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Respected Prime Minister

31 August, 2010

Sub. : Move to facilitate Consolidation & M&As in the Telecom Sector

As you are aware, the recent 2G licenses and spectrum that were allotted to Telecom companies (some new and some existing) were sold at very low prices – justified by the Government repeatedly as necessary to create sustainable competition in this sector that has seen quite a few cases of cartel-like behavior of the existing operators.

These licenses were issued with conditions and obligations that are cast on the licensees, specifically in terms of rollout. In addition, the Government, to avoid private gains of this cheap spectrum, has also imposed strict M&A conditions that are linked to rollout and timelines.

I draw your reference to an article in the Economic Times dated 30 August, 2010, my question in Parliament No. 3199, dated 26 August, 2010, to which Shri Sachin Pilot, Hon'ble Minister of State of Communications & IT has clearly responded, and my earlier letter dated 12 November, 2009 (copies enclosed herewith).

It is clear that there are moves afoot to influence the DoT to relax the M&A conditions and to make M&As 'freer and more easy'. To enable this, many International and financial sector examples are being freely quoted.

The reasoning quoted are :

- a. Competition of more than 6-7 cannot be sustained in the Indian telecom market.
- b. M&As cannot be stopped in a free economy and financial market.

The responses to the above are as follows :

- a. There is no evidence to suggest that in the long term, this market of over 1 billion customers cannot support 10-12 operators of 90 million or 100 million subscribers each. The short term losses of new operators are consistent with financial losses of such infrastructure projects and cannot be seen as evidence of lack of financial viability. As a matter of fact, the valuation of these companies proves exactly the opposite. The Government should only act on real evidence on this issue and not calculated rhetoric and spin.



- b. M&As should be permitted in a free and fair market. However we must not forget that these licenses were not allotted through a free and fair auction process. The curb on resale of the licenses/Spectrum was to ensure increased competition and to prevent 'private windfall and gains'. The curb on M&As is required to ensure that the policy objective of increasing competition – that was used to justify this giveaway of spectrum – is not forgotten and compromised.

In the final analysis even if such a move was to be made after due consideration, four clear steps need to be followed:

- i) Evidence of lack of viability should be clearly produced before any decision by the Government is taken in respect of reducing competition in the sector. Competition has already produced tremendous benefit for the consumer.
- ii) If evidence of viability is produced, then and then only should the licensees should be permitted to return their licenses . The spectrum and licenses should be returned to the Government of India at the original price that had been paid, i.e. Rs.1,658 crores for a pan India 2G license with appropriate startup spectrum, less any penalties for violation of any of their contractual obligations. Under no circumstances should the companies be allowed to trade in these licenses for private gain of more than what they have paid.
- iii) Severe and specific penalties must be levied on each of these companies, by circle, depending upon whether or not the company has launched commercial service. It is not sufficient for the company to meet license related roll out obligation in a view to fool the public and the Government – which might seem eager to be misled.
- iv) The sale of spectrum /license under any circumstances to other private operators by these companies, including under guise of M&As, cannot be allowed. This should be strictly mandated even if the company has launched in a few circles and is yet to launch in others. Government must benchmark the price of spectrum, and auction it directly in the event the operator wishes to sell it in the open market. The Government must retain all proceeds of such public auction, after paying license fees due to the seller and adjusted against penalties as indicated in (ii) above.

Any attempt to circumvent these steps would cause serious questions of credibility and give credence to the fact that the Government was involved in a massive spectrum scam in 2008 where it first allowed 'first-come-first-served' to prevail with an artificial cutoff date to favor a handful of companies and later pave the way for the sale of the spectrum/licenses in 2010-11.



So in summary:

1. Allowing M&As and relaxing the extent of competition would expose the Government to a valid accusation, that the whole process of giving away 2G spectrum through a "first come, first served" process (instead of an auction) has served no objective of either increasing competition or any other public service – except for windfall gains to a set of private companies.
2. Instead the Government must recognize its obligation to follow the rule of law and propriety in these matters. In the event a licensee wishes to exit its license (due to unviability) the Government must revoke or take the license and spectrum back and RE-AUCTION the spectrum to maximize the gains to the public.

This is the only legal and correct way to address the claim (real or imaginary) of lack of viability in the Telecom sector.

I request you to confirm that you will follow the due process under law and ensure that Government will adhere to the principle that it and the people of India will remain the sole beneficiaries of any value of spectrum and not private corporate interests.

Yours Sincerely,

RAJEEV CHANDRASEKHAR

Dr. Manmohan Singh

Hon'ble Prime Minister

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New Delhi