

If telcos have to pay Rs 92,000-cr in dues, it will be due to govt failure to settle definition of 'revenue' since 2006

If telecom operators do lose their case against the department of telecommunications (DoT)—hearings are going on in the Supreme Court right now—and end up having to pay Rs 92,000 crore, this will be a big blow to an industry which is already tottering under both large debt burdens and falling revenues. How much DoT will finally charge telcos is not clear since a large part of this is really penalties, interest and interest-upon-penalties. The largest dues are those of Airtel, which owes Rs 21,682 crore, but of this, the actual dues are just Rs 5,528 crore, the interest on this is Rs 9,816 crore; and while the penalty is Rs 2,407 crore, the interest on this is Rs 3,930 crore. Not surprisingly, since the interest/penalty component is very large, just three years ago, in 2016, the total dues for all telcos were Rs 29,474 crore. Given that, till now, there is no clarity on what comprises 'revenue', it is not clear how the government is even levying penalties and interest on these demands.

In 1999, when the telecom operators were in deep trouble and not able to pay the exorbitant fixed-license fees they had bid, the government offered a bailout and moved them all to revenue-share-license fees; while the grateful operators grabbed the opportunity, there was no formal definition of what was to be included in 'revenue'. While litigation soon started on this, in July 2006—DoT wanted most 'revenue' streams to be included while telcos said this couldn't include, for instance, the interest they earned on deposits—the Telecom Dispute Settlement and Appellate Tribunal (TDSAT) ruled in favour of telcos and said DoT couldn't charge a license fee from revenues/activities that did not require a license from DoT. When DoT took the matter to the Supreme Court (SC), SC dismissed the petition. Meanwhile, the Telecom Regulatory Authority of India (Trai) gave its recommendations on what should be included in 'revenue' and TDSAT accepted this in its final order in August 2007.

The DoT approached SC again on the TDSAT order, but with a new argument. DoT argued that it had decided what would be included in 'revenue'; so this was a 'licence condition'. TDSAT, DoT argued, could decide on a dispute on a license condition, but it could not rule on whether or not a licence condition was fair or not. The SC agreed with this, and added that, if the telcos found the licence condition onerous, they could have exited the business. The TDSAT then looked at the matter again given SC's restrictions on its powers and, when it came out with an order, the telcos challenged this in various courts.

There are, then, two issues that arise from this. First, till now, there is no settled definition of

what comprises 'revenues', so DoT shouldn't be charging penalties and interest on 'dues' from the past. More important, it speaks volumes for just how casual the government's attitude was, as a result of which, a dispute wasn't settled since at least 2006 when TDSAT first ruled on the issue; both the UPA and NDA governments are to blame for this. Sadly, this is not the only problem that the sector is facing; so, if the government is serious about helping it develop, a comprehensive solution is required for all these issues.