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DoT DEFINES NEW BASIS FOR COMPUTING LICENSE FEES

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On 25 October 2021, the Department of Telecommunications, Government of India (DoT) issued a landmark amendment (Amendment) to the telecom license conditions. The Amendment ushers in a new dawn for the telecom licensing regime in India by redefining the basis of '*adjusted gross revenue*' (AGR). AGR has been the basis of computing the license fees payable by a telecom licensee and has been a subject of debate for at least the past couple of decades. This is primarily because the definition of '*gross revenue*' (Gross Revenue) under each service authorisation, which in turn forms the basis of AGR, has thus far taken into the consideration the entire revenue of an entity (including revenue from non-telecom activities).

Background

The issue was exacerbated by the judgment passed by the Hon'ble Supreme Court of India in October 2019, pursuant to which DoT's interpretation of the license terms (and specifically the definition of Gross Revenue) was upheld. On the other hand, telecom service providers (TSP) had vociferously contested that they should only be liable to pay license fees based on the revenue generated from licensed activities. In many ways, the Supreme Court judgment shook the telecom industry, with many entities seeking refuge under the insolvency and bankruptcy regime. With the fate of the industry and consumer interest at stake, the Government announced a slew of reforms on 15 September 2021. A cornerstone of the reforms was the rationalization of AGR with the exclusion of '*non-telecom*' revenue. The present Amendment is a culmination of this measure.

Introduction of '*Applicable Gross Revenue*' (ApGR)

DoT has introduced the concept of ApGR vide the Amendment. In simple terms, ApGR refers to the Gross Revenue, which is reduced by certain prescribed items. Importantly, this list of excluded items comprises of "*revenue from operations other than telecom activities and operations*". That said, DoT has stopped short of delving deeper into what such operations would or would not entail.

Additionally, the following are also excluded from Gross Revenue for computing ApGR:

- revenue from activities under a license/ permission issued by Ministry of Information & Broadcasting,
- receipt from Universal Service Obligations Fund,

- Other income like income from dividend, income from interest, capital gains (on account of profit of sale of fixed assets and securities), gains from foreign exchange rate fluctuations, income from property rent, insurance claims, bad debts recovered and excess provisions written back, subject to fulfilment of certain conditions prescribed under the Amendment (e.g., DoT has clarified that interest earned on refundable deposits from customers, telecom vendors and other licensees shall be considered in ApGR). It appears that the overarching rationale adopted by DoT here is that income from these heads is distinct from the core operations of the entity and is otherwise not unique to telecom business.

To arrive at AGR, the prescribed heads under each service authorisation (e.g. pass-through charges to other TSPs, goods and services tax paid to the Government, etc.) will now be subtracted from ApGR instead of Gross Revenue (as under the preceding framework). Therefore, ApGR acts as a midpoint between Gross Revenue and AGR.

Other notable features

- The Amendment comes into effect from 1 October 2021 and will be applicable to the dues which arise from the operations of the licensee (i.e. TSP) after the said date. In other words, the Amendment will be applicable prospectively from 1 October 2021.
- DoT has also prescribed new formats for the 'Statement of Revenue and License Fees' for each service authorisation, based on the principles outlined above.

Comment

The issuance of the Amendment is expected to bring in the much needed solace to the debt ridden telecom industry. The benefits of the Amendment will trickle to existing players and new entrants alike. Coupled with the recent relaxation in the foreign direct investment (FDI) norms for telecom, it will also pave the way for additional investment in the sector.

That said, the Amendment may also end up opening a can of worms as it dodges the critical question of what constitutes "operations other than telecom activities and operations". In the era of convergence and proliferation of information and communication technology, in many cases (like cloud-based technologies), it is impossible to draw a line between licensed telecom services and other activities. In such cases, it would be difficult to compute ApGR (which is the new basis for AGR, and in turn license fees), bringing the industry back to square one.

Further, the new formats for 'Statement of Revenue and License Fees' will need to be scrutinized in a much deeper manner to assess the overall impact of the Amendment.

Nevertheless, the Amendment is a significant confidence boosting measure for the industry and the Government should be lauded for its timely intervention.

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