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Analysing developments impacting business

GOVERNMENT PROVIDES A FILLIP TO THE TELECOM SECTOR

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Introduction

The Union Cabinet, after much ado, has announced a slew of major reforms in the telecom sector on 15 September 2021. The reforms are set to address some long pending key issues affecting the telecom industry such as moratorium on payment dues, rationalizing the license fees and bank guarantees, spectrum auctions, increase in foreign direct investment (FDI) limit, etc. With the objective of promoting ease of doing business in this sector, these reforms aim to inter alia infuse liquidity, encourage investment and reduce the regulatory burdens on telecom service providers (TSP).

We have endeavoured to provide a snapshot of the reforms and their implications below.

Easing the financial dues and promoting investments

For over two decades, payment of license fees based on 'adjusted gross revenue' (AGR) has been a bone of contention between the TSPs and the Department of Telecommunications (DoT). The disputed issues have ranged from interpretation of AGR (for example, if it includes revenues arising out of non-telecom activities) to the payment of license fees itself. Not only did this cause chaos in the industry, but it also led to exorbitant penalties and interests on the due amounts. In this context, below are the key reforms that provide some clarity and ease financial dues and costs of TSPs in this highly regulated sector:

- Rationalizing AGR: A critical reform approved by the Cabinet is the exclusion of 'non-telecom revenues' from the definition of AGR on prospective basis. To take a step back, in 2019, the Supreme Court of India¹ upheld that the definition of AGR to also include revenue generated from non-telecom activities of a licensee (e.g., revenues from management consultancy services, interests and dividends, etc.). This was a major set-back for telecom companies – many had to restructure their businesses while others had to strive to keep themselves afloat. The proposed exclusion of non-telecom revenues from calculation of AGR will not only bring an element of certainty in computation of AGR, but also drastically reduce the license fee payable by the TSPs. That said, clarity on what constitutes

¹ Union of India v Association of Unified Telecom Service Providers of India, Civil Appeal Nos.6328- 6399 of 2015

non-telecom revenues is much needed to avoid any ambiguity and it will be interesting to see how the DoT interprets this issue.

- Rationalizing bank guarantees: In addition to rationalizing AGR dues, the Government also seeks to reduce the amount to be furnished as bank guarantee against the telecom licenses. Additionally, separate bank guarantees for different Licenced Service Areas (LSAs) will no longer be required. This will bring some relief to TSPs operating in multiple LSAs and pave the way for smaller players keen to enter this market.
- Streamlining penalties and interest: The Government has also approved a reduction in the interest rate on license fees and spectrum usage charges and abolished the components of penalty and interest on penalty, which have historically cast a significant burden.
- Moratorium on license fees and spectrum charges: Another crucial reform approved by the Cabinet is the moratorium on annual payments of dues arising out of the AGR ruling (while protecting the net present value of the amounts) and due payments of spectrum purchased in past auctions (excluding the auction of 2021), for up to 4 years. The piled-up dues coupled with the interest on delayed payment and penalties from the AGR disputes resulted in hefty amounts to be paid by TSPs, and many entities found themselves at the edge of bankruptcy. In this context, the moratorium comes as a relief to relevant stakeholders and the debt-ridden TSPs. To compensate for the interest amount arising out of such deferment, TSPs have been given the option to pay such interest amount by way of equity. Such equity can be converted by the Government at the end of the moratorium, pursuant to guidelines that will be framed by the DoT specifically in this regard.
- Promoting FDI: In contrast to the earlier limits on FDI in the telecom sector (which required Government approval for any investment beyond 49%), Government has now allowed 100% FDI in this sector without any Government approval. This has been a subject matter of deliberation since 2017 and comes as a boon to promote investments in the telecom industry now, with stakeholders welcoming this reform with much appreciation. A formal notification is awaited on this.

Spectrum allocation and charges

As the spectrum allocation for 5G technology is around the corner, some of the key reforms proposed by the Government are as follows:

- Spectrum auctions: In India, spectrum is allocated to TSPs through auctions every few years. As this sector is fairly cost intensive, only a limited number of players are able to participate in such auctions and successfully acquire spectrum. In terms of the approved reforms, spectrum auctions will normally take place in the last quarter of every financial year as per the fixed auction calendar to promote spectrum sharing and technological advancements.
- Spectrum usage charges: Under the existing framework, telecom licensees are required to pay certain spectrum usage charges for acquiring spectrum as well as additional charges for spectrum sharing. The approved reforms aim to remove the spectrum usage charges for spectrum acquired in future spectrum auctions and the charges for spectrum sharing. This may promote the entry of other smaller players in this sector.

- No bank guarantees for auctions: Earlier, entities were required to pay the spectrum auction payments in instalments which required a bank guarantee to be furnished by the TSPs. With the new reforms, the Government seeks to remove the requirement for bank guarantee to secure instalment payments, citing that it is no longer required as the industry has matured.
- Spectrum tenure and surrender: For all future auctions, the tenure of spectrum holding has now been increased from 20 years to 30 years. Further, surrender of spectrum will be permitted (prospectively) after 10 years from the spectrum auction.

Digitizing processes and ease of doing business

Further to Government's vision of 'Digital India', the approved reforms aim to digitise certain procedural and regulatory requirements for telecom entities. For instance, entities are now required to replace the physical paper Customer Acquisition Forms (CAF) with digital data storage and the warehouse audits of the physical CAFs will no longer be required, which will also help in saving significant warehousing costs.

Similarly, a few compliance requirements like licenses for wireless equipment (now replaced with self-declarations) and Know Your Customers (KYC) norms (now with self-KYC available on mobile applications) have also been liberalised. These steps will certainly streamline processes.

Further, clearance by the Standing Advisory Committee on Radio Frequency Allocation (SACFA) for installation of mobile towers and allocation of radio frequency waves has also been streamlined and will now take place on a web-portal to be established by the DoT and linked with portals of other agencies. This seems to be a step in furtherance of Telecom Regulatory Authority of India (TRAI)'s consultation process on 'Ease of Doing Telecom Business' in 2017 where digitization of SACFA clearance was contemplated, among other things.

Comments

While the aforementioned reforms have been approved by the Union Cabinet, it is important to note that the telecom regulatory authorities, namely DoT and TRAI, are yet to formally implement these changes. In the coming days, to give effect to these reforms, amendments to the telecom licenses and/or notifications by DoT and TRAI are expected.

Undoubtedly, if these reforms are implemented as approved by the Cabinet, they will drastically ease the burden on telecom entities and also pave the way for new entrants. As several stakeholders cherish the new reforms for the telecom sector, it will be interesting to see whether such amendments or updates will in fact accentuate these reforms, or lead to further complexities (as has sometimes been the case in the past).

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