Only the fear of CAG/CBI/CVC can explain why telecom panel OK'd Rs 3,050-cr penalty after it asked Trai to cut this

If a body manned by top secretaries can't reject Trai's penalty recommendation even after it asked for a lower fine to be put, what signal does that give in terms of the govt's ability to take tough decisions?

Is the Narendra Modi -government, so early in its second term, falling victim to policy-paralysis due to the inability to take decisions? It is difficult to come to a firm conclusion, but certainly the Digital Communications Commission (DCC)—its members include the telecom, industry and finance secretaries along with the CEO of Niti Aayog—decision to rubber-stamp Trai's original Rs 3,050 crore penalty recommendation on Airtel, Vodafone and Idea (AVI) suggests this may be the case since, just last month, DCC was of the view that the penalty was way too high and asked Trai to reduce it to a nominal amount.

Given Trai doesn't have the powers to levy fines, and that its recommendation—based on a complaint by RJio—was suo motu, the DCC was well within its rights to reject Trai's recommendation or to impose a dramatically lower fine; indeed, DCC even told Trai that, given the precarious health of the industry, a token fine was really the best. If the DCC didn't do this once Trai refused to lower its fine-recommendation, the only plausible reason is that it feared lowering the fine could open it to scrutiny by CBI, CVC, or the CAG; the matter, it is true, will now be decided by the courts, but if every decision has to be ratified by the courts, policy-making will suffer a huge setback.

Lowering the Trai penalty, as this newspaper has argued earlier, also made sense since the telecom regulator has not distinguished itself in the past; not only has bad decision-making by it ensured India's spectrum prices went through the roof (bit.ly/30Thy4H), it has even been pulled by the Supreme Court and the Telecom Dispute Settlement and Appellate Tribunal (bit.ly/2yc2bIm) for being arbitrary and unreasonable. While DCC has asked Trai to explain its recommendations on spectrum pricing in the past, this newspaper has shown the lack of logic, inconsistencies and mathematical fallacies in Trai's approach.

Nor was, in this particular case, the evidence against AVI crystal clear. For one, RJio wanted points of interconnection (PoI) that, AVI argued, were far in excess of what anyone wanted in the past; they said that RJio's free services were illegal and, because of this, it was getting millions of subscribers which, in turn, hiked the need for more PoIs. AVI raised all these issues, including that of predatory pricing, but got no answer from the government. Despite this, they gave the PoIs within the specified period, evidence of which is the fact that Trai later came out with a consultation paper on whether the 90-days allowed for PoIs was too long! Even the Bombay High Court commented on the terms and obligations for granting PoIs not being very clear.

If a body packed with as many top bureaucrats as the DCC can't take a decision that it wanted to take, how will the government take other decisions that have been pending for over five years? Even before RJio disrupted the market, telcos were in deep trouble since the government was taking away 11-13% of their top-line in the form of license/spectrum levies while, at the same time, charging them astronomical amounts for spectrum; Trai's recommended reserve price for 5G spectrum, for instance, is effectively 54 times that in Germany. The high annual levies were charged when spectrum was given almost free, but should have been made near zero when the spectrum was market-priced. It is difficult to see that call being taken now, given how DCC ducked even a simple decision.

What contributes to the delay in the government slashing annual levies is the view, also expressed recently in a newspaper article, that while Airtel's debt is primarily related to its expensive acquisition of Zain for $10.7 billion in 2010, Vodafone's debt is related to its expensive purchase of Hutch's India operations; indeed, the logic goes, RJio has a debt of just around Rs 70,000 crore and started making profits within just two years of launch. While it is true the Zain acquisition didn't work out, less than a third of Airtel's current debt is due to the Africa acquisition; in the case of Vodafone, the cost of acquiring the India assets are on the parent's balance sheet, not on the India balance sheet. And a Kotak Institutional Equities analysis put RJio's real debt at Rs 216,300 crore some months ago; even if you reduce the debt offloaded via the recent deals the firm concluded, the net debt should still be around Rs 145,000 crore. In other words, the industry is in dire shape.

In the case of sectors like oil and gas—or mining for that matter—where import dependence has been rising despite the PM's targets for lowering it, the key to fixing this is allowing firms marketing freedom; once they get higher prices, and more profits, they will invest more. While the government has allowed more marketing/pricing freedom, the decision pertains to just new finds while the bulk of production comes from old discoveries; the government knows that higher prices should apply to existing finds as well if more investment is to be made, but taking that decision can mean potential queries from CBI/CVC/CAG … Ditto in the case of the non-oil minerals—these account for a fourth of India's import bill—where Indian levies are 2-3 times as high as those internationally.

The short point is that, if investment is to revive, the government has to take decisions which will seem to favour a class of investors. Not taking decisions and palming them off on to courts (as in the case of the promised repeal of the UPA's retrospective tax) or even reversing policies (as happened in ecommerce after Wal-Mart bought Flipkart for $16bn) is going to drive investors away; that is why investment levels have fallen from 34.3% of GDP in FY12 to 28.6% in FY18 and, within this, FDI from 2.5% to 2.3%.