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Analysing developments impacting business

DOT: NO MORE EXCLUSIVE ARRANGEMENTS FOR PASSIVE TELECOM INFRASTRUCTURE

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Infrastructure Provider - I (IP-I) is a registration granted by the Department of Telecommunications (DoT) to entities that establish and provide passive telecom infrastructure, such as towers, ducts, and dark fiber, to licensed telecom service providers (TSPs). This registration allows IP-I entities to support the telecom industry by offering essential passive infrastructure, facilitating the delivery of telecom services to end users. On 27 June 2024, the DoT released an amendment applicable to the registration for IP-I entities. The amendment now explicitly prohibits IP-I entities from entering into exclusive agreements with any public or private entities for establishing passive telecom infrastructure (like, dark fibers, ducts and towers) or for obtaining necessary rights of way (RoW). This move is intended to curb monopolistic tendencies of IP-I entities, who have been increasingly obtaining exclusive rights and RoWs from land / building owners and government authorities, to establish such passive infrastructure. This will also foster competition and a more open market for telecom infrastructure players, which will ultimately benefit the customers.

The 'light touch' IP-I registration framework (introduced in 2000) was meant for allowing IP-I entities to provide passive infrastructure in a neutral and non-discriminatory manner, to TSPs, on a multi-operator sharing basis. As a result, TSPs can reduce their capex and logistical burdens by not having to create and maintain telecom infrastructure across the geography of India. Over the years, fiberization and network densification activities carried out by IP-I entities across India (e.g., through additional fiber networks, mobile towers and in-building solutions (IBS)) in a neutral manner has been vital in catering to growing consumer demands and technological advancements, such as 4G and 5G. The IP-I framework encourages the entry of new IP-I entities into the market, driving competition within IP-I players as well.

However, exclusive arrangements and RoW rights between an IP-I entity and the relevant landlord, resident welfare association or government authority, not only restricts other IP-I entities from establishing their passive elements at the location, but also allows the IP-I entity (holding the exclusive rights) to charge exorbitant prices to the TSPs to whom it provides such passive elements. For example, building owners at strategic locations such as airports or malls may charge TSPs exorbitant fees for access to their premises. TSPs, unable to leave such critical locations uncovered, are compelled to agree to these terms, leading to higher costs and reduced flexibility. This ultimately results in a negative impact on consumer prices as well.

Consequently, DoT has now deemed such exclusive agreements entered by IP-I entities as undermining the spirit of the IP-I framework. In its previous recommendations in 2017 and

2018 TRAI had also highlighted such restrictive business practices by IP-I entities and sought DoT's intervention.

An intriguing aspect is that the amendment refers to such exclusive arrangements only in the case of 'establishing' such passive elements. Whether this would mean that IP-I entities may continue to enter into exclusive arrangements with TSPs for 'providing' such passive elements remains to be seen. This would be especially relevant for TSPs obtaining exclusive rights in the use of dark fiber pairs established by IP-I entities (which is the prevalent market practice for practical and technical reasons), while IBS and mobile towers are generally provided by IP-I entities to TSPs on a multi-operator sharing basis.

Currently, even government tenders often grant exclusive rights to the winning IP-I entity (H1 bidder) to lay fibers and other telecom infrastructure for use by TSPs. Therefore, this amendment might conflict with such tendering practices awarding exclusive rights to IP-I entities.

Importantly, this amendment follows a similar regulatory move in 2023, where even TSPs were expressly prohibited from entering into exclusive contract for establishing public network to provide telecom services or RoW with any public entity or person. By extending this principle to IP-I entities, the DoT aims to further eliminate anti-competitive practices and ensure a level playing field across the telecom sector, as a whole.

This amendment, therefore, aims to create a more open market for IP-I entities and remove barriers for new entrants. By prohibiting exclusive agreements, the amendment encourages a more competitive environment and improved services.

However, while this amendment is a positive step towards a more open market, it also challenges existing commercial models for establishing and leasing of passive telecom infrastructure and may impact current revenue models. It will be interesting to see how the industry adapts to this new amendment.

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