GOVERNMENT OF INDIA
COMMUNICATIONS AND INFORMATION TECHNOLOGY
LOK SABHA

UNSTARRED QUESTION NO:139
ANSWERED ON:23.11.2005
FOREIGN DIRECT INVESTMENT IN TELECOM SECTOR
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Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

(a) whether the Government has approved 74% Foreign Direct Investment (FDI) in telecom sector;

(b) if so, the details thereof;

(c) the nature and form of investment allowed in this sector at present;

(d) the extent to which this decision of Government is likely to boost teledensity in the country particularly in rural areas and safeguard the interests of the people;

(e) whether interests of State owned MTNL and BSNL have also been kept in view while allowing FDI;

(f) if so, the details thereof;

(g) whether there is any security risk to the country due to transfer of secret data to MNCs; and

(h) if so, the steps taken by the Government in this regard?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (DR. SHAKEEL AHMAD)
(a) Yes, Sir.

(b) & (c) A copy of the Press Note No. 5 (2005 Series) issued in this regard is placed at Annexure. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-resident Indians (NRIs), Foreign Currency Convertible bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference share, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., would be counted towards the foreign direct investment (FDI) ceiling of 74 per cent.

(d) Liberalization of FDI policy is expected to address the requirement of investment, which will help in increase in tele-density and manufacture of telecom equipment in the country.

(e) & (f): FDI policy is formulated keeping in view the interest of telecom sector as a whole.

(g) & (h): Security concerns associated with the increase in FDI limits have been addressed through various conditions as mentioned in the aforesaid Press Note No.5.

ANNEXURE
Government of India Ministry of Commerce & Industry Department of Industrial Policy & Promotion Secretariat for Industrial Assistance
PRESS NOTE NO. 5 (2005 SERIES)
Subject: Enhancement of the Foreign Direct Investment ceiling from 49 per cent to74 per cent in the Telecom sector.

1. In pursuance of the Government`s commitment to liberalise the FDI regime, it has been decided to enhance the Foreign Direct Investment ceiling from 49 per cent to 74 per cent in certain telecom services [such as Basic, Cellular, Unified Access Services, National/International Long Distance, V-Sat, Public Mobile Radio Trunked Services (PMRTS), Global Mobile Personal Communications Services (GMPCS) and other value added services], subject to the following conditions:-

A. The total composite foreign holding including but not limited to investments by Foreign Institutional Investors (FIIs), Non-Resident Indians (NRIs), Foreign Currency Convertible Bonds (FCCBs), American Depository Receipts (ADRs), Global Depository Receipts (GDRs), convertible preference shares, proportionate foreign investment in Indian promoters/investment companies including their holding companies, etc., herein after referred as FDI, will not exceed 74 per cent. Thus, 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company. Hence, the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company (i.e. foreign direct investment does not exceed 49 percent and the management is with the Indian owners). It is clarified that proportionate foreign component of such an Indian Company will also be counted towards the ceiling of 74%. However, foreign component in the total holding of India n public sector banks and Indian public sector financial institutions will be treated as `Indian` holding. The licensee will be required to disclose the status of such foreign holding and certify that the foreign investment is within the ceiling of 74% on a half yearly basis.

B. The majority Directors on the Board including Chairman, Managing Director and Chief Executive Officer (CEO) shall be resident Indian citizens, enforced through licence agreement. The appointment to these positions from among resident Indian citizens shall be made in consultation with serious Indian investors. Serious investor has been defined below in para G
(ii).

C. The share Holder Agreements (SHA) shall specifically incorporate the condition that majority directors on the Board including Chairman, Managing Director and CEO shall be resident Indian citizens and shall also envisage the conditions of adherence to Licence Agreement.

(D) FDI upto 49 per cent will continue to be on automatic route. Foreign Investment Promotion Board (FIPB) approval shall be required for FDI in the licensee company/Indian promoters/investment companies including their holding companies if it has a bearing on the overall ceiling of 74 per cent. While approving the investment proposals, FIPB shall take note that investment is not coming from unfriendly countries.

(E) The investment approval by FIPB shall envisage the conditionality that Company would adhere to licence Agreement.

(F) FDI shall be subject to laws of India and not the laws of the foreign country/counties.

(G) Department of Telecommunications (DoT) will enforce the above and the conditions mentioned below through appropriate amendment in licence:-

(i) There shall be a non-obstante clause in the licence which confers powers upon the licensor to cancel the licence under certain defined circumstances.

(ii) In order to ensure that at least one serious resident Indian promoter subscribes reasonable amount of the resident Indian shareholding, such resident Indian promoter shall hold at least 10 per cent equity of the licensee company.

(iii) The Company shall acknowledge compliance with the licence agreement as a part of Memorandum of Association of the Company. Any violation of the licence agreement shall automatically lead to the company being unable to carry on its business in this regard. The duty to comply with the licence agreement shall also be made a part of Articles of Association.

(iv) Chief Technical Officer (CTO) Chief Finance Officer (CFO) shall be resident Indian Citizens. The Licensor/DoT shall also be empowered to notify key positions to be held by resident Indian citizens.

(v) The Company shall not transfer the following to any person/ place outside India:-

(a) any accounting information relating to subscriber (except for roaming/billing) (Note: it does not restrict a statutorily required disclosure of financial nature);

(b) user information (except pertaining to foreign subscribers using Indian Operator`s network while roaming) and

(c) details of their infrastructure/network diagram except to telecom equipment suppliers/manufactures who undertake the installation, commissioning etc. of the infrastructure of the licensee company on signing of non-disclosure agreement.

(vi) The company when entering into roaming agreements with service providers outside India must provide, on demand, the list of such users (telephone numbers, in case of foreign subscribers using Indian Operator`s network while roaming).

(vii)The Company must provide traceable identity of their subscribers. However,in case of providing service to roaming subscriber of foreign Companies, the Indian Company shall endeavor to obtain traceable identity of roaming subscribers from the foreign company as a part of its roaming agreement.

(viii) No traffic (mobile and landline) from subscribers within India to subscribers within India shall be hauled to any place outside India.

(ix) No Remote Access (RA) shall be provided to any equipment manufacturer or any other agency out side the country for any maintenance/repair by the licensee. However, RA may be allowed for catastrophic software failure (such as failure to boot up etc.) which would lead to major part of the network becoming non-functional for a prolonged period, subject to meeting the following conditions:-

(a) An identified Government agency (Intelligence Bureau) will be notified, when RA is to be provided.

(b) Remote Access password is to be enabled for a definite period only and only for access from pre-approved locations of the Original Equipment Manufacturer (OEM) Vendors and only for the equipments specifically under repair/maintenance.

(c) The control of Remote Access i.e. activation, transfer of data termination etc. shall be within the country and not at a Remote location, abroad.

(d) The Government agency will be given all support to record the transactions for on-line monitoring.

(e) Any equipment or software that forms part of the overall monitoring shall not be permitted to have remote access under any circumstances.

(f) DoT will define appropriately the terms catastrophic software failure, major part of the network, and prolonged period used under this clause.

(x) It shall be open to the Department of Telecommunications to restrict the Licensee Company from operating in any sensitive area from the national Security angle.

(xi) In order to maintain the privacy of voice and data, monitoring shall only be upon authorization by the Union Home Secretary or Home Secretaries of the States/Union Territories.

(xii) For monitoring traffic, the licensee company shall provide blind access of their network and other facilities as well as to books of accounts to the security agencies.

(xiii) In case of not adhering to Licence conditions envisaged in para G. the licence(s) granted to the company shall be deemed as cancelled and the licensor shall have the right to encash the performance bank guarantee(s) and the licensor shall not be liable for loss of any kind.

2. The conditions at para 1 above shall also be applicable to the existing companies operating telecom service(s) which had the FDI cap of 49%.

3. The relevant provisions of FDI policy for `investment companies`, as given in Press Note 2 (2000 series) dated 11.2.2000 issued by department of Industrial Policy and Promotion will no longer be applicable to telecom sector.

4. An initial correction time of 4 months from the date of issue of this notification shall be allowed to the existing licensee companies providing telecom services mentioned in para 1 above for ensuring adherence to the aforesaid conditions. An unconditional compliance to the aforesaid conditions shall be submitted to the licensor within this period.

5. Press Note 15 (1998 series) and Press Note2 (2000 series) issued by Department of Industrial Policy & Promotion stand modified to the above extent.

Sd/-

(UMESH KUMAR) Joint Secretary to the Government of India

No. 9 (1)/2002-FC dated 3rd November, 2005