

RELIEF PACKAGE FOR TELECOM SECTOR- 4 YEAR MORATORIUM ON AGR DUES AND OTHER MEASURES*

Introduction

A significant judgment was delivered by the Hon'ble Supreme court on October 24, 2019 in relation to the licensing agreement between telecom companies and the Department of Telecom (DoT). In its judgment, the Court upheld the interpretation given to Adjusted Gross Revenue (AGR) by the DoT and ruled against the telecom companies. The Supreme Court mandated telecom operators to pay Rs. 1,19,292 crore to the Department of Telecommunications as AGR dues. Of this, Bharti Airtel's dues are pegged at Rs. 43,980 crore, while Vodafone Idea's dues were Rs. 58,254 crore.

However, later in September 2020, the Supreme Court granted 10 years to the operators to make staggered payments of the AGR dues, including penalty, interest and interest on penalty through March 31, 2031.

Vodafone Idea, promoted by Aditya Birla Group and UK's Vodafone Group, has paid Rs. 7854 crore as AGR dues, whereas Bharti Airtel has paid Rs. 18,000 crore as AGR dues.

Definition of AGR

The dispute between DoT and the mobile operators was mainly on the definition of AGR. The DoT argued that AGR includes all revenues (before discounts) from both telecom and non-telecom services. The companies claimed that AGR should comprise just the revenue accrued from core services and not dividend, interest income or profit on sale of any investment or fixed assets.

In 2005, Cellular Operators Association of India (COAI) challenged the government's definition for AGR calculation.

In 2015, the TDSAT (Telecom Disputes Settlement and Appellate Tribunal) stayed the case in favour of telecom companies and held that AGR includes all receipts except capital receipts and revenue from non-core sources such as rent, profit on the sale of fixed assets, dividend, interest and miscellaneous income.

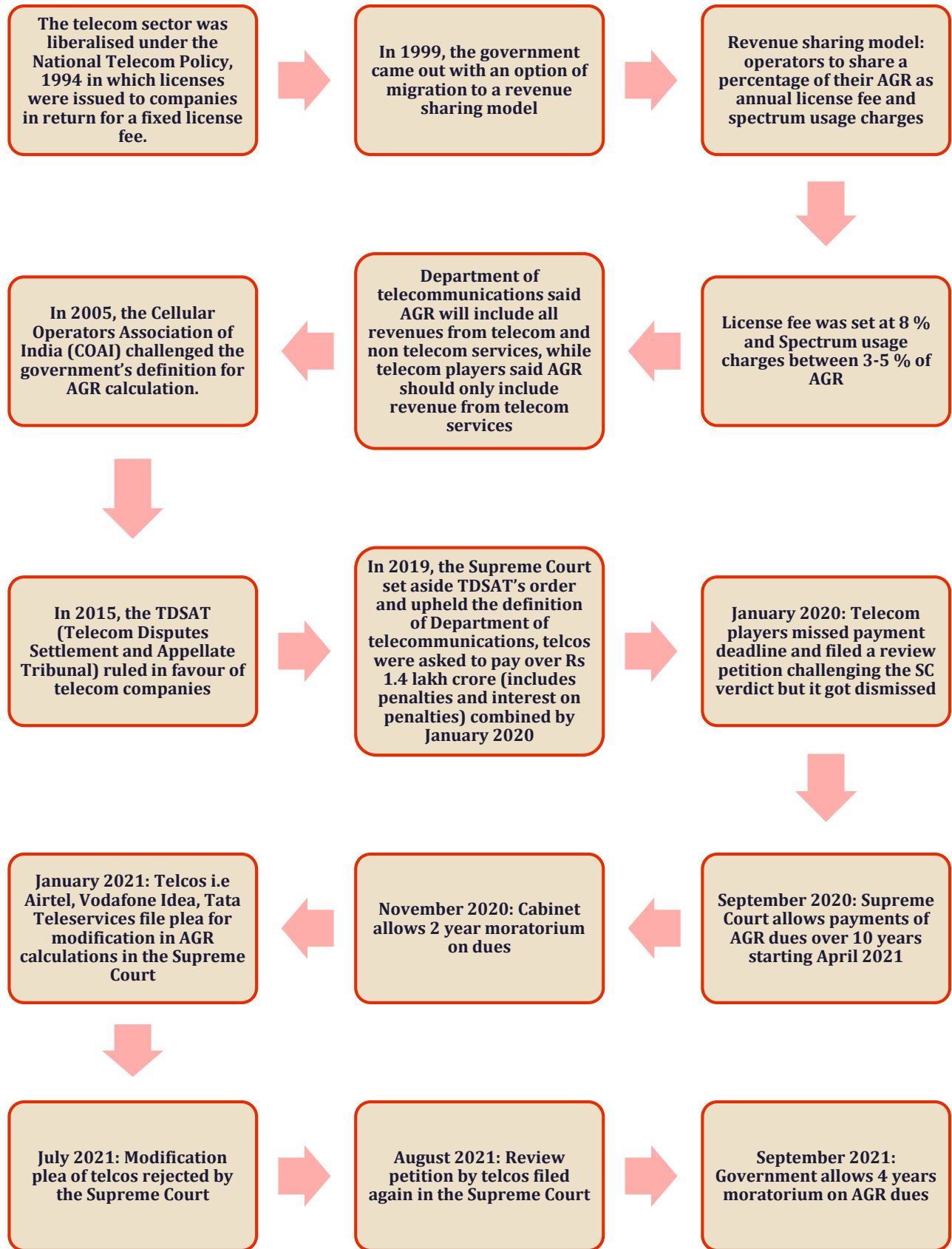
However, setting aside TDSAT's order, Supreme Court on October 24, 2019 upheld the definition of AGR as stipulated by the DoT.

In a significant decision the government in September, 2021, rationalized the definition of AGR, which had been a major reason for dispute for the sector by excluding non-telecom revenue of telecom companies on prospective basis.

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Chronology of events



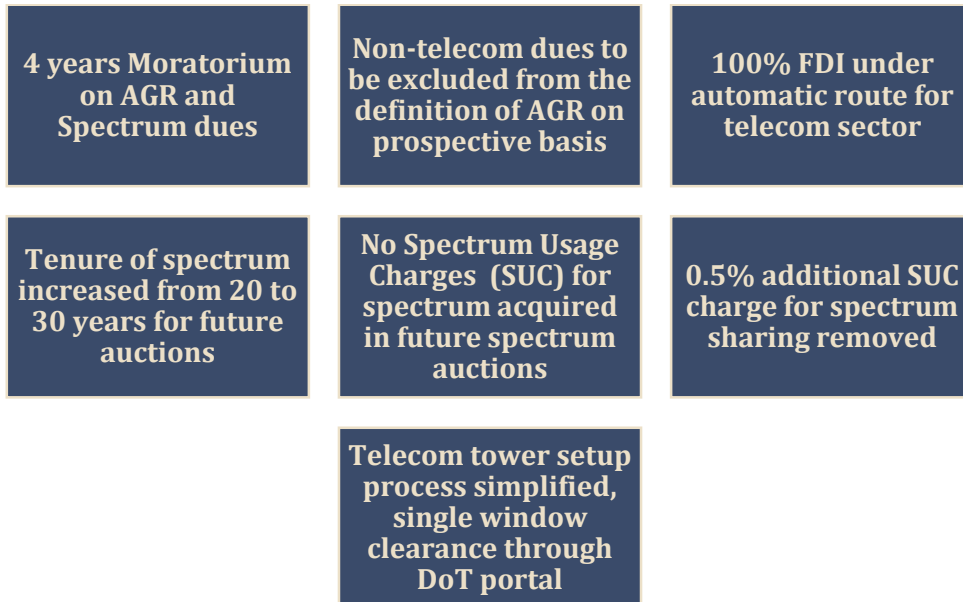
Measures approved for Telecom sector

The Union Cabinet approved several measures for the telecom sector. These measures seek to infuse liquidity, encourage investment and competition, and reduce the regulatory burden on the telecom service providers (TSPs). Key measures include:

- Moratorium for outstanding dues:** A moratorium of up to four years will be allowed to the TSPs on payment of: (i) dues on account of license fees and spectrum usage charges for the years between 2003 and 2019 (as per a 2019 Supreme Court Judgement), and (ii) dues for spectrum purchased in past auctions (excluding 2021 auction). TSPs may pay interest amounts arising due to deferment of payment by way of equity. The central government will have an option to get equity in place of the outstanding dues at the end of the moratorium period.
- Rationalization of levies:** Non-telecom revenue will be excluded from the definition of Adjusted Gross Revenue (AGR) on a prospective basis. AGR is the value of gross revenue after deduction of certain taxes and certain charges such as roaming charges from gross revenue. AGR also includes revenue from any non-telecom operations such as income from investments and income from property rent. Currently, the TSPs pay a percentage of their AGR to the central government in the form of license fees and spectrum usage charges.

No spectrum usage charges will be levied for spectrum acquired in future auctions. Additional charges for spectrum sharing will also be removed. The interest rate applicable on late payment of dues will be reduced from October 1, 2021 (2% less than earlier). No penalty and interest on penalty will be levied on such delayed payments.
- Bank Guarantees (BGs) rationalized:** The government approved a huge reduction in BG requirements (80%) against License Fee (LF) and other similar Levies. One BG would be enough instead of multiple BGs in different Licenced Service Areas (LSAs) regions in the country. For Auctions held henceforth, no BGs will be required to secure instalment payments. Industry has matured and the past practice of BG is no longer required.
- FDI:** 100% Foreign Direct Investment under automatic route will be permitted in the telecom sector.
- Procedural changes:** Spectrum auctions will be held in the last quarter of every financial year. For providing ease of doing business, cumbersome requirement of licenses under 1953 Customs Notification for wireless equipment has been removed and replaced with self-declaration.
- Spectrum Tenure:** In future Auctions, tenure of spectrum increased from 20 to 30 years. Surrender of spectrum will be permitted after 10 years for spectrum acquired in the future auctions and No Spectrum Usage Charge (SUC) will be levied for spectrum acquired in future spectrum auctions. Further, the government has encouraged Spectrum sharing by removing additional SUC of 0.5% for spectrum sharing.

Major reforms in a nutshell



Conclusion

The above steps taken by the government would go a long way in relieving the financial stress the sector is facing, boosting investments, encouraging healthy competition, offering choice to customers, infusing liquidity, and reducing regulatory burden on Telecom Service Providers (TSPs). The government also noted that there will be further reforms when 5G is auctioned so that more players would enter the sector. The telecom sector has welcomed these measure by the government which will provide the much needed thrust to this sector for its growth and development.

Reference

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