

The 3G Roaming Controversy

When the Government of India auctioned 3G telecom spectrum in 2010, it was the first time any form of spectrum had been auctioned in India. By all accounts, it was a huge success and netted the government far more income than they had anticipated. It was a clear demonstration of the real value of the Indian telecom market and eventually became the single biggest reason why investigations were launched into the allocation of telecom licenses in 2008 - an investigation that was, infamously, called the 2G Scam and which is still very much in the news even today.

So high was the discovered price of spectrum through the auction that no telecom company was able to procure 3G spectrum in every circle in the country. For the national players, all of whom supported a huge volume of subscribers, this was a disaster, as their customers in telecom circles where they had not won spectrum were about to be denied 3G services - a clearly unacceptable commercial outcome.

However, even before they participated in the auction, these telecom companies had anticipated this eventuality. In the pre-auction Q&A, they had asked the Department of Telecommunications (the DOT) whether, in the event they did not win spectrum in all circles, they would be able to roam on the network of other telecom operators who had won spectrum. The DOT's response was that the roaming is a part of the licence in general and not limited in applicability to specific bands of spectrum.

Under the license (as well as under the national telecom policy), roaming, both across circles as well as within a given circle, has been encouraged as a means to deepen network coverage. Telecom companies could, in circles where they do not have spectrum, enter into inter-circle roaming agreements with other operators to allow their customers to roam in those circles. Similarly, where the telco lacks network coverage within a given circle, they

could rely on intra-circle roaming to extend their effective network coverage.

It was on the basis of this clarification in the Q&A as well as a reasonable interpretation of the license and the telecom policy in India, that Idea, Airtel and Vodafone signed roaming agreements with each other to effectively build a pan-India 3G network for their clients extending to even those circles where they had not won 3G spectrum.

In practice, however, this created a slightly anomalous situation where the operator was offering 3G services to customers in circles where it had not won the spectrum - where in effect, the subscriber was always going to be roaming on the visited network of another operator with 3G spectrum.

The DoT viewed this arrangement as violating the conditions of the spectrum auction and issued notices to the concerned telcos to stop providing 3G services in circles where they had not won 3G spectrum. The case came up before the TDSAT, the telecom dispute resolution authority, which, quite surprisingly delivered a split verdict.

The Chairman of the TDSAT relied on the Q&A and the clarification that had been issued. He emphasised that the UASL allows licensees to enter into roaming agreements to offer coverage in areas where the licensee does not have a network. He concluded that a licensee, regardless of the nature of spectrum held by it, could provide all types of services using that spectrum whether it be 2G or 3G services.

On the other hand, the Member was of the view that 3G services can only be provided by way of an amendment to the license and a separate approval by the WPC wing. He further noted that if two service providers want to enter into an intra-circle roaming arrangement for 2G/3G services, both the service providers should have the

relevant license and the spectrum for a particular service area. Since this was not the case with the 3G roaming arrangements a new subscriber will always be on the visited network for 3G services and never on the home network, such an arrangement was impermissible.

After the split verdict, the DoT issued notices to the telcos to pay a penalty for violating the license. This was challenged by the telcos before the Delhi High Court and the Supreme Court. The matter is still being argued but for now the Supreme Court has prevented the telcos from acquiring additional 3G subscribers in circles where they do not hold spectrum. The decision of the Supreme Court is eagerly awaited as it is of deep significance to the telecom regulatory framework of India.

If one were to examine this issue in the context of the legal and regulatory framework it is evident that the UASL is a technology neutral license by design. It accords the licensee the right to provide a mobile telecommunications service in India which right has been derived from the license without reference to the specific band of spectrum allotted or the technology used.

If we were to follow that logic through in the context of the 3G roaming case, there is merit in the argument of the telcos in building their nationwide 3G network using roaming arrangements. However, the government also raises an interesting argument in that these telcos have effectively discounted their total cost of acquisition of pan-India spectrum by entering into "side deals" with other telcos.

Whichever way the Supreme Court finally rules on this matter it will have a significant impact on the manner in which the license will be interpreted - and accordingly on the strategic direction that companies will take in deploying their network in the future.