FOREWORD

Telecommunications is one of the biggest infrastructures of the country today. It is, one after Land, Sea and Air that contributes significantly to the Country's GDP. In many ways it fills the void of the above three by transporting vital information all across. It has attracted huge investments, because of the appetite caused by the potential it has in the development of the country.

The Government of India has been treating it as a cash cow, which it can milk as much as required without due consideration to its health, at times because of ambiguous policies and regulation, leading to multiple interpretations, resulting in debilitating litigation. There is only one gainer out of that. This has happened since 2003, limited to unlimited mobility definition, 2007, combination of technology and non-auction of 2 G spectrum, 2010, backdoor entry from data to voice services, differential spectrum charge for one player and the latest in 2016 by lack of clarity on what is promotional?

Telecom services are essential services, but they are treated like elite infrastructure services which are taxed to fill the revenue chest of GoI. The sector is not getting the required attention in terms of the difficulties it is facing, which by and large, as has been reiterated in our response below, is primarily due to the lack of clarity in regulation and policy. Despite the sector having been opened up for liberalisation almost 25 years ago, every other time some sort of litigation crops up against the policies of the government on telecom.

Take the most recent example of definition of promotional offers and the definition of Adjusted Gross Revenue (AGR) in India. Despite working on multiple consultations, TRAI has not been able to reach on a clear definition either for promotional offers or AGR. The consequences of this dilly dallying and lack of clarification resulted in Reliance Jio shooting one after the another offer violating all the basic principles of competition, while both the regulator and the Telecom Department watched quietly without giving a thought to the health of telecom market.

Further, the regressive taxing policy of the government with regards to Telecom has made sure that it becomes an unviable business in India. As has been mentioned in the response as well, Telecom companies today are barely able to manage inputs costs due to consistently myopic policies of DoT, not paying heed to the ground realities on timing of spectrum sale and setting high base price (700 MHz High Reserve Price of Last Spectrum Auction being one example of that). For Industry thus it is a double whammy, high input costs and ever increasing taxation burden with growth. We would like to question the premise of suppressing the industry through tax terrorism. Why we cannot have a system where tax is calibrated with the income to make sure that telecom industry in the country can at least have some relief? Why cannot a concept like Revenue Neutrality be advocated where taxes are decided on a year to year basis with regards to revenue?

It is with such questions in mind and with a background of the overarching power of DoT on all the policies without a requirement of a 'reverse obligation' principle, that we are writing this response to the CP on Ease of Business.

1. BACKGROUND

1.1. India is currently the world's second-largest telecommunications market and has registered strong growth in the past decade and half. The Indian mobile economy is growing rapidly and will contribute substantially to India's Gross Domestic Product (GDP), according to report prepared by GSM Association (GSMA) in collaboration with the Boston Consulting Group (BCG).

1.2. The Indian telecom sector is expected to generate four million direct and indirect jobs over the next five years according to estimates by Randstad India. The employment opportunities are expected to be created due to government push towards increasing access in rural areas and the rapid increase in Smartphone sales and rising internet usage.

1.3. The Government of India has further allocated Rs 10,000 crore (US$ 1.5 billion) for rolling out optical fibre-based broadband network across 150,000 cumulative gram panchayats (GP) and Rs 3,000 crore (US$ 450 million) for laying optical fibre cable (OFC) and procuring equipment for the Network For Spectrum (NFS) project in 2017-18.

1.4. With regards to procedures for ease of business, recently notified Right of Way 2016 rules has tried to address the concerns of the market players regarding the congruities among various states and municipal corporation for establishing underground and over ground telegraph infrastructure by appointing nodal officers at state level, streamlining the fee structure, and ensuring a time bound approval and readdressal process.

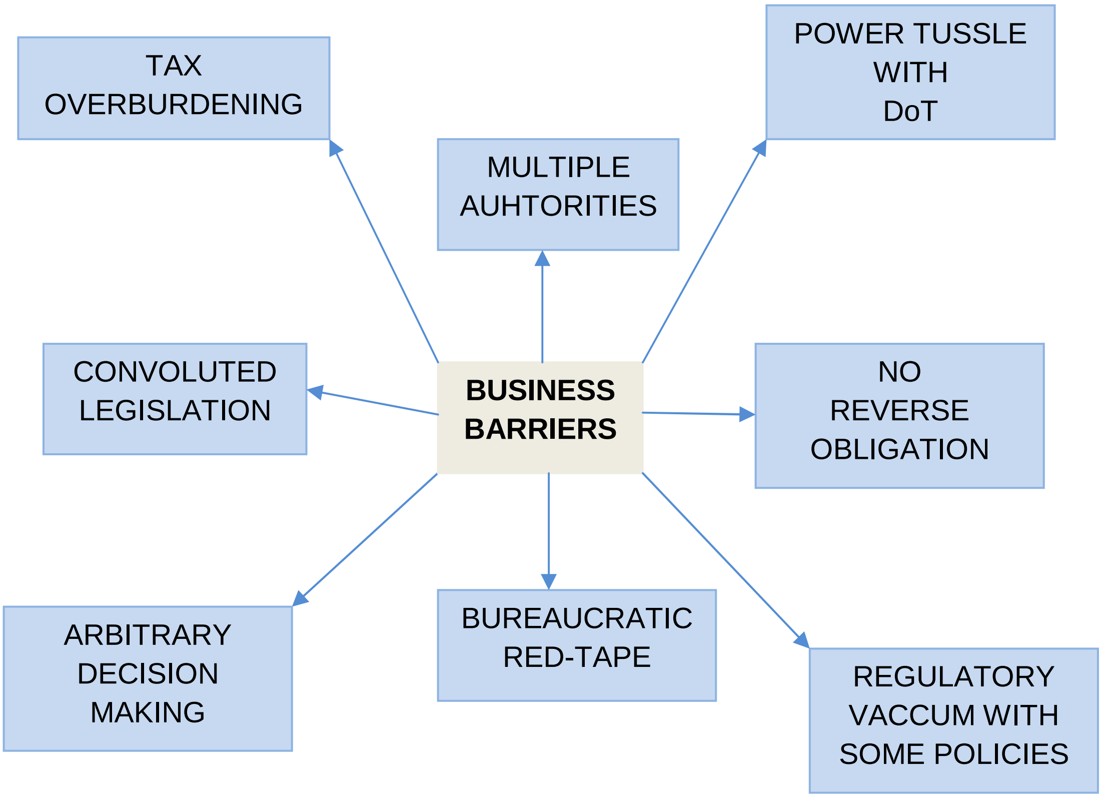
1.5. Further, the policies related to assignment of spectrum through auction, permitting spectrum trading, a push towards unified licensing and guidelines regarding merger and acquisitions have tried to engage stakeholders in regulatory environment for the market players.

1.6. But, despite all of it, telecommunications industry, which has the potential to contribute 8.2% (INR 14lakh crore) of GDP by 2020 is 'bleeding' as mentioned by Gopal Vittal, Airtel MD for South Asia and India, in a recent interview to ET. The industry is having a total debt burden of Rs 4.5 lakh crore at present with return on capital being as low as 1%. A major part of this debt burden and low revenues could be attributed to the ill-conceived policies of Department of Telecommunications (DoT), in the recent spectrum auction.

1.7. India had the lowest average connection speed in the Asia Pacific region at 2.8 Mbps followed by Philippines at 3.2 Mbps. Overall India's average internet speed grew by 11% QoQ and 36% YoY, and ranked 114th globally. Most of it primarily due to hurdles related to infrastructure (something which has been addressed to an extent with RoW rules), the delay due to bureaucratic red-tape, the reluctance of the government to utilise the unused spectrum available with defence department, and government's ill-conceived taxation policies which has shrunk capital opportunities in the country.

1.8. Moreover, the continuous tussle of power between DoT and Telecom Regulatory Body of India (TRAI) regarding the policy decisions is further harming the industry. One such instance could be the rejection of idea by TRAI in 2015 auction to involve 15 MHz of 3G at the same time as 2G airwaves but DoT rejected the recommendation, and decided to include only 5 MHz of the 2.1 GHz 3G spectrum along with 800 MHz, 900 MHz and 1,800 MHz 2G bands in the spectrum auction setting a high reserve price of 38.99 billion rupees ($635.8 million). Such uneasy relationship between the regulator (an expert body) and government does not bode well for industry.

2. POLICY RECOMMENDATIONS



2.1. ENTRY BARRIERS

2.1.1. Indian Telecom Industry Entry is marred with the issue of **extremely convoluted processes**, due to multiplicity of authorities, related to business in the telecom industry. There is two primary issues with policy, either there are so many policies that it is impossible to wade through them or there is no policy at all.

2.1.2. One example is of latter is the recent merger of Vodafone and Idea. In at least six markets, the merged entity's revenue share cap with cross 50% which is the limit put up by Telecom regulator. Also, in four circles, the merged entity will overshoot 25% prescribed limit of spectrum in mergers and acquisitions. Now, these issues will open up these entities to scrutiny from DoT, TRAI, SEBI (for anti-competition practices), without the mention of any due procedures and timelines to adhere to, by the government officials, to process these files.

2.1.3. Two important points emerge here. That regulator did not foresee a spree or M&A in India, due to market related issues, and did not recommend a coherent policy to work out the exceptions, thus leaving the field of arbitrariness. Second, the absence of written policies for processes opens the field for prolonged delays.

2.1.4. Similar arbitrariness exists in the processes related to operationalisation of spectrum after its allocation to the industry players which may take anywhere between 6-10 months and sometimes, even more with no accountability of the government to complete the process within stipulated time.

2.1.5. Further, to the over-legislation point: there are different set of legislations to govern infrastructure, spectrum, license and interconnection related issues with further rules related to Quality of Service (QoS), security requirements, roll out obligation, telemarketing norms etc. The plethora of legislation creates different rules for different set of industries in the overall Telecommunications market. Rules for TSPs and OTT (Over the Top) service providers are one such example where they have different obligations while they both, in practice, work in synergy. Across the world, governments are moving towards '**Same Service, Same Rule' premise**. In France, regulator has demanded VoIP telephony player to register as a telecom operator, with VoIP having same regulatory framework as telecom in Germany. Thus, under the broad Unified Licensing Policy of the government, instead of creating segregation of services, and creating varied legislations for different players, a broad encompassing legislation should be drafted to **ease the legislative complexity in the telecom.**

2.1.6. Another example of procedural hurdle is of the issue of import of low powered wireless devices. WPC has mandated obtaining an Equipment Type Approval (ETA) for all wireless equipments and its variants operating in de-licensed frequency. Importers of wireless equipments are required to submit the sample of device to government accredited lab. It is estimated that INR 3000 cr worth of low powered devices are imported in India. This process takes an average of 4-6 of the time which results in telecom players losing the competitive edge. It further requires a compulsory licensing under Wireless Telegraphy Act. It is recommended that these processes be simplified and lead time be reduced to a maximum of 15-30 days, which is a global standard,

2.2. BUSINESS BARRIERS AFTER ENTRY

2.2.1. **Conceptualisation to Realisation**: Due to multiplicity of authorities, and overriding powers of the DoT in almost every sphere of telecommunications policies, it takes unusually long for a policy recommendation to move from conceptualisation to realisation. The idea of VNO at a global level has been floating around since 1990s. We saw SONOFON as the first viable VNO agreement as early as May 2000. But it took further 12 years in India, for VNO to even find a mention in National Telecom Policy and then further four years for the government to issue first guidelines for VNO operators in the country. If telecom industry is to grow in the country, both regulator and government need to be proactive in the policies related to industry. Regulator's focus on Green Telecom as a proactive measure is one such step in the direction, but it completely abdicates governments of their responsibility to provide better electricity, something which is a topic of different discussion. But, it is important that both regulator and government take a proactive approach in devising policies and reduce the time in which these consultations actually materialise.

2.2.2. Further, to build on to the transparency and timely mechanism, government should move towards paperless operations in areas such a EMF (Electromagnetic Field Survey), self certification, SACFA clearances resulting in establishing the principle of reverse obligation. Moreover, Face to Face and timely grievance readdressal mechanism should be developed for Telecom Players instead of creating a bureaucratic chain of letter correspondence, seeing that 'E-initiatives' are in vogue in present dispensation.

2.2.3. Subsequent to the above points is a broader issue of **multiplicity of authorities** in the field of telecom. While above two examples are more of the issues in the broader policy realm and are faced by telecom player once in a while, but in the case of audits particularly telecom players have to face these authorities every few months. Different agencies like DoT. TRAI, CCI, SEBI and CAG conduct various audits to audit the same aspects during the same period leading to the significant costs for Telecom Service Providers (TSPs). Infrastructure segment faces the similar issues where NOC is required from Airports Authority of India, local fire department, environment department, archaeological department etc for the installation of towers resulting in delay in roll-out of services. Establishment of Repair Hubs has similar issues. TRAI need to take steps where these agencies work in a coherent manner or rather similar to RoW structure, there should only be one agency which has the members of all these agencies to conduct audits or provide clearances in latter case for the telecom players.

We will recommend streamlining various processes related to procedures with reverse obligation principle to be abided by the government in a transparent, timely, and efficient manner, which is the key to the 'Ease of Business' motto.

2.3. BUSINESS BARRIERS RELATED TO OPERATIONAL COSTS

Noticing that the Telecom players are functioning on a wafer thin margin presently, as visible from the recent spree of M&A and reduction of total number of telecom players in the market (an antithesis of a market and competition based economy), following suggestions regarding the tax and levy structure may be taken into consideration:

2.4. **Definition of Adjusted Gross Revenue (AGR)** is one of the most contentious issues between telecom players and regulator. In the CAG audit of the records, there was an understatement of AGR valuing INR 40,046 cr for the period of 2006-07 and 2009-10 leading to short payment of INR 3,752 cr in license fee. Telcos argue that revenue that was not accounted for was from non-telecom streams such as investments (dividends, interest, etc.), real estate rent and sale, and other miscellaneous items while DoT has said that this revenue would not exist without the telecom licence and spectrum, for which the telcos pay revenue share. There is an urgent need to **rationalise the definition of AGR** to further not subject the industry to such scepticism. The earlier suggestion of the regulator regarding the Applicable Gross Revenue (ApGR) which will distinguish between non-telecom and telecom revenue need to be further explored and concluded at the earliest.

2.5. In line with TRAI recommendations, license fee and USOF charges may be considered for a reduction to 6% and 3% respectively from the current levels of 8% and 5%. Subsequent to this, we also need to rationalise the annual charges of spectrum usage. TSPs in India pay 5% for spectrum acquired after 2014 and 3-5% for spectrum acquired before 2014, which for South Africa is 0.15-0.35% of revenue, for Singapore it is maximum of 1%, for Bhutan it is 1% of AGR etc. We need to consider that over and above this, there is Corporate Tax to the rate of 34.61%, dividend distribution tax to the rate of 20.36%, service tax to the rate of 14%, resulting in extremely high tax for TSPs. Thus, these **taxes will require to be rationalised** for telecom industry to prosper.

2.6. Telecom has been given infrastructure status but it does not have the benefit of that status as yet. Tax holiday under Section 801A, can be extended to the tower companies as in the case of other industries conferred with ‘Infrastructure’ status. The period could be reduced for this tax holiday as comparative to the other such projects but this idea need to be expounded further, considering that telecom infrastructure is high capital and low dividend (initially) business discouraging companies to invest in it.

2.7. Under the broad framework of GST, both Centre and State government will have the power to tax services unlike the current regime where only central government can levy tax on the services. The **proposed GST** regime, thus, should support the government’s initiative of ‘Ease of Doing Business’ and create a simplified tax regime. Since level of taxes may differ on VAS, infrastructure sharing, and other such telecom services (like B2B, B2C transactions etc), these tax structures need to be clarified to the industry.

2.8. Basic Custom Duty (BCD) of 10 percent was levied on imports of specified telecom equipments in 2014 and were not exempted under the ‘Information Technology Agreement’ which allows duty free import of products falling under eight categories covering telecom, computers and semiconductors. Telecom Manufacturing Industry in India is at a nascent stage. With 10% BCD, the cumulated duty on the imports would be around 29%. Given that 80% of the imports are toward IP protected software, and India wants local manufactures to increase their manufacturing in the India, this increased custom duty can be anti-business.

3. CONCLUSION

Two over arching themes are touched upon in these recommendations i.e. Creating accountable regulatory system with the binding principle of reverse obligation and reducing the tax burden on telecom by bringing in revenue neutrality. **The recognition of reverse obligation on the part of the government to ensure a transparent system should be the focus of Ease of Doing Business**.

We need to understand that if India need to push the country towards a truly digital society, it is important that the telecom sector is given enough assurance that it will not have to deal with a complex, vague and rigid regulatory system at times appearing to favour a particular company. We **further need to simplify the plethora of legislation that** we have on various aspects of telecom business and reduce the number of authorities involved in the whole process. One thing that was not explicitly highlighted but referred to implicitly is the need to give more teeth to TRAI, in the way that the recommendations made by the body should be made mandatory while taking decisions in DoT due to simple reason that TRAI represents the interest of various stakeholders.

We need to understand that it is only when industry is allowed a breathing space in the policy and regulatory framework that we can realise the dream of 'Digital India'. Therefore, a balance has to be struck between Telecomm Commission, the custodian of the industry and the Regulator, the conscience of the industry