

Both the one-time spectrum levy and short-payment are under dispute, so let courts rule on them first

Going by a report in The Economic Times, the department of telecom (DoT) is likely to insist that Vodafone and Idea pay Rs 13,157 crore of “dues” of licence/spectrum fees and Rs 5,713 crore as a one-time fee to regularise their ‘excess’ spectrum. Only once this is paid, the report says, will DoT allow the Vodafone-Idea merger to take place. If this is indeed the case, it is unfortunate. Asking these telcos to pay these dues—disputed by the industry for years—is unfair since, while the rest of industry is not paying, the DoT is using the merger to arm-twist Vodafone and Idea.

The so-called licence/spectrum fee dues pertain to the definition of what revenue is. Normally, you'd think that the money a telco earned from providing telecom services would be counted as revenue—and licence/spectrum charges are a share of this revenue—whereas the money got from selling mobile phones or from fixed deposits are not revenue. While various CAG reports routinely flag these ‘dues’ from telcos, this definition has been contested for nearly 15 years. In 2006, the TDSAT ruled that the DoT did not have the power to charge licence/spectrum fees on non-telecom revenues and, based on that, asked TRAI to declare what was ‘telecom’ and what was ‘non-telecom’. Trai gave its comments and, in 2007, TDSAT ruled on this.

This was then challenged by the DoT in the Supreme Court (SC) and, in 2011, the SC ruled that TDSAT had no jurisdiction on contracts between the DoT and the telcos. Telcos challenged this in various courts, including the TDSAT, which, by and large, ruled in favour of the telcos in 2015. The matter is now in the SC. The ‘excess spectrum’ is equally contentious. In the initial phase of telecom licensing in the country, telcos were given 4.4 MHz of spectrum bundled with the licence, with a promise to give another 1.8 MHz once they reached a certain number of subscribers. Subscriber criteria were also laid out for spectrum beyond that at a later date. While allegations of corruption in the way the criteria were decided were made, the fact of the matter is that there was no other policy by which telcos could have got spectrum beyond the initial 4.4 MHz.

Also, at that time, when a telco moved from 4.4 MHz to 6.2 MHz, the spectrum charge went up from 2% of revenues to 3%, and to 4% when it moved to 8 MHz. Surely, that extra money the government got by way of annual licence/spectrum fees were in lieu of a one-time spectrum payment? If, at a later date, the government decided it would auction all spectrum beyond the initial 4.4 MHz—and that too would be auctioned—this new rule can hardly be used retrospectively. Indeed, in 2013, the then TRAI chief, Rahul Khullar, pointed to another anomaly. Given state-owned telcos like MTNL and BSNL had a lot more spectrum than the private players, but earned far less revenue, they effectively paid a lot less spectrum charge. So, while a Bharti Airtel paid Rs 2.13 crore per MHz of spectrum in the June 2013 quarter, a BSNL paid just Rs 0.33 and an MTNL Rs 0.36 crore.

Given how the government is over-charging telcos by charging them both a high one-time spectrum cost and then a large annual licence/spectrum fee—the share of revenue going to the government by way of recurring licence/spectrum charges and auction-bids rose from 11% in FY07 to 32.4% in FY17 and, if service taxes are included, the number rose from 23.2% to 47.4%. The government needs to focus on fixing this, not playing the heavy with Vodafone-Idea.