

**RESPONSE TO  
TRAI CONSULTATION PAPER  
ON  
OVERALL SPECTRUM MANAGEMENT AND REVIEW OF  
LICENSE TERMS AND CONDITIONS**

**BY**

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## **Background**

SJ Varghese & Co LLP is a London based investment advisory firm that is advising parties who wish to invest in the Indian telecommunications sector.

## **Our response**

This response addresses only those issues where our clients and we have relevant comments.

### **SPECTRUM REQUIREMENT AND AVAILABILITY**

Q4. In view of the policy of technology and service neutrality licences, should any restriction be placed on these bands (800,900 and 1800 MHz) for providing a specific service and secondly, after the expiry of present licences, how will the spectrum in the 800/900 MHz band be assigned to the operators?

**We believe no service specific restrictions should be placed on these bands. After expiry of present licences the 800/900 MHz band should be assigned to operators based on their specific plans for the bands with primary reference to the social utility and economic gain that would be created, with particular reference to rural regions of the country. In case more than one operator has a credible and socially useful plan the band should be auctioned.**

Q5. How and when should spectrum in 700 MHz band be allocated between competitive services?

**The spectrum in the 700 MHz band should be allocated as soon as it is available with priority being given to operators who will bring affordable and pervasive BWA to rural areas.**

Q6. What is the impact of digital dividend on 3G and BWA?

**The digital dividend offers the best and quickest way to bridge the digital divide between the wealthy and the poor and also between the rural and urban areas of the country. As such the digital dividend should be used primarily for services that can achieve this objective. Operators who will bring affordable and pervasive BWA to rural areas should be given priority in allocation of the digital dividend.**



## **LICENSING ISSUES**

Q7. Should the spectrum be delinked from the UAS Licence? Please provide the reasons for your response.

**Spectrum should be delinked from the UAS license since there are other services covered by other licenses that operators may wish to offer without the full range of obligations covered by the UAS license, in particular voice services. Clearly the historical imperative was voice services and perhaps the current licensing regime reflects that priority. But increasingly one must look at non-voice services and how best to allocate spectrum for those.**

Q8. In case it is decided not to delink spectrum from UAS license, then should there be a limit on minimum and maximum number of access service providers in a service area? If yes, what should be the number of operators?

**If spectrum is not delinked from UAS license then there should be no limit on the number of operators. If spectrum is delinked then a cap can be put on the number of voice operators.**

Q14. Is there a need to do spectrum audit? If it is found in the audit that an operator is not using the spectrum efficiently what is the suggested course of action? Can penalties be imposed?

**Spectrum audits are a good idea as that will encourage holders to use efficiently what is a scarce resource. If spectrum is not being used efficiently the holder should be given notice to remedy the matter, failing which penalties including fines and ultimately forfeit of spectrum can be imposed.**

Q15. Can spectrum be assigned based on metro, urban and rural areas separately? If yes, what issues do you foresee in this method?

**Certain license classes could be subject to both frequency partitioning and geographical partitioning. So long as adequate procedures are in place to minimise interference between different users this should be achievable.**

## **M&A ISSUES**

Q20. Whether there should be a transfer charge on spectrum upon merger and acquisition? If yes, whether such charges should be same in case of

M&A/transfer/sharing of spectrum?

There should be no transfer charge on spectrum upon consolidation through M&A. The market should be allowed to function to determine the values to be agreed by the transferor and transferee. However this should be subject to the issues raised in reply to Q26 below.

Q23. Whether the spectrum held consequent upon M&A be subjected to a maximum limit?

No external limit should be imposed on how much spectrum is held. However, as mentioned in the answer to Q14 above, a mechanism should be in place to ensure efficient use of spectrum with a range of penalties up to and including forfeiture for inefficient use. This will ensure that spectrum hoarding will not endure and market forces will then redistribute the spectrum to users who can make better use of it.

### SPECTRUM TRADING

Q24. Is spectrum trading required to encourage spectrum consolidation and improve spectrum utilization efficiency?

Yes. If spectrum trading is allowed market forces will ensure that spectrum will be redistributed to operators who have a better ability to use it. However, spectrum trading can only be enabled efficiently if there are external controls and penalties imposed on those who are using spectrum inefficiently.

Two forms of spectrum trading are possible:

- (i) an outright transfer of all of the rights and obligations arising under a licence to a third party (outright total transfer); and
- (ii) an outright transfer of some of the rights and obligations arising under a licence to a third party (outright partial transfer).

Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that traded the spectrum) no longer has any rights to use the traded spectrum.

Q25. Who all should be permitted to trade the spectrum ?

Our view is that only operators validly licensed by DoT should be allowed to trade spectrum. However, measures should be in place to prevent spectrum hoarding by operators who buy up spectrum from others. Therefore spectrum trading could have some roll out obligations attached.

Q26. Should the original allottee who has failed to fulfill "Roll out obligations" be

allowed to do spectrum trading?

There should be no restrictions on who is allowed to trade spectrum. All licensed operators should be free to do so. However, in order to prevent the garnering of windfall profits by an operator who has failed in their roll out obligations, as opposed to operators who are using spectrum inefficiently, a windfall tax provision should be introduced directly linked to a failure of roll out obligations. This will need to be refined so that a failure to roll out cannot be disguised as inefficient use of spectrum, perhaps by reference to some objective measures to determine the degree of roll out achieved.

Q27. Should transfer charges be levied in case of spectrum trading?

Other than in the case described in the answer to Q26 above we feel no transfer charges or other charges should be levied. In case the trade results in gains or losses to the transferor that should be dealt with under normal income tax rules only, irrespective of the size of such gains or losses.

Q28. What should be the parameters and methodology to determine first time spectrum transfer charges payable to Government for trading of the spectrum? How should these charges be determined year after year?

Other than in the case described in the answer to Q26 above there should be no transfer charges or other charges levied. Market forces should be allowed to determine the transfer value and any resultant gains or losses should be dealt with under normal income tax rules.

Q30. Should size of minimum tradable block of spectrum be defined or left to the market forces?

Fundamentally the matter should be left to market forces, subject to the trade being of whole frequency channels or, in case of part frequency channels, subject to a minimum bandwidth or multiples thereof.

Q31. Should the cost of spectrum trading be more than the spectrum assignment cost?

Spectrum trading values should be left to market forces to determine.

## **SPECTRUM SHARING**

Q32. Should Spectrum sharing be allowed? If yes, what should be the regulatory framework for allowing spectrum sharing among the service providers?

Spectrum sharing or partial transfers should be permitted. These can take place by way of: frequency partitioning; geographical partitioning; temporal partitioning. Temporal transfers could be in the form of time-limited transfers of spectrum (e.g. for 3 months continuous use); or be for set times of the days or weeks (e.g. partitioning between the hours of midnight and 6am or at weekends) or in real time (e.g. by use of dynamic time division technology).

There are two ways in which spectrum can be shared:

(i) a transfer (of all of the rights and obligations arising under a licence) to a third party which results in a concurrent holding of those rights and obligations by the transferor and the transferee(s) (concurrent total transfer); and

(ii) a transfer of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s) (concurrent partial transfer).

Concurrent transfers enable licensees to share rights to use spectrum as they see fit over a period of time without the need to undertake further transfers between themselves, thus providing maximum flexibility,

Q33. What should be criteria to permit spectrum sharing?

Each of the concurrent licensees should jointly hold the same rights and obligations under a licence. They should therefore both (or all) be responsible for complying with licence obligations, including the obligation to pay the licence fee. A significant breach of licence obligations by one or more licensees should, as in the case of a sole licensee, lead to prescribed penalties being imposed.

Q34. should spectrum sharing charges be regulated? If yes then what parameters should be considered to derive spectrum sharing charges? Should such charges be prescribed per MHz or for total allocated spectrum to the entity in LSA?

Market forces should be allowed to determine spectrum sharing charges as between concurrent licensees.

Q35. Should there be any preconditions that rollout obligation be fulfilled by one or both service provider before allowing the sharing of spectrum?

There should be no preconditions as spectrum sharing is likely to lead to more effective use of the resource. Any licensee that fails in its roll out obligations should be subject to any sanctions it would face without regard to whether or not the spectrum was shared.

Q36. In case of spectrum sharing, who will have the rollout obligations? Giver or

receiver?

The licensee's roll out obligation should stand separate and independent of whether it is involved in spectrum sharing, as mentioned in the answer to Q35 above.