NOTE ON SPECTRUM MANAGEMENT AND LICENSING FRAMEWORK

I. Introduction.

The Department of Telecommunications ("**DoT**") has, on November 23, 2011, reverted with its views on the recommendations of the Telecom Regulatory Authority of India ("**TRAI**"), issued on November 3, 2011, on "Spectrum Management and Licensing Framework" in the telecom sector.

The said recommendations issued by TRAI (on November 3, 2011) were in response to DOT's views on the previous set of recommendations made by TRAI on May 11, 2010 on the subject. While in the said recommendations (issued on November 3, 2011) TRAI has reiterated its earlier stance on most of the issues, it has also recommended more liberal norms with respect to Mergers and Acquisitions (M&A) and spectrum sharing with a view to facilitate consolidation in the telecom industry.

The DoT has, vide its reply dated November 23, 2011, rejected most of the recommendations made by TRAI and has in turn sought to put in place a policy with even more stringent norms than those currently in place. This note deals with TRAI's recommendations on "Spectrum Management and Licensing Framework" issued on November 3, 2011, and the subsequent views expressed by DoT on November 23, 2011.

II. M&A Norms.

A. ***Cap in combined market share.***

(i) Current Position. Under the current Spectrum Management and Licensing Framework ("**Current Framework**"), two existing telecom operator companies can merge only if their combined market share does not exceed 40%.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has recommended that mergers of telecom operator companies should be automatically approved if the resultant entity comprises of less than or equal to 35% of the market share after the merger. Also if the resultant entity commands a market share greater than 35% (green line) but less than or equal to 60% (red line), the matter of approval of the merger should rest with TRAI. However, mergers which result in a new entity having more than 60% of the market share should not be allowed in order to prevent market dominance.

(iii) DoT's reply. TRAI's recommendations on relaxed M&A norms, as mentioned above, have been rejected by the DoT. Instead, DoT has recommended a cap of 35% market share for the resultant entity, which is even lower than the current cap of 40%. The

DoT has justified its stance by emphasizing that the spectrum cap will prevent large telecom companies from buying out new entrants or struggling smaller players even if their combined market share is lower than the 35% cap suggested by the DoT.[1]

B. ***Spectrum circle after merger.***

(i) Current position. Under the Current Framework, the merged entity can only retain 14.4 MHz of the spectrum and has to surrender the remaining to the government.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has recommended that a merged entity should be allowed to retain up to 25% of the total spectrum available with all the operators, per circle. According to TRAI, in an approximate calculation of spectrum availability in various circles, the merged operator under the recommended policy can retain up to 16-17 MHz.[2]

(iii) DoT's reply. The DoT has however rejected the above recommendation and held that there should be a ceiling of 10MHz for Delhi-Mumbai and 8MHz for the other service areas for every operator, per service area. In addition to this, the DoT has also suggested that airwaves beyond this limit should be surrendered within 12 months after the merger.[3]

III. Uniform License Fee.

(i) Current position. Under the Current Framework, the license fee is a variable fee of 6% to 10% of the total annual revenue of the operator.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has reiterated its recommendation of reducing the license fee across circles to 6% (of the annual revenue) over the next four years. It has also reiterated that Tower Companies and Internet Service Providers (ISPs) should also be brought under the licensing regime with the levy of license fee of 3% starting FY2013 and increasing the same to 6% by FY 2016. This was seen as a move to facilitate more savings by the telecom industry.

(iii) DoT's reply. DoT has rejected this recommendation and has suggested that the companies share 8% of their annual revenues with the government. Certain sections of the press have quoted experts who have warned that approval of DoT's decisions could indefinitely delay the recovery of India's telecoms industry.[4]

IV. Spectrum Re-farming.

[1] http://economictimes.indiatimes.com/news/news-by-industry/telecom/dot-rejects-trais-proposals-for-liberal-ma-norms-to-impose-fee-on-gsm-operators-on-excess-spectrum/articleshow/10836892.cms
[2] http://www.business-standard.com/india/news/trai-rings-in-telecom-ma-game-changer/454492/
[3] http://timesofindia.indiatimes.com/tech/news/telecom/No-liberal-MA-rules-DoT/articleshow/10841445.cms
[4] http://timesofindia.indiatimes.com/tech/news/telecom/No-liberal-MA-rules-DoT/articleshow/10841445.cms

(i) Current Position. Under the Current Framework all TSPs can generally participate in all spectrum band auctions.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has reiterated its earlier recommendation on the above in suggesting that the price of spectrum in the 900 MHz band should be 1.5 times that of the price of the spectrum in the 1800 MHz band. However, if price is discovered through auction, then auction prices would be applicable for the pricing. TRAI has also reiterated that re-farming of 800/900 MHz band of spectrum should be done. TRAI has held that it would also come up with specific recommendations including considering restricting auction of 700 MHz band of spectrum to TSPs who do not possess spectrum in the 800/900 MHz band in due course. The recommendation to restrict holders of 800/900 MHz band (being established TSPs such as Bharti Airtel, Vodafone and Idea) from participating in the auction of 700 MHz is likely to adversely impact their competitiveness. TRAI had also recommended that the spectrum re-farming fund should be set up.

(iii) DoT's reply. On the issue of auctioning 700 Mhz band of spectrum, DOT has accepted in principle to limit the auction to only those operators that do not have air waves in 800 Mhz or 900 Mhz band. But the DoT is likely to take a final stance after TRAI submits its recommendations on spectrum re-farming. The DoT panel has also accepted TRAI's proposal to price spectrum in the 900 Mhz band 1.5 times higher. DoT has rejected TRAI's recommendation on spectrum re-farming fund and opined that the re-farming cost should be met from the "consolidated fund of India".

V. Rollout Obligations.

(i) Current Position Rollout obligations under the Current Framework are lenient and urban centric. Roll-out obligations mandate the speed at which mobile phone firms need to expand their networks to specific portions of their licensed area when they are allocated spectrum. Under the Current Framework firms have to cover up to 50% of all district headquarters in the licensed area within three years.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has reiterated its earlier recommendations to replace the existing roll out obligations by the revised stringent norms in order to provide faster and larger coverage of rural/semi-urban areas. It has proposed to incentivize the TSPs by providing them concessions in the reduction in Universal Service Obligation Fund (USOF) component of annual license fees. As an incentive, it has recommended progressive reduction of the USOF component of license fees, starting from reduction of 0.5% for the achievement of two years' roll-out obligations and extending up to reduction of 4% in the event of coverage of all villages with population of 500 to 2,000 people.

(iii) DoT's reply. DoT has held that it is not possible to change the norms now since most of the operators have already completed their roll-out obligation. It has also held that there are serious limitations in measurement of habitation due to undefined boundaries in villages.

VI. 2G Spectrum Prices.

(i) Current Position. The price paid by telecom companies for each pan-India licence of 6.2 Mhz spectrum till the last allocation was Rs.1,658 crore.

(ii) TRAI's recommendations dated November 3, 2011. TRAI had earlier recommended Rs 10,972.45 crore for the contracted 6.2 Mhz spectrum for a pan-India licence. It also recommended that the 2G spectrum pricing beyond 6.2 MHz, should be Rs.4571 Crores per MHz.

(iii) DoT's reply. The DoT has accepted this recommendation. The spectrum price of Rs.10,972.45 crore is more than the current position and this one-time charge will have to be paid by telecom companies for the remaining years their mobile permits are valid. Criticism with regard to the above recommendation had even come before the DoT's approval. Operators like Bharti Airtel will have to pay nearly Rs.17,000 crores to hold spectrum beyond 6.2 MHz if this recommendation is implemented.

VII. Spectrum Sharing.

(i) Current Position. Under the Current Framework only spectrum holders are allowed to resort to spectrum sharing.

(ii) TRAI's recommendations dated November 3, 2011. TRAI has recommended allowing of spectrum sharing between TSPs with combined spectrum of up to 25% of the spectrum allocated in the circle. Presently, only spectrum holders are allowed to resort to spectrum sharing, limiting the entry of mobile virtual network operators (MVNO). It has been recommended that spectrum sharing should be allowed among TSP holding spectrum for an initial period of 5 years and further extendable by further 5 years. These recommendations if adopted are likely to benefit the established TSPs facing congestion especially in urban/metro areas and enabling them to provide better quality of service to its subscribers.

(iii) DoT's reply. DoT has endorsed TRAI's proposal to allow spectrum sharing.

A table encapsulating TRAI's recommendations and DOT's views on the above is set out in the Annexure hereto.

VIII. Conclusion

TRAI's recommendations, especially on relaxation of M&A norms in the telecom sector, was expected to act as enablers for the consolidation in the telecom industry, which is presently grappling with receding subscriber growth and severe competition. However, DOT's stance on these recommendations and the likelyhood of the further tightening of regulations appear to have turned the tables on the expectations of the players in this field.

All eyes will now be on the decision that will be taken by the Telecom Commission, the apex decision-making body of the Department of Telecommunications, which is scheduled to meet on November 28, 2011 to discuss TRAI's recommendations, which will have a final bearing on the framework of telecom sector.[5]

[5] http://www.hindustantimes.com/News-Feed/SectorsInfotech/DoT-to-meet-Nov-28-on-spectrum/Article1-771034.aspx

ANNEXURE

	Current Framework	TRAI's Recommendations	DoT's Views
		M&A Norms	
1.	(i) Two existing telecom operator companies can merge only if their combined market share does not exceed 40%. (ii) The merged entity can retain 14.4 MHz of its spectrum and the rest has to be surrendered to the government.	(i) Mergers to be automatically approved if the resultant entity has less than or equal to 35% of the market share. Also if the resultant entity commands a market share greater than 35% (also called the green line) but less than or equal to 60% (also called the red line), the matter of approval of the merger should rest with TRAI, which may approve such merger if it deems fit. (ii) The merged entity can retain up to 25% of the total spectrum held by all operators, per circle.	(i) TRAI's recommendation rejected by DOT, which wants to reduce the current cap of 40% combined market share to 35%. (ii) The merged entity can retain only upto 10Mhz of its spectrum in cases of Mumbai and Delhi and 8Mhz in other areas.
		Uniform License Fee	
2.	Presently the uniform licence fee is a variable of 6% to 10% of the annual revenue.	A uniform licence fee of 6% of the firm's annual revenue should be implemented within the next four years. TRAI has also recommended imposing revenue share on telecom tower companies and internet service providers at 3% of their annual revenues by 2012-13 and 6% by 2015-16.	DoT has rejected this and stated that India must move to a uniform revenue share for operators, but at an increased rate of 8% of their annual sales. This should be applicable to tower companies also.
		Spectrum Re-farming	
4.	(i) Presently no specific fund has been allocated for the purpose of spectrum re-farming. (ii) All operators can generally participate in spectrum band auctions without any restrictions.	(i) Spectrum re-farming fund has to be set up by taking fixed share from each operator. (ii) Operators with 800Mhz and 900Mhz bands should be kept out of the 700Mhz auction.	(i) DoT has rejected TRAI's recommendation and opined that the re-farming cost should be met from the "Consolidated fund of India". (ii) TRAI's recommendations have been accepted in principle but a final decision will only be taken after TRAI gives its detailed recommendations on re-farming.
		Rollout Obligations	
5.	Roll-out obligations mandate the speed at which mobile phone firms need to expand their networks to specific portions of their licensed	Replace the existing roll out obligations by the revised stringent norms in order to provide faster and larger coverage of rural/semi-urban areas. Incentivize the TSPs by providing concessions in the reduction in Universal Service Obligation Fund (USOF) component of	Not possible to change the norms now since most of the operators have already completed their roll-out obligation. There are limitations in measurement of

	area when they are allocated spectrum. Firms have to cover up to 50% of all district headquarters in the licensed area within three years.	annual license fees. Progressive reduction of the USOF component of license fees, starting from reduction of 0.5% for the achievement of two years' roll-out obligations and extending up to reduction of 4% in the event of coverage of all villages with population of 500 to 2,000 people.	habitation due to undefined boundaries in villages.
Spectrum Pricing			
6.	Till the last round of spectrum allocation the price paid by operators was Rs 1,658 crore for the contracted 6.2 Mhz spectrum for pan-India licence.	Rs 10,972.45 crore for the contracted 6.2 Mhz spectrum for pan-India licence.Spectrum pricing beyond 6.2 MHz should be Rs.4571 Crores per MHz.	TRAI's view has been accepted.
Spectrum Sharing			
7.	Only spectrum holders allowed to share spectrum.	Allow spectrum sharing between TSPs with combined spectrum of up to 25% of the spectrum allocated in the circle. Spectrum sharing should be allowed among TSP holding spectrum for an initial period of 5 years and further extendable by further 5 years.	DoT has endorsed TRAI's proposal to allow spectrum sharing.