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Consultation paper

On

Overall Spectrum Management and review of license terms and conditions

Chapter 2

Licensing issues

7. Should the spectrum be delinked from the UAS Licence? Please provide the reasons for your response.

ANS: Yes, it should be delinked.

The following objectives will be achieved:

- 1) Post delinking license fees will be lower and spectrum will be separately allocated through competitive bidding and so its valuation will increase and so will the revenue for the Government.
- 2) License fees will be lowered
- 3) MVNOs will emerge with more new business plans.
- 4) Efficient usage of spectrum
- 5) Promote niche players & other types of media

8. In case it is decided not to delink spectrum from UAS license, then should there be a limit on minimum and maximum number of access service providers in a service area? If yes, what should be the number of operators?

ANS: In Indian telecom market we already have 12 to 13 operators in a circle. Optimum value of HHI should be maintained. So we suggest 6 minimum and 8 maximum operators in each service area.

9. What should be the considerations to determine maximum spectrum per entity?

ANS: Considering HHI, six spectrum holders should be there.

10. Is there a need to put a limit on the maximum spectrum one licensee can hold?

If yes, then what should be the limit? Should operators having more than the maximum limit, if determined, be assigned any more spectrum?

ANS: There should be some limit on the number of spectrum holders.

As per TEC:

- 1) 8 MHz for 2G
- 2) 5 MHz for 3G

So the total is 13, but we recommend total spectrum limit for a player should be 15 MHz. After which operators should be encouraged to share spectrum amongst themselves.

11. If an existing licensee has more spectrum than the specified limit, then how should this spectrum be treated? Should such spectrum be taken back or should it be subjected to higher charging regime?

ANS: The spectrum should be first given back to DoT/WPC & later it should be allocated through the process of competitive bidding.

If there is only one player, the last bidding price should be taken including inflation over the years.

12. In the event fresh licences are to be granted, what should be the Entry fee for the license?

ANS: No comments

13. In case it is decided that the spectrum is to be delinked from the license then what should be the entry fee for such a Licence and should there be any roll out condition?

ANS: No comments for entry fee.

Yes, there should be roll out conditions as per present rules

14. Is there a need to do spectrum audit? If it is found in the audit that an operator is not using the spectrum efficiently what is the suggested course of action? Can penalties be imposed?

ANS: Yes, there is a need to do spectrum audit. It is required to know how efficiently the spectrum is being used. Also, how much more space is left in the present spectrum. If an operator is found guilty, he should not be allowed to bid for any other spectrum. Moreover, his spectrum should either taken back or shared by other license holder. The spectrum price should be high enough so that the operators themselves have to use the spectrum efficiently to achieve their breakeven point.

15. Can spectrum be assigned based on metro, urban and rural areas separately? If yes, what issues do you foresee in this method?

ANS: No, spectrum should be assigned circle wise.

16. Since the amount of spectrum and the investment required for its utilization in metro and large cities is higher than in rural areas, can asymmetric pricing of telecom services be a feasible proposition?

ANS: No, initial pricing should be symmetric; it is the bidding which will define the final price, only the roll out period should be different. During bidding operators will keep in mind the factor of urban and rural. A rural player should be given more time period than a metro and urban players as metro and urban players have an advantage of tower sharing whereas he has to build his own towers in rural area.

M&A issues

17. Whether the existing license conditions and guidelines related to M&A restrict consolidation in the telecom sector? If yes, what should be the alternative framework for M & A in the telecom sector?

Ans: Yes, keeping in mind method of consolidation of spectrum, especially in the context of scarcity of this resource, present guidelines states that M&A can happen after 3 years of awarding of license according to Article 2.32 that any permission for merger shall be accorded only after completion of 3 years from the effective date of the licenses. So we propose a minimum period of 1 year provided the market share of one of the entities is less than 2%. And if not minimum period for merger is 2 years. In any M & A activity it should be made mandatory for the Government to seek advice of the Competition Commission of India (CCI).

18. Whether lock-in clause in UASL agreement is a barrier to consolidation in telecom sector? If yes, what modifications may be considered in the clause to facilitate consolidation?

Ans: Yes, it is a barrier and we propose the same as in above answer.

19. Whether market share in terms of subscriber base/AGR should continue to regulate M & A activity in addition to the restriction on spectrum holding?

Ans: No, it is not correct because SLC (subscriber linked criteria) should not be the only parameter for M&A considerations because when we talk about SLC we take SLC of particular area but M&A of two entities means entire merger or acquisition without taking area constraints. As DOT Guidelines talk only about Intra Service Area merger. Moreover COMSUE model should also need to be considered as proposed by TEC.

20. Whether there should be a transfer charge on spectrum upon merger and acquisition? If yes, whether such charges should be same in case of M&A /transfer /sharing of spectrum?

Ans: Yes, transfer charge should be there in case of M & A only for the 2G spectrum holding of the combined entity. But for 3G and beyond the Government should not levy any transfer charges as the spectrum will be valued appropriately through competitive bidding. However, there should be no transfer charge for spectrum sharing and transfer of spectrum. This will serve as an incentive for spectrum sharing and transfer of spectrum.

21. Whether the transfer charges should be one-time only for first such M & A or should they be levied each time an M & A takes place?

Ans: They should be levied each time M & A takes place to keep track of HHI (Hirschman-Herfindahl Index) in market.

22. Whether transfer charges should be levied on the lesser or higher of the 2G spectrum holdings of the merging entities?

Ans: Transfer charges should be levied proportionately on the basis of the quantum of 2G spectrum held by the two merging entities.

23. Whether the spectrum held consequent upon M & A be subjected to a maximum limit?

Ans: Yes, there should be some constraint on maximum limit which will force operators to use spectrum efficiently. Otherwise through M&A smaller companies will be merged due to search of spectrum by bigger entities and hence it can affect the HHI. Only thing necessary to be tracked is that a single operator cannot hold more than 25% of the total spectrum in a circle

Spectrum Trading

24. Is spectrum trading required to encourage spectrum consolidation and improve spectrum utilization efficiency?

ANS: If roll out plan is implemented properly, then we should encourage spectrum trading.

- Spectrum trading and liberalization will facilitate introduction of new services and promote innovation; without measures innovation may move outside Europe
- Trading will remove barriers to market entry and promote competition in supply of spectrum-derived services
- Member States should manage implementation of spectrum trading but that national frameworks should have certain common generic features across the EU

25. Who all should be permitted to trade the spectrum?

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

- 1) The interested service provider should have a license to operate in the respective circle.
- 2) 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.
- 3) 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.
- 4) An operator can trade his spectrum even before "Roll out time". In that case proper MoU should be presented. The "Roll out Obligation" has to be then fulfilled by the receiver of the spectrum.

26. Should the original allottee who has failed to fulfill "Roll out obligations" be allowed to do spectrum trading?

ANS: No, the spectrum should be given back to DoT / WPC. This spectrum should be again put for auction. In this auction the previous allottee should not be allowed to participate. The minimum price of this spectrum should start from last sold price.

27. Should transfer charges be levied in case of spectrum trading?

ANS: Transfer charges should not be levied in the case of spectrum trading. The essential & sufficient thing would be effective pricing of the spectrum sold. Also, if some operator trades any spectrum, it would add its profits. So the government can earn through taxes rather than any charges to be levied.

But since 2G spectrum are already allotted & that too at much cheaper prices if we compare it with the world scenario. So for spectrum trading in case of 2G, first time spectrum charges are needed to be levied. These charges are to be levied on both giver & receiver.

For 3G spectrum or any other spectrum to be auctioned in future, the spectrum pricing should be sufficient enough so as to avoid any further charges in case of spectrum trading & the decision must be left on the market forces.

28. What should be the parameters and methodology to determine first time spectrum transfer charges payable to Government for trading of the spectrum? How should these charges be determined year after year?

ANS: The parameters required are:

- 1) How much spectrum is traded?
- 2) A minimum transfer charge per MHz required to be fixed. Also some percentage of the spectrum trading price is fixed as the charge percentage. So the maximum of these two values should be taken as charges by the government.
- 3) The spectrum for 2G is sold at 1651 crore & minimum price set for 3G is 3500 & speculations are this price can move upto 5000. This means per MHz price about 1000crore. While in the prior case it is only 330 crore. So, through this first time fee government should try to fill some of this gap.

The transfer charges should be there only for the first time in 2G case. In all other cases there should not be any charges in spectrum trading.

The price should increase year on year with the inflation rate.

29. Should such capping be limited to 2G spectrum only or consider other bands of spectrum also? Give your suggestions with justification.

ANS: There should not be any transfer charges other than 2G, as the spectrum pricing should be the only & sufficient condition.

30. Should size of minimum tradable block of spectrum be defined or left to the market forces?

ANS: Minimum tradable block of spectrum should not be defined. It should be left to the market forces. Only thing necessary to be tracked is that a single operator cannot hold more than 25% of the total spectrum in a circle.

31. Should the cost of spectrum trading be more than the spectrum assignment cost?

ANS: It is not necessary to put a cost cap. It should be left on the discretion of the allottee to sell the spectrum at any price.

Spectrum sharing

32. Should Spectrum sharing be allowed? If yes, what should be the regulatory framework for allowing spectrum sharing among the service providers?

Ans: Yes, spectrum sharing should be allowed in order to use spectrum efficiently. Moreover new operators will get chance to expand by this sharing. There should be mutual understanding of the spectrum sharing deal between operators without any intervention of regulator or DOT as it is basically for efficient spectrum utilization.

Also it will help newer operators to fulfill rollout obligations earlier and incumbent to increase market share.

In U.K. also it is proposed by government and OfCom for proper utilization of spectrum among 5 operators specially the major players Vodafone and O2.

33. What should be criteria to permit spectrum sharing?

Ans: If the operator is giving spectrum on lease then SLC (subscriber linked criteria) i.e rollout obligation should be fulfilled then only he should be allowed to do so and he has to pay to Govt. for giving spectrum on lease. And if operators are sharing pool of spectrum then any of the one entity must have fulfilled the criteria for rollout obligation. Spectrum sharing should be allowed irrespective of the status of telecom penetration in the given circle / region.

34. Should spectrum sharing charges be regulated? If yes then what parameters should be considered to derive spectrum sharing charges? Should such charges be prescribed per MHz or for total allocated spectrum to the entity in LSA?

ANS: Yes, TRAI should specify a minimum spectrum charge per MHz derived as a percentage of the bidden value of the spectrum being shared .

There should not be any additional fee on spectrum pool when operators are sharing a spectrum pool as the country's spectrum is being efficiently utilized.

35. Should there be any preconditions that rollout obligation be fulfilled by one or both service provider before allowing the sharing of spectrum?

ANS: We propose that when one of the licensees sharing spectrum has already fulfilled the roll-out obligations, there will be no further penalties on any of the licensees sharing spectrum. If there is a situation where none of the licensees has fulfilled the rollout obligations, penalties for unfulfilled rollout obligations will be applicable on each licensee separately.

36. In case of spectrum sharing, who will have the rollout obligations? Giver or receiver?

ANS: For every area there should be a benchmark set for the subscribers covered i.e roll out obligation. And if that condition is not fulfilled then there should be no penalization for the combined entity and in case if that benchmark is not fulfilled then combined entity should be penalized.

References:

In U.K. also it is proposed by government and OfCom for proper utilization of spectrum among 5 operators specially the major players Vodafone and O2. They are in continuous consultation of Ministry of Defence (MOD), Civil Aviation Authority (CAA) and Maritime and Coastguard Agency (MCA).

In U.K, Congress recently indicated that dual review by the FCC and DOJ is preferable to only one agency's review. And third, the FCC review is good public policy because we consider important factors that are not within the scope of DOJ's inquiry. Similarly we have to actively involve CCI competition commission of India which is doing very little in telecom sector. Moreover in U.K. The mergers and acquisitions in Telecom Sector are regarded as horizontal mergers simply because of the reason that the entities going for merger or acquisition are operating in the same industry, which is telecommunications industry

<http://www.ictregulationtoolkit.org/en/PracticeNote.aspx?id=3075>

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