imperative to provide the new entrants a level playing to compete against incumbent operators. Thus, we have already suggested a three stage spectrum auction process to maintain the sanctity of level playing field, extracted below:
- **Phase-I:** For Spectrum upto 4.4 MHz; for only new eligible entrants and quashed licensees.
 - **Phase-II:** For Spectrum beyond 4.4 MHz and upto 6.2 MHz; for new and existing operators having spectrum upto 4.4 MHz only.
 - **Phase-III:** For spectrum beyond 6.2 MHz; for all licensees holding 6.2 MHz spectrum.
8. The issues like auction of additional spectrum, excess spectrum upto prescribed limits, auction of spectrum in other bands i.e. 700 MHz, re-farming of spectrum, liberalization of spectrum etc. are priorities of the telecom sector; but these issues are not part of the aforesaid Judgment. Hence these issues should be dealt with separately following the auction of fresh licenses and spectrum.

ISSUE – 2 : Competitive Issues On Spectrum Block Size

Comments:

1. Many of the incumbents and existing operators have unsurprisingly commented on a block size of 1MHz for the auction, allowing for multiple blocks of 1 MHz for new entrants. Incumbents try and appear to be fair, however, the comparison of a new entrant with an existing operator itself differentiates their needs. An existing operator needs excess / additional spectrum essentially for reducing their costs and to expand capacity while for new entrants allocation of entry level spectrum (initial) is for start of services. Thus, a comparison between incumbents and new entrants at the same level is completely flawed and misplaced.
2. For our market allowing existing operators to compete with new entrants for natural resources at this non level field will result in stifling and denying competition. There is a far larger risk, in allowing natural resources to not be spread evenly across all private parties public good cannot be maximized.
3. In many of the responses such parallels have been drawn or implied equating new entrants/quashed licenses and incumbents which we find completely irrational. These private parties and licensees are clearly not similarly placed as tabulated below:

Category	Type of Operator by GSM Spectrum Holding in MHz	Advantage of Additional 1 MHz.	Our Suggestions for Auction blocks
A	Quashed Licenses alongwith having NIL spectrum.	No advantage. Competitive Service Levels not possible. Minimum 4.4 MHz required.	Phase I: 4.4 MHz GSM Spectrum auction between new entrants and quashed licenses.

B	Having 4.4 MHz	Added advantage. Better QoS	Phase II: 1.8 MHz GSM Spectrum between all operators holding 4.4 MHz spectrum allocation.
C	Greater Than Equal to 6.2 MHz	<ol style="list-style-type: none"> 1. Substantially Enlarged capacity. 2. Larger subscriber base, coverage and penetration possible 3. Reduced Capex/Opex 4. Huge Economic Value of excess spectrum allocation 	Phase III: 1 MHz GSM spectrum for all spectrum holders with 6.2 MHz and above.

4. It is clear from above that the Category A cannot compete with the Category C at all if the spectrum block allocation is of 1 MHz. Hence, spectrum blocks to be auctioned should be same for each phase between similarly placed service providers.
5. We re-iterate our view that:
 - a. Existing operators and Quashed Licensees/New Entrants are not similarly placed.
 - b. Hence, 1st Priority for Auction in 2G band should be for new entrants and quashed licensees at the earliest before June 2012 for 4.4 MHz GSM spectrum.

Issue – 3: Reserve Price at Rs. 1659 Crores

Comments:

1. The last market discovered price for auction in 2G band is Rs. 1,659 Crores pan India for the 4th Cellular License.
2. The reserve price during 2001 auction process was 'Zero.' The base was in fact discovered after the first round of bidding.
3. The price referred above was determined value of the spectrum upto 6.2 MHz hence, the reserve price itself should be much lower. Hence, any methodology applied to this reference price can only be considered as the market determined value adjusted.
4. The reserve price must be lower than any of the calibrated prices on Rs. 1,659 Crores. The value of the spectrum or its maximum value today should not be fixed as the reserve price for the auction in the interest of ensuring ample competition in the market place.
5. Larger Public good or Consumer Surplus should be well considered before any higher reserve price is thought of.
6. The attempt of the auction in 2G band in the first step should be to ensure enough and ample competition, in view of this the reserve price should not sacrifice the principle of larger public good.
7. In conclusion we re-submit that the reserve price be fixed at the level of the last market discovered price i.e; Rs. 1,659 Crores for 6.2 MHz prorated for 4.4 MHz.