

Challenging TDSAT's 3G ruling is a bad idea

For a government that is trying to attract investment, its policies on telecom are bewildering. This is a sector where firms are waiting to invest, but this is also a sector that has been plagued with bad policy and uncertainty—instead of removing this, it appears the telecom ministry is going out of its way to reinforce the uncertainty. And this is on top of the difficulty the government is having in getting the defence forces to vacate spectrum that is essential for telcos to invest.

The current case goes back to 2010 when the government sold spectrum in the 2100 MHz band (loosely called 3G spectrum) to telcos for R67,000 crore. Since there wasn't enough spectrum for all telcos, they wanted clarifications on whether they would be allowed to share spectrum—in jargon, whether intra-circle roaming would be allowed. The government gave this assurance to the telcos in writing—intra-circle roaming was allowed in the licence, so it would be allowed in the 2100 MHz band as well—as part of the questions and answers attached to the bid documents. So, it came as a rude shock to industry when the previous government cracked down on them. When the case reached the Telecom Dispute Settlement Appellate Tribunal (TDSAT), it ruled the government's arguments were 'misleading', its basic premises 'seriously flawed ... and its extensions to spectrums ... even more fallacious', and added that the government 'cannot be seen playing games in a matter of national importance'.

You would think the matter was settled with the TDSAT rapping the telecom ministry so strongly. The ministry, however, plans to appeal the ruling in the Supreme Court, throwing the industry into yet another spell of uncertainty which will have an impact on the results of the next auctions as well. Apart from the fact that the government is on a sticky wicket with the written clarifications as well as the fact that intra-circle roaming is not band-specific, the larger point is that since the government does not have enough spectrum, telcos have no option but to share spectrum by entering into intra-circle roaming pacts—and that is what the government is now challenging in the Supreme Court. Ironically, the government is currently debating the Trai's spectrum sharing and trading recommendations so that the spectrum shortage can be alleviated somewhat.