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Date: Nov 15, 2019 7:20:21 PM

Subject: Counter-Comments to Consultation Paper on "Reforming the Guidelines for Transfer / Merger of Telecom Licenses"

To: "advmn@traf.gov.in." <advmn@traf.gov.in>

Cc: "B. K. Syngal" <syngal@duaconsulting.com>

Shri S.T. Abbas
Advisor (Network, Spectrum and Licensing)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
New Delhi

Dear Shri Abbas,

This is with reference to the above mentioned consultation paper. In this regards, please find enclosed our counter comments (both in Word and PDF formats) for your kind consideration.

With best personal regards,

Yours sincerely,

B.K. Syngal
Senior Principal

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Counter-Comments to Consultation Paper on “Reforming the Guidelines for Transfer / Merger of Telecom Licenses”

Q-1 What reforms are required to be made in the existing guidelines on Transfer / Merger of Licenses to enable simplification and fast tracking of approvals? Kindly provide clause-wise response along with detailed justification?

Dua Consulting Response:

- We have reviewed the comments made by the TSPs to the present Consultation with respect to concerns in the existing guidelines. We attest to the common concerns raised by TSPs with respect to duplication of approval process by the Department of Telecom.
- Under **Clause 3(a)** of the Guidelines for Merger / Transfer of the Telecom Licenses, the Licensor (Department of Telecom) has to be informed prior to filing of application before the NCLT / Company Judge. The objections / representations of the Licensor are to be made within 30 days of the receipt of such a notice. **Section 230** of Companies Act, 2013 also provides for prior approval of the sector regulator (which would here refer to DoT) before filing of merger / amalgamation / transfer of businesses.

In regard to this, while DoT is an active participant during the proceedings before the Tribunal / Company Judge, there is provision for further approval by DoT once the scheme of merger / transfer has received sanction from the Tribunal / Company Judge.

What is the need for another approval by DoT after the sanction has been received from the Tribunal / Company Judge where the process provides for representation of DoT. The NCLT process in itself takes close to 8-12 months. Further approval process from DoT takes 2-4 months and there have been cases of further inordinate delays. This average time period of 12-16 months for merger / transfer imposes significant loss of time and value to the merging entities.

- Over the last 2-3 years, intense competition and unviable tariffs has led to major consolidation in the telecom industry. When the process of merger / transfer / amalgamation of licenses take extraordinary time, it adversely affects the revenues of the merging entities and is ultimately detrimental to consumer interests.

- There is a need to accord statutory responsibility on DoT to provide timely approvals and sanctions. To this extent, the policy should include provisions for deemed approval in cases where DoT does not provide a response within the time so specified.
- The present policy largely reflect the fears of Competition Commission of India back in 2011 which advocated for stringent guidelines with a view to restrict monopolization in a then crowded market of fifteen TSPs. However, in the present time when are the limited TSPs and ease of doing business is essential for the unhindered growth of the telecom sector, it is crucial that the guidelines for mergers and transfer should not prove to be a bottleneck for the market, while at the same time keeping a check on unfair practices.

Q-2 Whether mandatory access to MVNOs should be provisioned in the DoT M&A Guidelines to address the competition concerns? If yes, in which cases the access should be mandated and what should be the guiding principles for provision of wholesale access to MVNOs? If no, kindly provide justification.

Dua Consulting Response: We are of the view that MVNOs should be encouraged considering the value addition that they carry. However, access to MVNOs should not be mandated under the M&A Guidelines. MVNOs should be required to get access based on the commercial terms covered in the agreements between the MVNOs and TSPs. However, in case of merger / transfer of license, the acquiring TSP should honor the existing commercials that the company getting acquired has with MVNOs.

Q-3 In your view, what changes are required in the provisions of UL so as to make them unambiguous? Please provide justification.

Dua Consulting Response: We are of the view that the provisions of the UL – including the timelines in addition to other conditions – should be enforceable on both the parties, which is to mean the authorities as well as the TSPs.

Q-4 If there are any other issues / suggestions relevant to the subject, stakeholders may submit the same with proper explanation and justification.

Dua Consulting Response:

The mandate of TRAI and the Department of Telecom in addition to the tariff policies by TSPs extends to ensuring that the telecom industry is in good health and that the interests of the consumers are safeguarded.

The present policy puts a cap on market share. If the resultant entity of two merging companies has market share above 50% in a service area, the resultant entity is obligated to reduce the share within one year from the date of approval. In their comments to this present Consultation, Reliance Jio Infocomm Limited has contested that this provision should only be applicable to companies which individually have market share lower than 50% prior to the merger / transfer, and if one of the entities have market share above 50%, they should be allowed to maintain the same.

We are of the view that the particular provision in question finds its jurisprudence in ensuring that no company monopolizes the telecom sector through mergers / transfers. It is the responsibility of the government – both TRAI and DoT – to ensure that such predatory behavior is not allowed. The telecom sector in the last couple of years has seen the domino effect of unchecked predatory pricing and what it can lead to.

TRAI in its prior recommendations have stressed on the importance of competition in the sector and has suggested that at no point in time should the market comprise of less than 4-5 private service providers and 1 (one) government service provider. We believe the sanctity of fair market competition should be maintained, and such predatory behavior should be avoided at all cost, in view of which it is important that there should be a cap on market share in the event of a merger / transfer / amalgamation.