



Telecom Regulatory Authority of India



Consultation Paper
on
Reforming the Guidelines for Transfer/Merger of Telecom Licenses

19th September 2019

Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg,
New Delhi- 110002

Written Comments on the Consultation Paper are invited from the stakeholders by 18th October 2019 and counter-comments by 1st November 2019. Comments and counter-comments will be posted on TRAI's website www.trai.gov.in. The comments and counter-comments may be sent, preferably in electronic form, to Shri Syed Tausif Abbas, Advisor (Networks, Spectrum and Licensing), TRAI on the email ID advmn@trai.gov.in. For any clarification/ information, he may be contacted at Telephone No. +91-11-23210481.

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CHAPTER I – INTRODUCTION

1. DoT through its letter No. 20-281/2010-AS-I Vol.XII (pt) dated 8th May 2019 (**Annexure-1.1**), inter-alia, informed that the National Digital Communications Policy (NDCP), 2018 released by the Government of India under its 'Propel India' mission envisages simplifying and facilitating Compliance Obligations as one of the strategies, and reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals is one of the action plan for fulfilling the strategy. Through the said letter dated 8th May 2019, DoT has, inter-alia, requested TRAI to furnish recommendations on 'Reforming the Guidelines for Mergers & acquisitions, 2014', under the terms of the clause (a) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (as amended) by TRAI Amendment Act, 2000.
2. Through its subsequent letter dated 11th June 2019 (**Annexure-1.2**), DoT has provided further inputs and requested that the same may be considered while providing recommendations on Reforming the Guidelines for Mergers & Acquisitions, 2014. Accordingly, DoT has informed that it has examined several proposals for transfer/merger of licenses in the past five years. After examining the proposal for transfer/merger of licenses, DoT conveys its approval to take the transfer/merger on record subject to fulfilment of applicable conditions based on the existing guidelines. At many instances in the past, the entities have filed petitions before the Hon'ble TDSAT praying to quash and set aside certain conditions imposed upon them by DoT in terms of, inter-alia, the paragraphs 3(i) and 3(m) of the Guidelines for Transfer/Merger of licenses. The Hon'ble TDSAT, on several occasions has granted stay to the operation of some of such conditions. This has resulted in uncalled-for delays in mergers being taken on record. Further, DoT has forwarded a copy of the representation received from Virtual Network Operators Association

of India (VNOAI) dated 16th November 2018, wherein it has suggested to impose a commitment on the merged entity to set aside 20% of wholesale capacity for MVNOs on Mobile Bitstream Access (MBA) basis.

3. In view of the above, this consultation paper provides the background information and seeks inputs of the stakeholders on reforms required to be made in the existing guidelines on Transfer/Merger of Licenses to enable simplification and fast tracking of approvals. Chapter – II deals with existing guidelines on transfer and merger of licenses. Chapter – III lists the issues for consultation.

CHAPTER-II: EXISTING GUIDELINES ON TRANSFER/MERGER OF LICENSES

A. Background

- 2.1 Mergers and Acquisitions (M&A) are natural in any sector. M&A results in many benefits such as improving economies of scale & scope, enhancing efficiency, attracting investments, promoting efficient utilization of resources and increasing affordability of services. However, increased market share as a result of M&A may lead to monopoly power and thereby lessening of effective competition and higher prices for consumers. Generally, in any sector, the level of competition is linked with the number of players i.e. the more the merrier. However, telecom is a capital incentive sector and it involves utilization of limited natural resource, viz. spectrum, whose efficiency reduces with increasing number of players as it leads to fragmentation, necessitating increased provisioning of guard bands. Therefore, there is a need to have a merger and acquisition policy framework which facilitates M&A activities and at the same time ensures effective competition in the sector.

B. Evolution of M&A Framework in Indian Telecom Sector

- 2.2 The Authority in its recommendations on “Unified Licensing Regime” dated 27th October 2003, inter-alia, mentioned that:

“7.3.2 a sustainable market structure should be allowed to consolidate so as to achieve higher growth through efficient utilization of resources. Hence intra-circle Merger and Acquisition should be permitted subject to guidelines on Merger & Acquisitions. Other aspects of dominance will also be tested at the time of merger. Guidelines for Merger and Acquisitions shall be recommended to the Government separately.”

- 2.3 Subsequently, after carrying out a detailed study to analyse the effect of prospective M&As on the level of competition in the telecom

market, the Authority, gave its recommendations on “Intra Circle Mergers and Acquisition Guidelines” on 30th January 2004, providing broad guidelines to deal M&A cases in the Indian telecom sector.

2.4 The Authority had, in these recommendations, indicated that, internationally, the important issue for consideration at the time of approving M&A is not the dominance of resultant entity in the market but the likely abuse of its market power. The Authority had recommended that the intra circle access market be classified as ‘Fixed’ and ‘Mobile’, wherein Mobile includes all mobility including WLL (M). As regards assessment of market share, the Authority had then expressed the view that if market share was defined on the basis of revenues, then, despite having lower subscribers, an operator might have higher market share on account of higher ARPU and had, accordingly, recommended that subscriber numbers should be the preferred criterion to compute the market shares. In order to prevent concentration of market power, the Authority recommended that M&A should not be allowed if it leads to less than three operators in the market. Further, the Authority recommended that the maximum spectrum that could be held by a Resultant entity should be capped at 15 MHz per operator per service area for Metros & Category ‘A’ Circles and 12.4 MHz per operator per service area in Category ‘B’ and Category ‘C’ Circles. The Authority also recommended that all telecom mergers ought to be notified to TRAI and that the resultant entity should obtain the approval of the Licensor for the proposed merger. It was also indicated that TRAI reserves a right to intervene or enquire into expected or completed mergers.

2.5 On 21st February 2004, the Department of Telecommunications issued Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/Unified Access Services (UAS) Licences. In the said Guidelines for ascertaining the monopoly of resultant entity, the market was classified as fixed and mobile separately with

subscriber base as the criteria for computing the market share. The monopoly market situation was defined as market share of 67% or above in terms of subscribers within a given service area. For fixed subscribers, Exchange Data Records was to be taken into account, while for the mobile subscribers, the subscriber figure, as per the Home Location Register (HLR) and Exchange Data Record was to be taken into account in a given Service Area. Intra-service area merger and acquisition was allowed if there were no less than three operators providing access services in a service area. On the limit on spectrum holding, the resultant entity was entitled to the total amount of spectrum held by the merging entities, subject to the condition that after merger, the amount of spectrum shall not exceed 15 MHz per operator per service area for Metros and category 'A' Service Areas and 12.4 MHz per operator per service area in category 'B' and category 'C' Service Areas.

- 2.6 In April 2007, DoT sent a reference, requesting TRAI to provide its recommendations on the issue of determining the number of access providers in each service area and for reviewing the terms and conditions in the access service license pertaining to substantial equity holding, transfer of licenses, mergers and acquisitions, permitting service providers to offer access services using combination of technology under the same license, roll-out obligations, etc..
- 2.7 In the intervening period from 2004 to 2007, there had been significant changes in the market structure and operation. The telecom sector, especially in the mobile access segment, witnessed entry of more operators, exponential growth in subscriber base, a healthy interest among operators to deploy state of the art technologies, and addition of innovative value added services.
- 2.8 In August 2007, TRAI, inter alia, recommended that the service market should be treated separately as wireline and wireless

services. It was also recommended that there should be at least four operators in each service area post-merger and that the market share of resultant entity in the relevant market should not be greater than 40% either in terms of subscriber base or in terms of Adjusted Gross Revenue. For determination of market power, market share of both subscriber base and adjusted gross revenue of licensee in the relevant market shall be considered. On the merger of the two licenses, the licence fee and the Spectrum usage charges were recommended to be charged on the resultant total AGR. In line with the TRAI recommendations, the Department of Telecommunications, on 22nd April 2008, issued guidelines for intra-service area merger of CMTS and UAS licences.

2.9 In the year 2010, considering the large number of service providers (12 to 14) in each service area, and the position relating to availability of spectrum, the Authority believed that measures to consolidate spectrum should be facilitated. These measures included mergers & acquisitions (M&A), spectrum sharing and spectrum trading. The Authority examined the existing guidelines in this regard and made its recommendations on 'Spectrum Management and Licensing Framework' dated 11th May 2010. Some of the recommendations were referred back to TRAI by DoT seeking reconsidered recommendations. After examination, TRAI sent its response to the back-reference on 2nd November 2011 to DoT. The key recommendations w.r.t. M&A were:

- (a) Where the market share of the Resultant entity in the relevant market is not above 35% of the total subscriber base or the AGR in a licensed service area, the Government may grant permission at its level. However, where, in either of these criteria, it exceeds 35% but is below 60%, Government may decide the case after receipt of recommendations from the TRAI. Cases where the market share is above 60% shall not be considered.

- (b) The distinction between wireline and wireless service was proposed to be removed and the entire access market to be treated as the relevant market.
- (c) Consequent upon the merger of licences in a service area, the total spectrum held by the Resultant entity shall not exceed 25% of the spectrum assigned, by way of auction or otherwise, in the concerned service area in case of 900 and 1800 MHz bands. In respect of 800 MHz band, the ceiling will be 10 MHz. In respect of spectrum in other bands, relevant conditions pertaining to auction of that spectrum shall apply. Excess spectrum, if any, beyond these limits shall be returned within one year of the permission being granted.
- (d) The resultant entity shall be entitled to only one block of 6.2 MHz*/ 5MHz* (GSM/CDMA) for the Entry fee paid, either of the parties to the merger should pay the Spectrum price i.e. the difference between the Current Price of the spectrum, as a result of merger, beyond the above limit and the sum already paid, before permission for merger is granted. This shall not apply in case of spectrum obtained through auction, if any.

*In case of a specific decision that spectrum beyond 4.4MHz/2.5 MHz (GSM/CDMA) will be charged at Current Price, this should be read as 4.4.MHz / 2.5MHz. (GSM/CDMA)

- (e) A spectrum transfer charge, @5% of the difference between the transaction price between the parties and the total current price, shall be payable before permission is granted.
- (f) All dues, if any, relating to the licence of the merging entities in a given service area, will have to be cleared by either of the two licensees before issue of the permission for merger of licences. This shall be as per the demand raised by the Government/licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes.

- (g) The duration of licence of the Resultant entity will be equal to the higher of the two periods on the date of merger.

2.10 Thereafter, on 20th February 2014, DoT issued the Guidelines for Transfer/Merger of various categories of Telecommunication service Licenses/authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies. Based on TRAI response on “Issues relating to Spectrum Cap” dated 21st November 2017 and recommendations on “Ease of doing Telecom Business” dated 30th November, 2017, these guidelines were amended on two occasions on 30.05.2018 and 24.09.2018, respectively. These are the existing guidelines which applies to the cases of transfer/merger of licences.

C. Applicable Clauses of the existing guidelines on Transfer/Merger of Licences

2.11 Guidelines are mentioned under Clause 3 of the instructions on guidelines on transfer/merger of licenses dated 20th February 2014 (as amended). Clause 3 contains 14 provisions, which are reproduced below:

- a) The licensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/objection, if any, by the Licensor on such scheme on the merger/transfer of licenses/authorizations under Unified License, have to be made and informed to all concerned within 30 days of receipt of such notice. After the scheme is sanctioned by the Tribunal/Company Judge, the Licensor will provide its written approval within 30 days of receipt of request for approval to the transfer/merger of licenses/authorizations under Unified License.
- b) A time period of one year will be allowed for transfer/merger of various licenses in different service areas in such cases

subsequent to the appropriate approval of such scheme by the Tribunal/Company Judge.

- c) If a licensee participates in an auction and is consequently subject to a lock-in condition, then if such a licensee propose to merge/compromise/arrange/amalgamate into another licensee as per the provisions of applicable Companies Act, the lock-in period would apply in respect of new shares which would be issued in respect of the resultant company (transferee company). The substantial Equity/ Cross Holding clause shall not be applicable during this period of one year unless extended otherwise. This period can be extended by the Licensor by recording reasons in writing.
- d) The merger of licenses/authorisation shall be for respective service category. As access service licence/authorisation allows provision of internet services, the merger of ISP licence/authorisation with access services licence/authorisation shall also be permitted.
- e) Consequent to transfer of assets/ licences/authorisation held by transferor (acquired) company to the transferee (acquiring) company, the licences/authorisation of transferor (acquired) company will be subsumed in the resultant entity. Consequently, the date of validity of various licences/authorisation shall be as per licenses/authorisation and will be equal to the higher of the two periods on the date of merger subject to prorata payments, if any, for the extended period of the licence/authorisation for that service. However, the validity period of the spectrum shall remain unchanged subsequent to such transfer of asset/licences/authorisation held by the transferor (acquired) company.
- f) For any additional service or any licence area/service area, Unified Licence with respective authorisation is to be obtained.

- g) Transfer/merger of licences consequent to compromise, arrangements, amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.
- h) For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers. Exchange Data Records (EDR) shall be used in the calculation of wireline subscribers and Visitor Location Register (VLR) data or equivalent, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/VLR data of equivalent shall be 31st December or 30th June of each year depending on the date of application. The duly audited AGR shall be the basis of computing revenue based market share for operators in the relevant market. The date for duly audited AGR would be 31st March of the preceding year.
- i) If a transferor (acquired) company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the transferee (acquiring) company (i.e. resultant merged entity), at the time of merger, shall pay to the Government, the differential between the entry fee and the market determined

price of spectrum from the date of approval of such arrangements by the National Company Law Tribunal/Company Judge on a pro-rata basis for the remaining period of validity of the license(s). No separate charge shall be levied for spectrum acquired through auctions conducted from year 2010 onwards. Since auction determined price of the spectrum is valid for a period of one year, thereafter, PLR at State Bank of India rates shall be added to the last auction determined price to arrive at market determined price after a period of one year. In the event of judicial intervention in respect of the demands raised for one time spectrum charges in respect of the spectrum holding beyond 4.4 MHz in GSM band/2.5 MHz in CDMA band before merger in respect of transferee (i.e. acquiring entity) company, a bank guarantee for an amount equal to the demand raised by the department for one time spectrum charge shall be submitted pending final outcome of the court case.

- j) The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity shall also be payable.
- k) Consequent upon the implementation of scheme of compromises, arrangements or amalgamation and merger of licenses in a service area thereupon, the following conditions shall apply on the Resultant entity with respect to spectrum caps.
 - (i) The total spectrum held by the Resultant entity shall not exceed 35% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band, by way of auction or otherwise, in the concerned service area.
 - (ii) The combined spectrum holding in the sub-1 GHz bands (700 MHz, 800 MHz and 900 MHz bands) by the Resultant entity shall not exceed 50% of the total spectrum assigned

in the sub-1 GHz bands, by way of auction or otherwise, in the concerned service area.

(iii) The principles applied in NIA of August 2016 for calculation of spectrum cap shall continue to be applied while calculating revised overall as well as sub-1 GHz spectrum cap.

(iv) In case transferor and transferee company had been allocated one block of 3G spectrum (2100 MHz) through the auction conducted for 3G/BWA spectrum in 2010, the resultant entity shall be allowed to retain two blocks of 3G spectrum (2100 MHz) acquired through the aforementioned auction in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence(UL).

- l) If, as a result of merger, the total spectrum held by the resultant entity is beyond the limits prescribed, the excess spectrum must be surrendered or traded within one year of the permission being granted, The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered or traded within one year, then, separate action in such cases, under the respective licenses/statutory provisions, may be taken by the Government for non-surrender/non-trade of the excess spectrum. However, no refund or set off of money paid and/ or payable for excess spectrum will be made.
- m) All demands, if any, relating to the licences of merging entities, will have to be cleared by either of the two licensees before issue of the permission for merger/ transfer of licenses/authorisation. This shall be as per demand raised by the Government/ licensor

based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand raised for pre-merger period of transferor or transferee company shall be paid. However, the demands except for one time spectrum charges of transferor and transferee company, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The one time spectrum charge shall be payable as per provisions in para 3(i) above of these guidelines.

- n) If consequent to transfer/merger of licenses in a service area, the Resultant entity becomes a “Significant Market Power” (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. SMP in respect of access services is as defined in TRAI’s “The Telecommunications Interconnect (Reference Interconnect Offer) Regulations, 2002 (2 of 2002)” as amended from time to time.

2.12 In the recent past, telecom market has been undergoing a phase of consolidation, several transfer/merger of licences have taken place. Presently, there are about 4 telecom service providers in each licensed service area as against 12-14 in 2010-2011, when the last recommendations on merger of licenses were made by the Authority.

2.13 DoT, through its letter dated 11th June 2019, has informed that in many merger proposals, the entities have filed petitions before the Hon'ble TDSAT praying to quash and set aside certain conditions imposed upon them by DoT in terms of, inter-alia, the paragraphs 3(i) and 3(m) of the Guidelines for Transfer/Merger of licenses. The Hon'ble TDSAT, on several occasions has granted stay to the operation of some of such conditions. This has resulted in uncalled-for delays in mergers being taken on record.

2.14 Further, with the passage of time, some clauses may have become redundant, while some may have been noticed to be ambiguous and

demand clarity. Moreover, the National Digital Communication Policy (NDCP), 2018, under 'Propel India' mission, inter-alia, envisages 'Reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals' under the strategy on 'Catalysing Investment for Digital Communications sector'.

- 2.15 In view of the above, the stakeholders are requested to provide their inputs to the following question.

Issue for Consultation

Q1. What reforms are required to be made in the existing guidelines on Transfer/Merger of Licenses to enable simplification and fast tracking of approvals? Kindly provide clause-wise response along with detailed justification.

D. Representation from VNOAI

- 2.16 DoT through its letter dated 11th June 2019 has also forwarded a copy of the representation received from Virtual Network Operators Association of India (VNOAI) dated 16.11.2018, requesting that the same may be considered while providing recommendations on Reforming the guidelines for Mergers and Acquisitions, 2014. In its letter dated 16th November 2018, VNOAI has, inter-alia, provided a description of the international practices to avoid cartelization and to sustain the competition by mandating MVNOs/VNOs to the merged entity. In order to sustain competition in the market, VNOAI has suggested to impose a commitment on the merged entity to set aside 20% of wholesale capacity for MVNOs on Mobile Bitstream Access (MBA) basis.
- 2.17 In relation to mandatory access to MVNOs, it may be noted that in all the three international cases cited by VNOAI, the commitment, which, inter-alia, included granting access to MVNOs was proposed by the MNO and the Competition Authority of European Commission

(CAEC) i.e. Director General Competition concluded that the proposed merger would no longer raise competition concerns, subject to full compliance of the commitments. Further, mandatory access to MVNOs was not a standalone remedy but a part of a broader remedy package which also included divestment of spectrum, etc. European remedy also defines key commercial principles & charges for the provision of wholesale access to MVNOs to avoid any dispute between the MVNO and the mobile network operator (or the merging entity granting access) along with a detailed supervisory process through an independent monitoring agency.

- 2.18 In India, the TSPs always have the option of engaging with an MVNO, even in case of merger where it might be exceeding the market share of 50%. However, the existing guidelines do not provide for mandatory access to MVNOs. Further, in case it is decided to provide mandatory access to MVNOs, it may be provisioned in the DoT M&A Guidelines which can be exercised on a case to case basis. However, in such cases, a mere enabling provision in the guidelines may not be sufficient, and a detailed and elaborate procedure needs to be codified for matching harm with remedy and laying down key commercial principles & charges for the provision of wholesale access to MVNOs.

Issue for Consultation

- Q2. Whether mandatory access to MVNOs should be provisioned in the DoT M&A Guidelines to address the competition concerns? If yes, in which cases the access should be mandated and what should be the guiding principles for provision of wholesale access to MVNOs? If no, kindly provide justification.**

E. Relevant provisions in the Unified License

- 2.19 While the guidelines on Transfer/Merger of Licences are being reviewed, it may be appropriate that the relevant clause in the

License may also be examined. Relevant Clauses in the Unified Licence under “Restriction on Transfer of License” in Chapter-I on General Conditions are reproduced below:

6.1 manner whatsoever to a third party or enter into any agreement for sub-License and/or partnership relating to any subject matter of the License to any third party either in whole or in part i.e. no sub-leasing/partnership/third party interest shall be created. For provision of the service by the Licensee, the Licensee may appoint or employ franchisee, agents, distributors and employees.

6.2 The Licensors shall have the right to direct the Licensee to warn, penalize or terminate the services of the franchisee or agent or distributor servant, after considering any report of conduct or antecedents detrimental to the security of the nation. The decision of the Licensors in this regard shall be final and binding and in any case the Licensee shall bear all liabilities in the matter and keep the Licensors indemnified for all claims, cost, charges or damages in this respect.

6.3 Intra service area mergers and acquisitions as well as transfer of licenses shall be subject to the guidelines issued on the subject from time to time by the Licensors.

6.4 Further, the Licensee may transfer or assign the License Agreement with prior written approval of the Licensors, in the following circumstances, and if otherwise, no compromise in competition occurs in the provisions of Telecom Services:-

(i)(a) When transfer or assignment is requested in accordance with the terms and conditions on fulfillment of procedures of Tripartite Agreement if already executed amongst the Licensors, Licensee and Lenders; or

(i)(b) Whenever amalgamation or restructuring i.e. merger or demerger is sanctioned and approved by the High Court or Tribunal as per the law in force; in accordance with the provisions; more particularly Sections 391 to 394 of Companies Act, 1956; provided that scheme of amalgamation or restructuring is formulated in such a manner that it shall be effective only after the written approval of the Licensors for transfer/merger of Licenses, and

(ii) Prior written consent/No Objection of the Licensors has been obtained for transfer or merger of Licenses as per applicable guidelines issued from time to time. Further, the transferee/assignee is fully eligible in accordance with eligibility criteria as applicable for grant of fresh License in that area and show its willingness in writing to comply with the terms and conditions of the License agreement including past and future roll out obligations as well as to comply with guidelines for transfer/merger of Licenses including for charges as applicable; and

(iii) All the past dues are fully paid till the date of transfer/assignment by the Transferor Company and Transferee Company; and thereafter the transferee company undertakes to pay all future dues inclusive of anything remained unpaid of the past period by the outgoing company.”

2.20 As can be seen from the above, some of the clauses are framed in a way which makes them ambiguous. For instance, clause 6.4 reads as “*the Licensee may transfer or assign the License Agreement with prior written approval of the Licensor, in the following circumstances, and if otherwise, no compromise in competition occurs in the provisions of Telecom Services*”; however, due to presence of the expression “and if otherwise” one could argue that as per clause 3.4, a licensee can transfer its license agreement without prior approval of the licensor if such a transfer would not result in compromise in competition, which is certainly not the intention. Thus, there may be a need to make the conditions unambiguous. In view of the above, the stakeholders are requested to furnish their comments on the following question:

Q3. In your view, what changes are required in the provisions of UL so as to make them unambiguous? Please provide justification.

Q4. If there are any other issues / suggestions relevant to the subject, stakeholders may submit the same with proper explanation and justification.

CHAPTER-III: ISSUES FOR CONSULTATION

- Q1. What reforms are required to be made in the existing guidelines on Transfer/Merger of Licenses to enable simplification and fast tracking of approvals? Kindly provide clause-wise response along with detailed justification.**
- Q2. Whether mandatory access to MVNOs should be provisioned in the DoT M&A Guidelines to address the competition concerns? If yes, in which cases the access should be mandated and what should be the guiding principles for provision of wholesale access to MVNOs? If no, kindly provide justification.**
- Q3. In your view, what changes are required in the provisions of UL so as to make them unambiguous? Please provide justification.**
- Q4. If there are any other issues / suggestions relevant to the subject, stakeholders may submit the same with proper explanation and justification.**

Government of India
Ministry of Communications
Department of Telecommunications
Access Services Wing
Sanchar Bhavan, 20, Ashoka Road, New Delhi-110001

No: 20-281/2010-AS-I Vol. XII (pt.)

Date:08.05.2019

To,
The Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Old Minto Road,
New Delhi-110002

Subject: Seeking recommendations of TRAI on strategies of National Digital Communications Policy, 2018 - reg.

The National Digital Communications Policy, 2018 (hereinafter, referred to as, the NDCP, 2018) of the Government of India envisages, *inter-alia*, the following strategies under its 'Connect India' and 'Propel India' missions:

"

1. Connect India: Creating a Robust Digital Communications Infrastructure

...

Strategies:

1.1 Establishing a 'National Broadband Mission – Rashtriya Broadband Abhiyan' to secure universal broadband access

...

- (j) *By Encouraging innovative approaches to infrastructure creation and access including through resale and Virtual Network Operators (VNO)*

2. Propel India: Enabling Next Generation Technologies and Services through Investments, Innovation, Indigenous Manufacturing and IPR Generation

...

Strategies:

...

2.1 Catalysing Investments for Digital Communications sector:

...

- (b) *Reforming the licensing and regulatory regime to catalyse Investments and Innovation, and promote Ease of Doing Business by:*

...

- v. *Enabling unbundling of different layers (e.g. infrastructure, network, services and application layer) through differential licensing*

...

- (c) *Simplifying and facilitating Compliance Obligations by:*

...

- v. *Reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals*

...

- viii. *Creating a regime for fixed number portability to facilitate one nation – one number including portability of toll free number, Universal Access Numbers and DID numbers*

...

2.2 Ensuring a holistic and harmonized approach for harnessing Emerging Technologies

...

- (e) *Ensuring adequate numbering resources, by:*

...

- ii. *Developing a unified numbering plan for fixed line and mobile services*


...”

2. Telecom Regulatory Authority of India is, hereby, requested to furnish recommendations, under the terms of the clause (a) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997 (as amended), in respect of the afore-mentioned items of the NDCP, 2018.

3. For sake of convenience, the strategies/ items under strategies of the NDCP, 2018, on which recommendation of TRAI are being sought, are summarized below:

- (a) Strategy 1.1 (j) of 'Connect India' mission,
- (b) Item (v) under Strategy 2.1 (b) of 'Propel India' mission,
- (c) Items (v) & (viii) under Strategy 2.1 (c) of 'Propel India' mission, and,
- (d) Item (ii) under Strategy 2.2 (e) of 'Propel India' mission.

4. This issues with the approval of the Secretary, Department of Telecommunications, Government of India.


(S.B. Singh) 8/5/18

Deputy Director General (AS)

Tel: 011-23036918

Annexure 1.2

Government of India
Ministry of Communications
Department of Telecommunications
Access Services Wing
Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001

No: 20-281/2010-AS-I Vol. XII (pt.)

Date: 06.06.2019

To,
The Secretary,
Telecom Regulatory Authority of India,
Mahanagar Doorsanchar Bhawan,
Jawaharlal Nehru Marg, Old Minto Road,
New Delhi-110002

Subject: Inputs with respect to the DoT's letter dated 08.05.2019 seeking recommendations of TRAI on strategies of National Digital Communications Policy, 2018- reg.

This is with reference to the letter of even No. dated 08.05.2019, through which, the Department of Telecommunications (DoT) had requested TRAI to furnish recommendations, under the terms of the clause (a) of sub-section (1) of Section 11 of the Telecom Regulatory Authority of India Act, 1997, on certain strategies of the NDCP, 2018. A copy of the DoT's letter dated 08.05.2019 is enclosed as **Annexure-I**.

2. In this regard, your kind attention is invited towards the item (v) under Strategy 2.1 (c) of 'Propel India' mission (viz. 'Reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals'), which is one of the items, on which, DoT has sought recommendations of TRAI through the letter dated 08.05.2019.

3. With reference to the afore-mentioned item, it is stated that, earlier, DoT issued Guidelines for Transfer/Merger of various categories of Telecommunication service licences/ authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies (hereinafter, referred to as, 'the Guidelines for Mergers & Acquisitions, 2014') through letter No. 20-281/2010-AS-I (Volume-VII) dated 20.02.2014. A copy of the Guidelines for Mergers & Acquisitions, 2014 is placed as **Annexure-II**. These guidelines were amended through letter No. 20-281/2010-AS-I

(Volume-VII) dated 30.05.2018 (**Annexure-III**) and 20-281/2010-AS-I (Volume-VII) dated 24.09.2018 (**Annexure-IV**). DoT has examined several proposals for transfer/ merger of licenses in light of the provisions of the Guidelines for Mergers & Acquisitions, 2014 in the past five years.

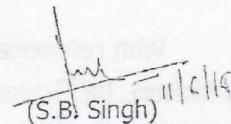
4. After examining any proposal for transfer/ merger of licenses, DoT conveys the approval of the competent authority to take the transfer/ merger on record subject to fulfillment of applicable conditions based on the provisions of the Guidelines for Mergers & Acquisitions, 2014. At many instances in the past, the merging entities have filed petitions before Hon'ble TDSAT praying to quash and set aside certain conditions imposed upon them by DoT in terms of, *inter-alia*, the paragraphs 3(i) and 3(m) of the Guidelines for Mergers & Acquisitions, 2014. The Hon'ble TDSAT, on several occasions, has granted stay to the operation of some of such conditions.

5. Your kind attention is also invited towards a copy of the representation received from Virtual Network Operators Association of India (VNOAI) through the letter No. VNOAI/11/2018 dated 16.11.2018 (**Annexure-V**). In its letter, VNOAI has, *inter-alia*, provided a description of the international practices to avoid cartelization and to sustain the competition by mandating MVNOs/ VNOs to the merged entities.

6. The above inputs may be considered while providing recommendations on 'Reforming the Guidelines for Mergers & Acquisitions, 2014 to enable simplification and fast tracking of approvals'.

7. This issues with the approval of the Secretary, Department of Telecommunications, Government of India.

Enclosures: As above


(S.B. Singh) 11/11/18

DDG (AS)

Tel: 011-2303 6918

Annexure - II

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashok Road, New Delhi
(AS-I Division)

No.20-281/2010-AS-I (Volume-VII)

Dated: 20th February, 2014

Subject: Guidelines for Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies.

1. National Telecom Policy -2012 envisages one of the strategy for the telecom sector to put in place simplified Merger & Acquisition regime in telecom service sector while ensuring adequate competition. This sector has been further liberalised by allowing 100% FDI. Further, it has been decided in-principle to allow trading of spectrum. The Companies Act of 1956 has also been amended by Companies Act of 2013 and the amendments have been made in reference to compromises/arrangements and amalgamations of companies. SEBI has also prescribed procedure for IPO.
2. The scheme of compromises, arrangements and amalgamation of companies is governed by the various provisions of the Companies Act, 2013 as amended from time to time. Such schemes is to be approved by National Company Law Tribunal to be constituted under the provisions of Companies Act, 2013. Consequently, the various licences granted under section 4 of Indian Telegraph Act, 1885 to such companies need to be transferred to the resultant entity (ies). It is also noted that such schemes may comprise of merger by formation or merger by absorption or arrangement or amalgamation etc. of company (ies) and thereafter merging/transferring such licences/authorisation subject to the condition that the resultant entity being eligible to acquire such licence/authorisation in terms of extant guidelines issued from time to time.
3. Earlier department has issued Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/ Unified Access Services (UAS)

Licences vide Office Memo No.20-232/2004-BS-III dated 22nd April 2008. Taking into consideration the above and taking into consideration the TRAI's Recommendations dated 11.05.2010 and 03.11.2011 and National Telecom Policy 2012, in supersession of these guidelines, it has been further decided that Transfer/ Merger of various categories of Telecom services licences/ authorisation under UL shall be permitted as per the guidelines mentioned below for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

- a) The Licensors shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/objection, if any, by the Licensors on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.
- b) A time period of one year will be allowed for transfer/merger of various licences in different service areas in such cases subsequent to the appropriate approval of such scheme by the Tribunal/Company Judge.
- c) If a licensee participates in an auction and is consequently subject to a lock-in condition, then if such a licensee propose to merge/compromise/arrange/amalgamate into another licensee as per the provisions of applicable Companies Act, the lock-in period would apply in respect of new shares which would be issued in respect of the resultant company (transferee company). The substantial Equity/ Cross Holding clause shall not be applicable during this period of one year unless extended otherwise. This period can be extended by the Licensors by recording reasons in writing.
- d) The merger of licenses/authorisation shall be for respective service category. As access service licence/authorisation allows provision of

internet services, the merger of ISP licence/authorisation with access services licence/authorisation shall also be permitted.

- e) Consequent to transfer of assets/ licences/authorisation held by transferor (acquired) company to the transferee (acquiring) company, the licences/authorisation of transferor (acquired) company will be subsumed in the resultant entity. Consequently, the date of validity of various licences/authorisation shall be as per licenses/authorisation and will be equal to the higher of the two periods on the date of merger subject to pro-rata payments, if any, for the extended period of the licence/authorisation for that service. However, the validity period of the spectrum shall remain unchanged subsequent to such transfer of asset/licences/authorisation held by the transferor (acquired) company.
- f) For any additional service or any licence area/service area, Unified Licence with respective authorisation is to be obtained.
- g) Taking into consideration the spectrum cap of 50% in a band for access services, transfer/merger of licences consequent to compromise, arrangements or amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.
- h) For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers. Exchange Data Records (EDR) shall be

used in the calculation of wireline subscribers and Visitor Location Register (VLR) data or equivalent, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/VLR data of equivalent shall be 31st December or 30th June of each year depending on the date of application. The duly audited AGR shall be the basis of computing revenue based market share for operators in the relevant market. The date for duly audited AGR would be 31st March of the preceding year.

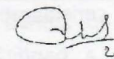
- i) If a transferor (acquired) company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the transferee (acquiring) company (i.e. resultant merged entity), at the time of merger, shall pay to the Government, the differential between the entry fee and the market determined price of spectrum from the date of approval of such arrangements by the National Company Law Tribunal/Company Judge on a pro-rata basis for the remaining period of validity of the license(s). No separate charge shall be levied for spectrum acquired through auctions conducted from year 2010 onwards. Since auction determined price of the spectrum is valid for a period of one year, thereafter, PLR at State Bank of India rates shall be added to the last auction determined price to arrive at market determined price after a period of one year. In the event of judicial intervention in respect of the demands raised for one time spectrum charges in respect of the spectrum holding beyond 4.4 MHz in GSM band/2.5 MHz in CDMA band before merger in respect of transferee (i.e. acquiring entity) company, a bank guarantee for an amount equal to the demand raised by the department for one time spectrum charge shall be submitted pending final outcome of the court case.
- j) The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity shall also be payable.

- k) Consequent upon the implementation of scheme of compromises, arrangements or amalgamation and merger of licenses in a service area thereupon, the total spectrum held by the Resultant entity shall not exceed 25% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band, by way of auction or otherwise, in the concerned service area. The bands will be as counted for such cap in respective NIAs for auction of spectrum. In respect of 800 MHz band, the ceiling will be 10 MHz. Moreover, the relevant conditions pertaining to auction of that spectrum shall apply. In case of future auctions, the relevant conditions prescribed for such auction shall be applicable. However, in case transferor and transferee company had been allocated one block of 3G spectrum through the auction conducted for 3G/BWA spectrum in 2010, the resultant entity shall also be allowed to retain two blocks of 3G spectrum in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL), being within 50% of spectrum band cap.
- l) If, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered by the merged entity within one year, then, separate action in such cases, under the respective licenses / statutory provisions, may be taken by the Government for non surrender of the excess spectrum. However no refund or set off of money paid and/or payable for excess spectrum will be made.
- m) All demands, if any, relating to the licences of merging entities, will have to be cleared by either of the two licensees before issue of the permission for merger/ transfer of licenses/authorisation. This shall be as per demand

raised by the Government/ licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand raised for pre-merger period of transferor or transferee company shall be paid. However, the demands except for one time spectrum charges of transferor and transferee company, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The one time spectrum charge shall be payable as per provisions in para 3(i) above of these guidelines.

- n) If consequent to transfer/merger of licenses in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. *SMP in respect of access services is as defined in TRAI's "The Telecommunications Interconnect (Reference Interconnect Offer) Regulations, 2002 (2 of 2002)" as amended from time to time.*

4. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended from time to time.
5. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.


(R. K. Soni)
Director (AS-I)
For and on behalf of the President of India
Ph. 23036284

No.: 20-281/2010-AS-I (Vol. VII)
 Ministry of Communications
 Department of Telecommunications
 (Access Services Wing)
 Sanchar Bhawan, 20, Ashoka Road, New Delhi -110001

Dated at New Delhi, 30.05.2018

Subject: Amendment in the Guidelines for Transfer/ Merger of various categories of Telecommunication service licenses/ authorisation under Unified License (UL) on compromises, arrangements and amalgamation of the companies dated 20.02.2014

In pursuance to the clause (5) of 'Guidelines for Transfer/ Merger of various categories of Telecommunication service licenses/ authorisation under Unified License (UL) on compromises, arrangements and amalgamation of the companies' (hereinafter, referred to as, the Merger and Acquisition Guidelines, 2014) issued by the Department of Telecommunications (DoT) on 20.02.2014, and revision of the limits of cap for spectrum holding therefor, DoT hereby amends the sub-clause (g) and sub-clause (k) of the clause (3) of the Merger and Acquisition Guidelines, 2014 as detailed below:

Present Clause	Amended Clause
g) Taking into consideration the spectrum cap of 50% in a band for access services, transfer/merger of licences consequent to compromise, arrangements or amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant	g) Transfer/merger of licences consequent to compromise, arrangements or amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period

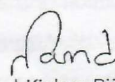
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30/05/18

<p>entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.</p>	<p>of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.</p>
<p>k) Consequent upon the implementation of scheme of compromises, arrangements or amalgamation and merger of licenses in a service area thereupon, the total spectrum held by the Resultant entity shall not exceed 25% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band, by way of auction or otherwise, in the concerned service area. The bands will be as counted for such cap in respective NIAs for auction of spectrum. In respect of 800 MHz band, the ceiling will be 10 MHz. Moreover, the relevant conditions pertaining to auction of that spectrum shall apply. In case of future auctions, the relevant conditions prescribed for such auction shall be applicable. However, in case transferor and transferee company had been allocated one block of 3G spectrum through the auction conducted for 3GIBWA spectrum in 2010, the resultant entity shall also be allowed to</p>	<p>k) Consequent upon the implementation of scheme of compromises, arrangements or amalgamation and merger of licenses in a service area thereupon, the following conditions shall apply on the Resultant entity with respect to spectrum caps.</p> <ul style="list-style-type: none"> (i) The total spectrum held by the Resultant entity shall not exceed 35% of the total spectrum assigned for access services, by way of auction or otherwise, in the concerned service area. (ii) The combined spectrum holding in the sub-1 GHz bands (700 MHz, 800 MHz and 900 MHz bands) by the Resultant entity shall not exceed 50% of the total spectrum assigned in the sub-1 GHz bands, by way of auction or otherwise, in the concerned service area. (iii) The principles applied in NIA of August 2016 for calculation of spectrum cap shall continue to be

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<p>retain two blocks of 3G spectrum in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/Merger of various categories of Telecommunication service licences/ authorisation under Unified Licence (UL), being within 50% of spectrum band cap.</p>	<p>applied while calculating revised overall as well as sub-1 GHz spectrum cap.</p> <p>(iv) In case transferor and transferee company had been allocated one block of 3G spectrum (2100 MHz) through the auction conducted for 3G/BWA spectrum in 2010, the resultant entity shall be allowed to retain two blocks of 3G spectrum (2100 MHz) acquired through the afore-mentioned auction in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/ Merger of various categories of Telecommunication service licences/ authorisation under Unified Licence (UL).</p>
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2. The afore-mentioned amendments in the Merger and Acquisition Guidelines, 2014 shall come into effect immediately.


(Nand Kishor Bijaraniyan)

ADG (AS-V)

For and on behalf of the President of India

Tel: 011-23036416

To,

Director (IT) for publishing on the web-site of Department of Telecommunications

Annexure - IV

No.: 20-281/2010-AS-I (Vol. VII)

Ministry of Communications
Department of Telecommunications
(Access Services Wing)
Sanchar Bhawan, 20, Ashoka Road, New Delhi- 110001

Date: 24.09.2018

Subject: Amendment in the 'Guidelines for Transfer/Merger of various categories of Telecommunication service licenses/authorisation under Unified License (UL) on compromises, arrangements and amalgamation of the companies' dated 20.02.2014

In pursuance to the clause (5) of the 'Guidelines for Transfer/ Merger of various categories of Telecommunication service licenses/authorisation under Unified License (UL) on compromises, arrangements and amalgamation of the companies' dated 20.02.2014 (hereinafter, referred to as "the Merger and Acquisition Guidelines, 2014"), the Department of Telecommunications, hereby, amends the sub-clause (a) and sub-clause (l) of the clause (3) of the Merger and Acquisition Guidelines, 2014 as detailed below:

Present Clause	Amended Clause
a) The licensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/ objection, if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.	a) The Licensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/ objection, if any, by the Licensor on such scheme and on the merger/ transfer of licenses/ authorizations under Unified License, have to be made and informed to all concerned within 30 days of receipt of such notice. After the scheme is sanctioned by the Tribunal/ Company Judge, the Licensor will provide its written approval within 30 days of receipt of request for approval to the transfer/ merger of licenses/ authorizations under Unified License.

Sign

<p>1) If, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered within one year, then, separate action in such cases, under the respective licenses/statutory provisions, may be taken by the Government for non surrender of the excess spectrum. However, no refund or set off of money paid and/ or payable for excess spectrum will be made.</p>	<p>1) If, as a result of merger, the total spectrum held by the resultant entity is beyond the limits prescribed, the excess spectrum must be surrendered or traded within one year of the permission being granted. The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered or traded within one year, then, separate action in such cases, under the respective licenses/statutory provisions, may be taken by the Government for non-surrender/ non-trade of the excess spectrum. However, no refund or set off of money paid and/ or payable for excess spectrum will be made.</p>
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2. The afore-mentioned amendments in the Merger and Acquisition Guidelines, 2014 shall come into effect immediately.

Sujit Kumar
24/01/15

(Sujit Kumar)

ADG (AS-V)

For and on behalf of the President of India

Tel: 011-23036416

To,
The Director (IT), DoT-Hq, New Delhi for publishing on the web-site of the Department of Telecommunications

11-01-2018 M(T)

Ref: VNOAI/11/2018

DDG (AS)
DDG (DS)

The Chairman
Telecom Regulatory Authority of India
Mahatma Gandhi Bhawan, Jawahar Lal Nehru Marg,
New Delhi- 110 002.

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Ministry of Telecom
Dept. of Telecom
Central Registry

16 NOV 2018

Date: 16.11.2018

VNOAI

Sub: International Practices to avoid cartelization and to sustain the competition by mandating MVNOs/VNOs to the merged entities refer recent Merger of Two top Operators (Idea-Vodafone) and creation of 3+1 market in India.

Sir/Madam

This in reference to the issue of competition being reduced due to recent Merger and Acquisition of two large operators (IDEA-VODAFONE) forming a new entity with the revenue of about Rupees.80,000/- crores and a market share of (RMS of 43%) leaving behind market leader Bharti Airtel. However, the proposed merger of Vodafone and IDEA has some challenges on the M&A policy front. The RMS of the new entity should not be over 50% of the overall revenue of the market.

In order to sustain the competition in the Indian mobile market we need a balance between the efficient utilization of spectrum on the one hand and ensuring adequate competition on the other. The basic objective of maintaining competition in the market remains relevant. In view of such situations therefore internationally countries have used market share in terms of subscriber base as one of the criteria to classify any operators dominance. Internationally the regulators and licensing authority clear the mergers only on the commitment that the host merged entity will be setting aside 20% of whole-sale capacity for MVNOs with upfront commitment on MBA basis.

We hereby provide you some of the used cases in the European Union where in recent some M&A activity has taken place between prominent operators. The Licensing authorities/ Regulators

mandated for earmarking of 20% of whole-sale capacity for the MVNOs in order to maintain the competition in the market and availability of good competitive products to the end consumers.

Globally – to avoid the above described scenario and to ensure that: –

- Customers continue to enjoy choice and the benefits of a competitive market, despite the consolidation (through mergers and acquisitions) among the TSPs.

While at the same time ensuring that: -

- spectrum is allocated to a few responsible players and not fragmented among several TSPs
- Capex expenditure for the industry as a WHOLE is kept at sustainable levels (ensuring that too many TSP's don't invest and build duplicate infrastructure across the country, far in excess to requirements.

Globally the regulatory authorities mandate in case of M&A that: -

- TSPs which are opting for mergers with other TSPs, or acquiring other TSPs must allocate a fixed proportion of their spectrum capacity (typically 20-40% depending on the 'dominance' of the operator) for the exclusive use of MVNOs.
- Such TSPs are also mandated to compulsorily host MVNOs (maybe 1-5 MVNOs)
- TSPs are mandated to provide 'non-discriminatory access to MVNOs i.e. the TSP must extend all facilities (like coverage, access to 4G networks etc.) to the customers of its hosted MVNOs, that it provides to its own customers.
- In some cases, TSPs purchasing spectrum in auctions are also subject to mandate allowing MVNO access to the TSP's network.

We submit that similar conditions may be introduced in India also. Mandating the large incumbent TSPs in India to support VNOs – will ensure that several VNOs will emerge in India in a short period of time.

With a large number of VNOs, co-existing with the 4 large TSPs which will emerge post the current wave of consolidation – customers will continue to enjoy the benefits of a competitive market viz – lower, more affordable costs, innovative services and choice of multiple brands.

The dominance of the large TSPs –expressed as pricing power in the market, will be curtailed by the availability of a large number of VNOs, who will be 'alternate service providers' for the end consumers.

We submit that such mandates be applied by DoT and TRAI, to TSPs opting for mergers and acquisitions so that the end customers continue to be benefited.

Global Scenario and Case Study

There have been several instances where regulators in other countries have mandated wholesale network access to MVNOs, as a precondition for allowing mergers and acquisitions among the TSPs in that country. Following are some case studies in Europe :-

1.Austria – Acquisition of Orange Austria by Hutchison.

Hutchison was mandated to

- Ensure that up to 30% of its capacity was dedicated to its Wholesale business.
- Allow wholesale access (i.e. make its spectrum available) to up to 16 MVNOs for the next ten years;
- Sign wholesale access agreement with at least one MVNO approved by the European Commission BEFORE completing the acquisition.
- http://europa.eu/rapid/press-release_IP-12-1361_en.htm

2.Ireland – Merger between Hutchison and Telefonica.

Hutchison was mandated to

- Ensure the short-term entry of two mobile virtual network operators (MVNOs), with an option for one of them to become a full mobile network operator later. Hutchison committed to divest five blocks of spectrum in the 900 MHz, 1800 MHz and 2100 MHz bands to either MVNO at a later date.
- Ensure to sell 30% of the merged company's network capacity to two MVNOs in Ireland at fixed payments. (Instead of the usual "pay-as-you-go" wholesale pricing model, typically used between TSPs and MVNOs, where payments are made as per the usage of the MVNO's subscribers.)
- http://europa.eu/rapid/press-release_IP-14-607_en.htm

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3. Germany – Acquisition of E-Plus by Telefonica.

Telefónica submitted commitments to the regulator as below-

- To sell, before the acquisition is completed, up to 30% of the merged company's network capacity to one to three MVNOs in Germany at fixed payments.
- Extend existing wholesale agreements with Telefonica's and E-Plus' partners (i.e. MVNOs and Service Providers) and to offer wholesale 4G services to all interested players in the future.
- Improve its wholesale partners' ability to switch their customers from one MNO to another (i.e. make it easier for its MVNOs to switch to the network of another TSP if they want)
- <http://europa.eu/rapid/press-release MEMO-14-460 en.doc>

It is therefore, submitted that the above case studies in Europe may be considered for the mandate of allocation of capacity by the merged entity in the case of current merged entities like IDEA-VODAFONE merger for the VNOs in India be mandated in order to maintain the efficient usage of spectrum and ensuring the adequate competition in the Indian Telecom Market for the benefit of consumers at large.

As per Global case studies described above the Merged entity will be able to use excess network capacity optimally. The VNOs will no longer face any hurdle or challenge to access the 'merged entities' networks. Customers will benefit from having larger choice of brands, to choose their telecom operator, and also benefit from continued affordable prices and innovative service offerings. The government will benefit from increased revenues through regulatory fees and taxes since the telecom resources of the country will be monetized more efficiently by the merged entity.

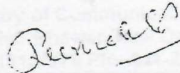
In the absence of any mandate to the current scenario in India wherein there are 3-Private Players and one Govt. entity (BSNL). It is a fact that inspite the issue of UL-VNO policy in 2016 but no UL-VNO was able to start the services as no TSP is ready to provide the capacity to the VNOs. Therefore the chances of cartelization in the industry are more and moreover if the regulators and licensors want that in pursuant to NTP2012 the VNO policy to succeed then mandate to TSP for compulsory allocation to the VNOs be made on priority in order to provide benefits to the end consumers. We can judge this from the international practices where inspite of

such a mature market there is substantial competition due to mandating of the MVNOs to the TSPs and customers are largely reaping its benefits.

We therefore urge the authorities to consider our submissions in the right prospective and suo moto amend the regulations inorder to protect the competition in the market and availability of innovative products to the end consumers.

Best Regards

For Virtual Network Operators Association of India



(Rakesh Kumar Mehta)

Secretary General

Mobile: 9899006599

E-mail: secretary-general@vnoai.com/rk.mehta2051@gmail.com

CC-

✓ 1. Secretary Telecomm
Dept of Telecommunications
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