

The Mess called “Reform” in Telecommunications*

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Neoliberal reform has plunged more than one industry into a crisis, where large scale failure is the norm, but there is no sign of resolution. India’s civil aviation sector is a stark example. So is the beleaguered telecommunications industry. The mess in telecom has been highlighted by what should have been a routine event: a Supreme Court judgement upholding the Department of Telecommunications (DoT) definition of what constitutes Adjusted Gross Revenue (AGR) of firms in the industry. Delivered at the end of more than a decade of litigation, the judgement has thrown the industry into disarray.

The government has consistently held that the AGR, which is the basis for computing the fee to be paid by operators licenced to “establish, maintain and work telegraphs” as of August 1999, was the gross revenue (GR) accruing to the licensee from all sources minus (1) the telecommunication-related call charges actually paid to other telecom service providers (TSPs) within India, (2) roaming revenues actually passed on to other TSPs, and (3) service tax and sales tax actually paid to Government. However, an industry-friendly Telecom Regulatory Authority of India (TRAI) had from the beginning sown confusion by defining the AGR as consisting only of the revenue generated through “the service mandated under the licence”, minus Interconnection Usage Charge (IUC)/ access charges payable to other telecom service providers (TSP) for carriage of calls, roaming revenues collected on behalf of other TSPs, service tax paid or payable, and proceeds from sale of handsets or terminal equipment. So if revenues are generated in the form of interest or rent, for example, that according to the TRAI could be excluded from AGR.

This difference in definition may make the matter in dispute seem trivial. But its ramifications have turned out to be large for two reasons. To start with, encouraged by the TRAI’s viewpoint, telecom service operators who have for some time now functioned under a revenue-sharing licence fee regime, have not paid the fee calculated as per the terms dictated by DoT. That is, operators have not paid the in full the sum due to DoT as licence fee. Second, this has, as per the license agreement, made the service providers liable to pay interest on unpaid dues, a penalty, and interest on the penalty, if the latter too has not been paid on time. Since the disputed has gone on for long, according to DoT definition, the cumulative sum due to it as fee, penalty and interest from the service providers is a huge Rs. 92,000 crore. The unpaid dues themselves amount to only around Rs. 23,000 crore, the balance being on account of interest, penalty and interest on penalty. Add on the spectrum usage charge (SUC) additionally due to the government, and the total sum to be paid by service providers to the government is more Rs. 1.3 trillion, some of which is owed by firms that are not functioning anymore. The Supreme court has now ruled that the DoT claim is valid, and given the operators a short span of three months to pay up.

For an industry that has been through repeated “shake-outs” that have reduced the number of operators to essentially three—Airtel, Vodafone-Idea and Reliance Jio—the Supreme Court verdict can prove devastating. Expansion to acquire and/or retain market share has required large resources, whereas competition to woo subscribers has kept the average revenue per user extremely low. The result has been a long-term

squeeze on margins leading to losses. That trend was aggravated by an aggressive price war by new entrant Jio, which left the main competitors bleeding and steeped in debt.

Incumbent operators have partly responded by postponing spectrum acquisition and capital spending. Investment in the infrastructure needed to support the rising subscriber base has been short of required sums. The number of mobile subscribers per Hz of spectrum is among the highest in the world for Airtel, Idea and Vodafone, with attendant implications for quality of service. The rush for spectrum has vanished. In the government's last effort at spectrum sale, much of the bandwidth on offer remained unsold. And, both Vodafone and Airtel have been strongly arguing for a postponement of the auction of 5G spectrum, saying that the industry is too overstretched for the operators to acquire new spectrum.

The worst hit by the Supreme Court judgement is Vodafone, which is required to pay Rs. 28,300 crore, while its net worth stands at around Rs. 80,000 crore. It is only recently that the company has gone in for a rights issue to draw additional resources from its promoters, Vodafone and the Aditya Birla group. The resources so mobilized were used to reduce leverage. Slapped with this court-validated demand, the company would have to look to more debt to meet that commitment. But that could mean that its finances would be hugely stretched, leading to speculation that it may choose to exit the industry instead.

Airtel too is hard hit, having to pay up Rs 21,682 crore (excluding the additional spectrum usage charges), while having provided only Rs.6,000 crore to meet unforeseen contingencies. Because of the benefit of a late start, Reliance Jio is the least affected, having to pay only around Rs. 13 crore (excluding SUC). This would allow the disruptive late entrant to intensify its aggressive strategy to acquire a larger market share and make things worse.

At one level the industry has only itself to blame for its current predicament, since there were indications that the law on the matter was not in its favour. In 2006, the Telecom Dispute Settlement Appellate Tribunal (TDST), when approached by the service providers disputing DoT's inclusive definition of the AGR, ruled in their favour. But when the matter moved to the Supreme Court, it had held in 2011 that TDSAT's jurisdiction did not extend to deciding the validity of the terms and conditions of the licence including the definition of AGR incorporated in the licence agreement. Based on that decision new guidelines issued by the government in 2013 following the announcement of the National Telecom Policy, 2012 provided for an annual licence fee as a percentage of AGR (currently 8%), which was defined in ways that were similar to the definitions earlier adopted by DoT.

This should have sent a message to the operators that it was perhaps pointless to expect to legally win against DoT. However, ever since the National Telecom Policy of 1994 opened the doors to private players as a means of expanding the telecommunications network, the perception has been that the government would bend over backwards to facilitate private sector growth. This view was strengthened by the government's stance from the early stages of the liberalized telecom policy. Initially, when investors made irrational bids for cellular bandwidth during the first round of auctions, putting them in a spot, the government stepped in to help out. Thus, when individual players made bids for multiple circles at irrational prices, keeping out

rational competitors but unable to meet their own commitments, the government helped the bidders by allowing them to only retain a few of the multiple circles in which they had, not surprisingly, won licences.

Despite this, exploiting their oligopolistic position deriving from their control over spectrum, these bidders turned operators set call charges at exceptionally high levels. Yet, the regulator did not intervene to rein in prices. Rather, it was argued, that ensuring competition by bringing in private players involved a cost that the consumer had to bear. Needless to say, this did not work because the subscriber base remained low and prices had to be brought down especially when the number of providers, capacities and competition increased. With lower prices, the telecom service providers of that period discovered that they could not operate profitably if they were actually required to pay the amounts they had bid to obtain their licences. Here again the government lent a helping hand. It allowed incumbent and new operators to migrate to a revenue sharing regime rather than a specific licence fee system, allowing them to make huge profits subsequently. The current judgement relates to how the revenue share should be defined.

This time around too, their expectation is that they would be given some respite. Backed with support from the financial media, the telecom operators hold that imposing the charges allowed by the Supreme Court judgment would not just delay the roll-out of 5G, but irreversibly damage the industry. Thus, while Vodafone speaks about appealing against the judgement, the Cellular Operators' Association is reportedly working the phones for appointments with those who matter to present the industry's case. There is some hope for them, because sensing the difficulties facing the industry, the government had already been sympathetically considering suggestions to extend the schedule for annual payments due from the operators to the government and to reduce the spectrum usage charge. Given the Supreme Court judgement, the government may well decide to take a lenient view on the penalty to be imposed and the interest on that penalty, and give firms the option to stagger payments due over a number of years.

One other reason the government may consider such options is because of the impact that telecom distress can have for the already beleaguered banking system. Bank exposure to the industry is known to have increased hugely after liberalisation, and default triggered by distress will only make a bad NPA situation worse and threaten insolvency. If the government for these reasons turns soft, liberalization and reform would not only have transferred an industry that was earlier a government monopoly over to the private sector, but would be subsidizing private firms to keep them in operation. The mess in the telecom industry and in other economic components linked to it is clearly the result of such so-called 'reform'.

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