

**GOVERNMENT OF INDIA
COMMUNICATIONS AND INFORMATION TECHNOLOGY
LOK SABHA**

UNSTARRED QUESTION NO:1835

ANSWERED ON:22.08.2012

MERGER AND ACQUISITION POLICY

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Will the Minister of COMMUNICATIONS AND INFORMATION TECHNOLOGY be pleased to state:

- (a) whether the Finance Ministry has requested the Department of Telecom to provide maximum security to lenders in the event of termination of licence and incorporate suitable clause in the draft tripartite agreement;
- (b) if so, the details thereof and the reaction of the Department of the Telecommunication (DoT) thereto and on draft tripartite agreement;
- (c) whether there is a need for a liberal Merger and Acquisition policy to facilitate speedy consolidation in an orderly manner so that industry viability and growth is sustained by a reasonable number of efficient and financially strong operators;
- (d) if so, the details thereof; and
- (e) the steps taken by the Government in this direction?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY (SHRI MILIND DEORA)

(a) Yes, Madam.

(b) Communications have been received from Finance Ministry which, among others states the following:

- i. It would be necessary to expedite assignment of the spectrum allotted to operators in favour of lenders;
- ii. Permit a suitable stand still period for consultation with secured lenders before cancellation of telecom license assigned in favour of lenders in the event of default/breach of terms of allotment by the operator;
- iii. Incorporate a suitable clause in the Tripartite Agreement (for assignment of License) to provide for termination payment to lenders of an amount equivalent to lower of the license fee mobilized or secured loan outstanding in the event of termination of license allotted to an operator;
- iv. There should be tripartite agreement between the Government of India, the lender and the borrower to ensure that the lender's interests are duly taken care of even in the case of force majeure.
- v. In case of default by the borrower, the bank should have unfettered right to sell, transfer, assign, exchange or otherwise dispose of the spectrum free of any restraining conditions.
- vi. In case of cancellation/revocation/voluntary surrender of telecom licence before full satisfaction of dues to the lender, whatsoever may be the reason, the title/right to spectrum should be with the lenders.
- vii. There shall be credible valuation methodology for valuing spectrum, to reflect the true realisable value of the spectrum for the purpose of treating it as security.
- viii. There shall be a robust formula/ methodology for finding the market price of spectrum together with a margin which has to be prescribed/ laid down to take care of the downward fluctuations in prices before spectrum can be treated as a tangible security.

Government has decided that the existing Tripartite agreements in Unified Access Service (UAS) licenses be modified appropriately to include 'spectrum' in order to achieve the desired objective in consultation with the Department of Legal Affairs and the Department of Financial Services. Further, in the event of default by a licensee entailing auction of spectrum, financial institutions/agents be allowed to conduct auction in consultation with the Department of Telecommunications and in accordance with such guidelines as may be laid down for the purpose by the Department of Telecommunications. It would be open to financial institutions to request the licensor to conduct the auction without prejudice to their rights.

(c) to (e): Broad guidelines announced through Press release dated 15.02.2012 in respect of mtra-service area merger of CMTS/UAS licences are at Annexure-I.

