

## Uninor Counter Comments to the response by some Incumbent Operators to the TRAI Consultation Paper on 'Auction of Spectrum'

These submissions are being made without prejudice to any rights and contentions that Unitech Wireless (Tamilnadu) Pvt. Limited (“Uninor”) may have before any court of law and/or authority in connection with the Hon’ble Supreme Court’s judgment dated February 02, 2012 passed in writ petitions number 423/2010 and 10/2011 (“Judgment”).

### **1. AUCTION PARTICIPATION**

The incumbent operators like Vodafone and Bharti Airtel in their response to the consultation paper No. 04/2012 dated March 07, 2012 (“Consultation Paper”) issued by the Telecom Regulatory Authority of India (“TRAI”) have stated that the auction process as envisaged under the Judgment should be open to all players, including the incumbent operators. It is Uninor’s submission, that aforesaid position advocated by the incumbents is untenable, *inter-alia*, for the following reasons:

- i. The Judgment does not contemplate a situation where the incumbent operators, the new entrants and the UAS licensees, who face the prospect of their licenses being cancelled pursuant to the Judgment, are all allowed to participate simultaneously in the auction process. Rather, the Judgment emphasizes on principles of equality, competition, and public interest as the guiding principles of the proposed auction process.

Uninor submits that the Licensees impacted by the Judgment are not similarly placed with the incumbent operators. Therefore, allowing the two dissimilar groups to participate simultaneously in the auction process will be contrary to the principles of equality and level playing field as envisaged by the Judgment to be the guiding principle of the proposed auction process. Further, the “*public interest*” as emphasized by the Judgment is best served by government policies that lead to optimum ‘welfare outcomes’ for the society as understood in economics terminology. In the Telecom Sector, specifically, government actions that promote and safeguard effective competition in the marketplace, thus leading to affordable, high-quality services for the end consumer, are an important pillar of ensuring such an optimum welfare outcome.

- ii. The UAS licenses have been cancelled on the premise that “*if the method of auction had been adopted for grant of license which could be the only rational transparent method for distribution of national wealth, the nation would have been enriched by many thousand crores (para 73 of the Judgment)*”. The aforesaid observation has been made by the Supreme Court in context of the grant of licenses and spectrum in 2008 to the

eligible and successful applicants and was not meant or intended to include within its ambit the incumbent operators, which were not eligible to apply for the UAS licenses or spectrum in question at the relevant time. Therefore, the auction process to discover the actual price of the spectrum ought to be confined only to those eligible or those who would have been eligible for license and spectrum in 2008 had they applied and should not include the incumbent operators, who were not eligible for grant of licenses and spectrum in 2008.

- iii. Without prejudice to the above submission and with a view to balance equities between public welfare and maintenance of level playing field on the one hand and the consideration of revenue maximization on the other hand, Uninor has proposed a multi-stage auction process in its response to the Consultation Paper in (**paras 1.13 and 3.1.4**) and the same may be resorted to by the government.

Some of the incumbents have misinterpreted the Press Statement of Minister of Communications & Information Technology of 29 January 2011, in saying that since the concept of 'start-up' / "contracted" spectrum would not exist going forward, the auction should be a single stage free for all. However, we cannot ignore the fact that worldwide regulatory interventions, including auctions, are based on clear underlying government policy objectives. In the instant case too, in making its final recommendations, TRAI should recognize that the principle of fostering competition in the public interest should be adhered to, an objective which has been repeatedly enunciated by the Government, including in the Minister of Communications & Information Technology's Press statement of 29 January 2011.

For the sake of good order, we would also like to re-iterate here the point from our response to the consultation paper (**para 3.1.3 (iii)**) that new entrants without an existing spectrum portfolio need a minimum amount of spectrum to continue their operation. Auctioning smaller lots, as proposed by e.g. Bharti Airtel, will create significant "exposure risks" (as described by TRAI in its consultation document) for new entrants. Large lots are needed to remove this risk.

## **2. COMPETITION**

Further, Uninor would like to clear some misconceptions that the 'Preliminary Comments' section of Vodafone's submission seems to suffer from:

- Vodafone comments that: *"It must be noted in this context that we do not believe that a genuine auction could be held if the auction was restricted only to the operators who entered the market in 2008. By definition, the demand for spectrum would be equal to*

*(or more likely lesser than) the supply of spectrum. This would therefore result in the award of spectrum at the reserve price – therefore effectively an administrative assignment of spectrum at a reserve price determined administratively”*

Similarly, Bharti in their response to Q.22 have opined that the auction should not be restricted to the quashed licensees.

Uninor agrees with their position and therefore has, in its response, recommended that at the primary stage *“Only those eligible, or would have been eligible for license and spectrum in 2008 had they applied be allowed to participate”*. Uninor has further recommended that at least two blocks of 6.2 MHz each per circle be put up for auction.

***The two recommendations together should ensure that the number of bidders would be larger than the number of blocks and result in competitive bidding.***

Further Uninor has recommended subsequent stage(s) of auction, open to all licensees.

***It may be noted that Uninor has not recommended complete exclusion of the incumbents from the auction.***

Vodafone have further opined on effect of new entrants on the competitive landscape of the telecom sector:

- Vodafone comments that: *“We note that the cancellation of the 2008 new licences has not materially affected the level of competition in the industry, since few of those new entrants actually built significant network, and their ability to build significant customer bases was inevitably hampered by the highly competitive environment. It remains the most competitive communications industry that can be found. While the auction contemplated by the TRAI should certainly be open to new entrants, we do not believe therefore that there is any policy case for restricting the auction to new entrants.”*

Uninor reiterates that it has not recommended the restriction of the auction to the ‘new licensees’ of 2008. We are surprised at Vodafone’s submission that these new licensees did not materially affect the level of competition in the industry. The Minister of Communications & Information Technology in his Press Statement of 29 January 2011 had acknowledged that the advent of the new licenses in 2008 had helped increased competition in the country:

*“Currently, there is a considerable debate regarding the assignment of licences in the year 2008 in which spectrum was bundled with the licences. I have already indicated that this*

was done following the then existing policy and the recommendations received by the Government. This policy was in the context of Government's effort to increase the teledensity and reduce tariffs through **increased competition** thereby extending the reach of telecom services to all sections of society. There is no doubt that **this policy has paid rich dividends** and today, India is in the enviable position of being the fastest growing market as well as the second largest market in the world. Telecom services are being availed by all sections of society and the tariffs are the lowest in the world. There is adequate and healthy competition among the service providers bringing the benefits of competition to the consumers at large." (emphasis added)

It may be noted that, today Uninor has built a base of 41 Million plus subscribers in short period of 2+ years from commercial launch, which is an impressive achievement by any standards, considering that it is competing with formidable incumbents. In fact, in January and February 2012, Uninor has been Number 1 and Number 2, respectively, in terms of total net subscriber additions across the country.

***For the above reasons, the competition created by a licensee like Uninor cannot be trivialized.***

### **3. 700 MHz**

Several incumbents have opined that 700 MHz spectrum should be auctioned now, while there should be no attempt at re-farming of 800/900 MHz spectrum. Uninor believes that all sub 1 GHz spectrum should be assessed in totality, and any piecemeal treatment would not be in the larger interest of the country. The immediate task for TRAI, and subsequently for the Government, is to complete the process of 2G spectrum auction and allocation within the deadline of 2<sup>nd</sup> June 2012, so as to ensure that the competition created by licensees like Uninor can continue in the consumer interest. After the above task is completed, TRAI may conduct a detailed consultation covering all aspects such as re-farming, harmonization, liberalization, auctioning of and eligibility for sub 1 GHz spectrum.

### **4. DEFERRED PAYMENT (Q31)**

M/s Airtel, Idea and Vodafone have opined that auction price be paid up front. We presume that it would be the Government's intent that competition from licensees like Uninor and new applicants participating in the auction be encouraged in the public interest. A deferred payment arrangement, for those successful bidders wanting to opt for it, would therefore facilitate the continuity of such competition without any financial loss to the Government. ***Further, it would increase the field of participants for the primary stage of the auction. Moreover, those participants may be able to submit higher bids as a result of more flexible payment conditions.***

Of course, incumbents who have built up adequate reserves through many years of operations may choose to opt for the upfront payment route, if they are successful in the secondary stage(s) of the auction structure suggested by Uninor.

***These are the very same incumbents whose licenses had benefited from relaxations in Government policy during 1999, and from minimal competition resulting in high customer tariffs and margins, thereby resulting in the building up of their business reserves and market positions that they currently enjoy.***