

## ***With Trai not lowering Rs 3,050-cr fine, telecom panel must decide penalty; it should have been totally focussed on a relief package***

It may have been nothing but a coincidence, but at a time when the government needed to be finalising a relief package for an industry bleeding from excessive government levies, one of the first things the Digital Communications Commission—DCC includes finance and industry secretaries apart from the telecom one—did after the new government came to power was to decide, last month, on Trai's Rs 3,050-crore penalty recommendation for the older telcos like Bharti Airtel, Vodafone and Idea (BVI). For context, keep in mind the DCC had been sitting on Trai's recommendation for over two-and-a-half years—presumably because it thought it made little sense, so it could have continued to ignore it after the NDA came to power again. As it happened, while DCC disagreed with Trai on the quantum of the penalty—Trai wanted the maximum of Rs 50 crore per telecom circle—it didn't want to actually decide the amount; any decision it took would open it up to criticism of being pro- or anti- the older telcos. So, it (incorrectly) agreed with Trai on the need for a penalty, but asked it to relook the amount. Not surprisingly, Trai has stuck to its original recommendation, so it should be interesting to see what DCC does.

In this particular case, RJio wanted Points of Interconnection (PoI) from BVI to run its network in June 2016. BVI, however, argued that the number of Pols that RJio wanted were excessive for a network that was in a test phase; later, when RJio announced a launch date, BVI argued that RJio's free services meant customers were flocking to its network and this, in turn, created a need for more Pols. While BVI raised these issues, including that of predatory pricing, the government never really gave a reply; even so, BVI gave RJio the Pols within the specified time period. So, it is not too clear as to what the penalty was for. Indeed, Trai later even had a consultation on whether the time allowed for providing Pols was too excessive! While both SC and TDSAT have used terms like "manifestly arbitrary and unreasonable" and "arbitrary without any deliberation and effective consultation" to describe other Trai recommendations, even the DCC had asked Trai to justify its spectrum pricing recommendations—on many occasions, Trai has used the bid of the previous auction round as the base price for the next round—but Trai refused to provide this.

DCC can choose to rubber-stamp what Trai is saying, knowing full well the final decision will be taken by the courts since the telcos will petition them on the penalty; if that happens, it will be unfortunate since, as this newspaper has consistently argued, Trai was not just wrong on the penalty, it has consistently been wrong on many important issues and it has been pulled up by even the Supreme Court and the TDSAT in the past. In any case, the job of the DCC is not just to go along with Trai's recommendations, it is to modify them if the need arises. So far, sadly, DCC hasn't really done too much to temper Trai's suggestions which is a pity since, apart from the government's unconscionably high annual levies, Trai's high reserve prices for various auction rounds has played a big role in bankrupting the industry. In the bargain, the government has also lost out because large amounts of spectrum have remained unused.