

Licences granted in 'arbitrary and unconstitutional manner', Trai asked to make fresh recommendations on grant of licences, spectrum to be auctioned in four months

Apex court refuses to ask CBI to probe Chidambaram's role in 2G case, trial court decision in two weeks, CBI directed to file status reports on spectrum case inquiries to CVC

Though telecom and banking stocks and the Sensex recovered after collapsing immediately after the Supreme Court ruled that the 122 licences issued by jailed ex-telecom minister A Raja be cancelled, the full story will take some months to unravel. For a beleaguered government, the saving grace was that the court refused to comment on the petition to make home minister P Chidambaram a co-accused and left the matter to the trial court.

A final decision on how to auction the cancelled licences, and whether any money needs to be refunded to the telcos will be taken by the government after sector regulator Trai gives its recommendations. Trai is likely to come out with a larger consultation on an exit policy for telcos in the next month or two.

While ordering cancellation of licences, the court imposed a unprecedented fine of R5 crore each on Etisalat DB, Tata Teleservices and Unitech Wireless saying the companies had "benefited by a wholly arbitrary and unconstitutional action taken by the DoT for grant of UAS licences and allocation of spectrum in the 2G band" and had then offloaded part of their stake at a huge profit. Though the court did not rule on the 35 dual-technology licences issued by Raja — these were not part of the petition before it — the fact that Tata Teleservices has been fined is interesting as its was not part of the 122 licences but was part of the 35 dual-technology licences. Fines of R50 lakh each were also imposed on Loop, STel, Allianz Infratech and Shyam Sistema Telecom for benefiting from arbitrary action by the DoT.

Immediately after the judgment, Unitech's stock fell 16% to Rs 23.2 (it ended the day at Rs 25), RCom by 11% to 91.1 and ended the day at Rs 96.8, DB Realty by 11% to Rs 57.2 and Videocon by 6% to Rs 166.1 – the Sensex fell 1%, but recovered most of the loss, as did most of the affected firms.

SBI, which has the largest exposure to the new telcos whose licences are to be cancelled after four months, fell from Rs 2,113 to Rs 1,975 before ending the day at Rs 2,072 after it issued a statement saying it expected no trouble as the licences would be re-auctioned – markets saw this as a signal that the government would compensate telcos for the licence fees they had paid and the capex spent even though there is no such suggestion from the court. The finance ministry is likely to consult the AG on whether the licencees need to be compensated. Right now, with the government likely to bring in 4G spectrum for auction as well, it is unclear as to whether government can recoup the Rs 1,02,000 crore CAG said was lost on account of these licences – right now, there is an oversupply of spectrum over demand.

Though the court refused to appoint a special team to oversee the CBI's work – it said the CBI was working “with requisite seriousness after 16.12.2010” – it asked the CVC to help the court effectively monitor the investigations and to “send their observations/suggestions to this court in sealed envelopes” so that these could be considered along with what the CBI sent to the court.

After the judgment, Congress and BJP traded charges: Telecom minister Sibal said the court had ruled against the first-come-first-served policy that was brought in by the NDA when it was in power. The court, however, didn't really rule on the allocations made by NDA as it said these had not been questioned by anyone.

In a move that has ramifications that go beyond spectrum, the court said: “Whenever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition.” The court added that while it did not wish to interfere in government decisions, “when it is clearly demonstrated before the court that the policy framed by the state or its agency ... is violative of constitutional principles, it is the duty of the court to exercise its jurisdiction in larger public interest.”

Though the court has said the judgment is without prejudice to CBI's investigation and the

case in the lower court, most lawyers said the ruling was certain to have an impact. The court was also all praise for the vigilance of certain enlightened citizens who brought matters to its notice and ensured “those who enjoy money power and who have been able to manipulate the system” were not allowed to get away.