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DOT COMMENCES 5G SPECTRUM AUCTION PROCESS

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The Department of Telecommunications (**DoT**) has commenced the process for auction of spectrum in various frequency bands to introduce 5G services in India. As a first step, a 'Notice Inviting Applications' (**NIA**) has been issued on 15 June 2022.

Background

In September 2017, the Indian government had set up a 'High Level Forum' to recommend policy initiatives for the launch of 5G in India. The High-Level Forum in its report identified available spectrum for the launch of 5G, addressed regulatory gaps and explored use cases of 5G technology. Thereafter, the Telecom Regulatory Authority of India (TRAI) issued a white paper and carried out public consultations for formulation of policies for the launch of 5G, between 2019 to 2021.

The process for 5G spectrum allocation was expedited when the parliamentary 'Standing Committee on Information Technology', in its report issued in February 2021 recommended that the auction of spectrum for launch of 5G should be carried out soon. Following which, the DoT issued a letter dated 22 February 2022 to seek TRAI's recommendations for auction of spectrum to launch 5G services in India. Notably, the Prime Minister's Office has set a target of 15 August 2022 for the initial launch of 5G in India. Thereafter, the TRAI issued its recommendations for auction of spectrum for enabling 5G in India in April 2022. After considering TRAI's recommendations (such as, spectrum should be allowed for captive use; no 'Spectrum Usage Charges' (SUC) to be levied on the spectrum to be auctioned; the indicative roll-out timeline suggested by TRAI for all spectrums; and no 'Spectrum Usage Charges' to be levied on the spectrum to be auctioned), the DoT has invited applications from the eligible bidders for allotment of spectrum through the NIA.

The DoT has proposed to assign the right to use several bands of radio spectrum frequencies (ranging from 600 MHz – 26 GHz frequency bands) across all telecom circles in India.

Key highlights of the NIA

The NIA sets out the complete lifecycle of spectrum allocation process, including auction procedure, eligibility criteria of the applicants, obligations of the allottees, rollout obligations and payment terms. Key highlights of the NIA are captured below:

- **Proposed timeline of the auction:** An indicative timeline of the auction process is set out in the NIA. For reference, the last date for submission of applications is 8 July 2022 (i.e., the 23rd day from the issuance of the NIA), and the auction will start on 26 July 2022 (i.e., the 41st day from the issuance of the NIA). Successful bidders will be required to make payments towards the bid amount within 10 days of issuance of a demand note issued by the DoT.
- **Details of spectrum to be auctioned:** A telecom circle-wise list indicating base price for bidding, available frequency bands and quantum of spectrum in each circle, is set

out in the NIA. Spectrum in the following frequency bands will be auctioned in the present round: 600 MHz, 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2100 MHz, 2300 MHz, 2500 MHz, 3300 MHz, and 26 GHz bands. Notably, according to the National Frequency Allocation Plan 2018, these frequency bands can support 5G and some of these frequency bands are also capable of satellite based mobile connectivity. Under the NIA, a total of 72097.85 MHz of spectrum has been put to auction.

- Eligibility criteria: The following categories of entities are eligible to participate in the current spectrum auction –
 - Any telecom licensee that holds a 'Unified Access Service License' / 'Unified License' with 'Access Services' authorization for the circle for which such licensee is participating in the current auction;
 - Any licensee that fulfils the eligibility criteria for obtaining a Unified License with authorization for Access Services, and gives an undertaking to obtain a Unified License with authorization for Access Services; and
 - Any entity that gives an undertaking to obtain a Unified License with authorization for Access Services.

- Measures to reduce financial stress on the industry: The NIA has introduced certain measures to ease the financial stress on the telecom industry, including the following:
 - No SUC: Under the current telecom licensing framework, licensees are required to pay SUC as a percentage of the 'Adjusted Gross Revenue' However, for the spectrum allotted under the present round of auction, no SUC will be charged.
 - Payment of the bid amount in instalments: Successful bidders can pay the bid amounts in 20 equal instalments.
 - Upfront payment of the bid amount not required: Successful bidders will have an option to not make upfront payment of the bid amount; successful bidders will also have the option of making part upfront payment and full upfront payment as well.
 - Moratorium on payment of bid amount: In case a successful bidder makes a part upfront payment, the successful bidder will have the option of availing moratorium for the corresponding number of years for which the upfront payment instalments have been made, and the balance amount will be payable in equal annual instalments over the remaining period. For example, if a successful bidder pays 2 instalments upfront, out of the 20 equal instalments that it is required to pay, such bidder can avail a moratorium of 2 years for paying the remaining instalments of the bid amount.
 - Option to surrender allotted spectrum: Successful bidders will have an option to surrender the allocated spectrum after a minimum period of 10 years, without any liability to pay the amounts due for such spectrum for the remaining term of the successful bidder's right to use the spectrum.

- Conditions relating to technology to be deployed on the spectrum being allocated: The spectrum acquired in the auction can be used to provide services through any technology, there are no restrictions on the kinds of technology to be deployed. Existing licensees will be allowed to combine any technology in the same frequency band with their existing spectrum holding and the spectrum allotted to them in the current round of auctions. However, if a successful bidder deploys technologies other than GSM / WCDMA / LTE / CDMA / IMT-2020 (5G), then the successful bidder will be required to intimate the DoT 6 months before any base station is offered for testing and a pre-clearance will be required for the use of such other

technology. IMT-2020 are the standards issued by the International Telecommunication Union (ITU) for 5G networks, devices and services.

- *Establishment of 'Captive Non-Public Network'*: The NIA allows establishment of 'Captive Non-Public Network.' While the DoT will publish rules and licensing terms for setting up of Captive Non-Public Network in due course of time, the NIA sets out several methods of setting up a Captive-Non-Public Network. For instance, Telecom Service Providers having Access Service authorization may provide Captive Non-Public Network as a service to enterprises; and enterprises setting up Captive Non-Public Network can obtain spectrum directly from the DoT to establish their own network. As a background, TSPs have been at loggerheads with DoT on this issue as it allows non-licensees to transgress in the domain of licensed players.
- *Roll-out obligations*: The NIA sets out a phased frequency-band wise roll-out plan for successful bidders. The successful bidders will have to meet the network coverage targets set out in the NIA within the timeline specified therein, in each phase. For example, for 600 MHz and 700MHz frequency bands, for the first phase, successful bidders will have to provide a coverage of 40% (in metro circles) and 10% coverage in district headquarters (in non-metro circles) by the end of 1st year from the frequency allotment. In case a successful bidder fails to fulfil the roll-out obligations latest by 15 calendar days from the expiry of the due date, then such bidder will be required to pay liquidated damages to the DoT, which range from INR 1 lakh to INR 1.4 crores. Further, if a delay of more than 52 weeks is caused in any phase, then spectrum allocation may be withdrawn by the DoT.
- *Backhaul spectrum not to be allocated in the current round of auctions*: Backhaul is defined as the connection between telecom operators' base stations (for the sake of clarity, base stations are located at a telecom infrastructure site, such as at telecom towers) to the network core. In the NIA, it is clarified that the frequencies in which backhaul operates, are not a part of the current round of auctions. The DoT will make spectrum available for backhaul purposes from time to time, subject to availability.
- *Spectrum sharing*: Sharing of spectrum allotted through the current auction is allowed, however, successful bidders will only be allowed to share spectrum in a particular band only after 1 year from the date of frequency assignment.

Comment

The issuance of the NIA has garnered a mixed response from the industry. While the abolition of SUC and other initiatives to reduce financial burdens of the industry have been warmly welcomed, DoT's decision to allow allocation of spectrum to unlicensed entities has not fared well with the licensed telecom service providers, who enjoy an exclusivity in providing telecom services through the allocated spectrum. Notably, in representations made to the TRAI, associations of telecom service providers strongly opposed TRAI's stance on allowing unlicensed entities to obtain spectrum for captive use. On the other hand, DoT's decision to extend spectrum use for unlicensed entities will allow such entities to establish networks as per their requirements. As the DoT is yet to issue regulations for establishment of captive networks, a more holistic impact assessment may be made once DoT's issues formal regulations in this regard.

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