

Inputs of EBG Federation stakeholders on “Ease of Doing Telecom Business in India”

It will perhaps not be out of place to mention that many of the Policies, Guidelines & Regulations that govern a majority of the actions taken in this sector emanate from public policy considerations that were perhaps written 20-30 years ago. While these were probably justified when they were written, however with the march of technology and with the rapidly changing user's requirements & needs, time has probably come to review all of them and align them in view of the already changed and fast changing ecosystem.

Though lot of steps are already being taken both by the Regulator in framing forward looking regulations as well as by the DOT in framing forward looking policies which lay emphasis on innovation and equitable growth of the sector, however EBG feels that it may be important to identify the bottlenecks/obstacles that are perhaps acting as an barriers to the ease of doing business in this sector which perhaps could be overcome through judicious intervention by the Authority.

EBG Federation respectfully submits that some of the policies in India in the previous 5-6 years have adversely impacted the OEM's business sustenance.

Some of the measures that have impacted global OEM's in India are;

- 2011 – security testing & certification notification – no imports over a year hence no network deployments/ expansions
 - 2012 – license cancellation – no network rollouts
 - 2014 – reintroduction of customs duties on certain ITA I products
 - 2015 – Increase in Dividend Distribution Tax
 - 2016 – Lack of clarity on SEZ with indications of withdrawal of benefits.
- EBG is of the view that the government should holistically promote an overall electronics manufacturing ecosystem within the country which is plugged into the global supply chain. As you are aware, the current raw material and electronic components ecosystem in the country is still developing and needs to be expedited.
 - Secondly, to increase scale, a global manufacturing eco system needs to be created. It is a well-known business practice that multi-national companies before investing, evaluate the country's trade barriers, consistency in policy environment, investor friendly policies and adherence to global supply chain management and eco-system norms

For example, Preferential Market Access (PMA) Applicability to Government Procurement. For many products and technologies there is a lack of local vendor base and for many products the requirement in TSP's network though critical but is of low volume. For such low volume cases it is not viable for a global vendor to have multiple manufacturing facilities. Forced localization policies will limit the

flexibility of government agencies in procurements with the potential to increase cost, decrease choice, and impair the ability of the government to meet its legitimate security, performance, and cost objectives.

Government has the self professed goal of attaining net zero electronics imports. On similar lines to overcome trade barriers to global OEMs who have since long had local manufacturing facilities for making items which are consumed in bulk volumes in the TSPs' networks, it is requested that the existing PMA policy maybe suitably adapted to also include "Net Zero Electronics Imports " philosophy. Such Global vendors who have made investments in India and have created manufacturing facilities in India should be treated on par with other domestic suppliers on this account instead of being asked to be PMA compliant for every product to be manufactured in India which is perhaps not feasible due to a variety of reasons as enumerated above.

Further there is a complex Value addition criteria which has been introduced for local manufacturing on account of local registration of IPR which cannot be adhered to by all the vendors in all the cases.

Recommendation: Government should adapt/modify/amend the PMA guidelines suitably to incorporate ' Net zero electronic imports " philosophy and treat global vendors/OEMs with local manufacturing facilities on par with domestic suppliers as PMA compliant.

Government should focus on creating a component / raw material / silicon manufacturing in India and till such time all such products are not available locally and which are intrinsic for manufacturing for finished telecom equipment in India should be considered a part of local value addition. The same is now allowed in the case of electronics equipment by MeitY.

Also, stability in tax policies and removal of market access restrictions including the proposed new duty structure would allow for a roadmap wherein global players from the hi-tech electronics manufacturing sector would be encouraged to invest.

- EBG members laud the efforts of TRAI in bringing forth this consultation as TRAI should protect the interests of service providers and consumer of the telecom sector
- Regulatory decisions should be taken on the basis of very transparent market analysis and these decisions should be further supported by the Regulatory impact Analysis (RIA), to ensure the orderly growth of the telecom sector.
- we are in support for a regulatory framework that provides technology neutrality, service neutrality, operational flexibility, reliance on market forces, promote an effective and sustainable competition, minimalistic regulatory compliances and ensure the business sustainability in long term so that policy can keep up with the short technology lifecycles inherent in the telecom sector.

In addition, EBG has listed issues of members of processes in other areas which may be requiring simplification and could be relooked at.

Telecom Service Providers and Infrastructure Companies

Possibility of introducing reforms in service tax on spectrum charges, E-KYC, and rationalization of USO to be explored.

1) Reduction of USOF levy tied to achievement of rural penetration

Out of the INR 80,000 crores collected for the USOF between FY2003 to FY2017 (Prov.), INR 47000 crores remained unutilized as on October 31, 2016, representing 58% of the USO levy collected. Operators are still being subjected to an ever-increasing heavy burden of contributions to USO fund with the same percentage of Adjusted Gross Revenues.

Recommendation: We request a reduction in the USO levy to 3% of AGR from the present 5% of AGR with immediate effect and a further reduction of USO levy from 3% to level of 1% or even 0% with further increment in rural tele-density /coverage in a time bound manner(Rural Teledensity has increased from 39.22 as on 31st March 2012 to 53.27 as on 31st December 2016 against Urban teledensity from 169.55 as on 31st March 2012 to 170.15 as on 31st December 2016 which relates to an approximate growth of 138million subscribers in rural areas vis a vis 57million subscribers in urban areas). This perhaps,justifies the request for reduction in the USOF levies.

2) Clarification on ambiguous AGR definition and rationalizationReduction of Spectrum Usage Charges (SUC)among some of the issues pending debate.

Industry has made various representations to DoT to accept the TRAI's recommendations for the uniform SUC rate of 3% across all spectrum bands and gradually to 1% of revenues over next 1-2 years.

Government has taken decision of SUC of 3% for future auction and a Weighted average for existing allocations with floor of 3%;

Recommendation: EBG suggests SUC at a uniform rate of 3% across all spectrum bands to start with and a reduction of the SUC rate in a phased manner bringing it down gradually to 1% of revenues over next 1-2 years.

3) Unreasonable reserve pricesdiscourage participation and fair market discovery of the value of spectrum. In the spectrum auction held in October 2016, 700 MHz remained unsold due to high reserve price. There is a need to ensure reasonable reserve price to ensure successful auctions.

Telecom Equipment Manufacturers

4) Anti-Dumping Duty (ADD).

In year 2010 Directorate General of Anti-dumping and Allied Duties (DGAD) imposed ADD ranging from 3% to 266% in respect of import of Synchronous Digital Hierarchy (SDH) transmission equipment imported from China/Israel. For European OEM's the rate of ADD is 45% on CIF value and this is making European products uncompetitive in Indian Telecom Market. DGAD initially imposed this ADD for 5 years and despite representations (by telecom operators/equipment vendors) DGAD in Dec, 2014 has initiated the Sun-set review (in progress) to further extend the period for imposition of such Anti Dumping Duties and to examine the need and adequacy of the safeguard duty. We are of the view that fundamental basic requirement of the Anti Dumping Laws being completely ignored to favor some local equipment vendors.

This is also important as SDH technology will be phased out soon and will be replaced by DWDM, OTN and PTN technology. Given that development in technology has resulted in multiple products / functions being available in one single unit which hitherto were available only as independent products, likewise development in technology has resulted in SDH, OTN and DWDM being available together in one box, which earlier were available as separate products only. Tax authorities may use these developments to their benefit and may impose levy of anti-dumping duty on box as a whole even where SDH is just a part of box having multiple technologies.

Further although said notification itself is still under fundamental challenge since 2009 before the Supreme Court and the CESTAT but Department of Revenue Intelligence had, on the basis of complaints filed by the same domestic manufacturer, initiated coercive investigations against telecom service providers and equipment vendors for recovery of alleged evasion of anti-dumping duty. Most of these recoveries were passed on to the equipment vendors by the service providers, in our case these recoveries by service provider has resulted in multi millions additional cost and has also forced European OEM's to pay ADD even on import of components for SDH manufacturing in India

Recommendations: It is hereby suggested to withdraw ADD on SDH products as it is already 8 years since it was introduced. With technology advancements, demand of SDH products has also reduced. Only small quantities are required for providing legacy services and local manufacturing is unviable for such small volumes.

Also it should not be levied on other products viz. non-SDH products viz. DWDM, PTN, etc as due to advancement in technology, new Optical Transmission Products have emerged in which SDH functionalities are subsumed. Such new products should not attract ADD.

5) Basic Custom Duty Exemption for SEZ supply to DTA:

10% BCD was imposed as per union budget of 2014 on certain telecom products under non ITA category. The above amendments were made to promote domestic

manufacturing; however, the adverse impact of the same on the SEZ manufacturing (which is also part of domestic) has been ignored. Suitable amendments should be made in order to give BCD exemption on said goods if they are manufactured in SEZ area and cleared in DTA. The objective to introduce the 10% Basic Custom duty was to encourage local manufacturing in India, invite investment, create jobs and promote electronics export from India. This incidentally is also being fully undertaken by a manufacturer operating from an SEZ in India. With the budget ruling, 10% Basic Custom Duty is imposed on manufacturers operating out of SEZ if they are selling in DTA. This will make them noncompetitive to sell in DTA and defeat the purpose of the setting up manufacturing for Telecom and Electronics in SEZ in and for India. For setting up manufacturing for Telecom Equipment, scale is needed which can only be achieved if the vendor is able to address both local and exports, else the business viability will not be there. It should perhaps be recommended to “Not levy Basic Custom Duty on the finished product, but instead if there has been any benefit that a SEZ manufacturer would have otherwise had on input (components) vis -viz a DTA manufacturer, the government may be requested to charge the Duty foregone by it on inputs from a manufacturer operating from SEZ which otherwise would have been charged to a DTA manufacturer”. This we believe would bring both the DTA manufacturer and a SEZ manufacturer on par with each other for selling in DTA and have similar advantage to an importer of Non ITA Telecom products.

6) In-country security assurance testing beginning April 1, 2018:

The current deadline to implement mandatory in-country security testing of Telecom Network Equipment before deployment in the network is 1st April 2018 as set by Department of Telecom (DoT) vide their notice dated 29.03.2017.

There is a lack of existing lab testing capacity in India. India's 2012 National Telecom Policy advocates to build national capacity in security testing. The current lack of lab testing capacity in India risks major supply chain disruptions and increased costs for TSPs and their vendors, which will in turn affect consumer pricing. This situation must be avoided and as an interim action, the implementation of the requirement to test network equipment in India should be extended till the time the specifications for security are defined by 3GPP and must be introduced in phase manner.

Recommendation: Products should be tested once per major HW / SW release rather than batch testing which if introduced would create supply chain bottlenecks and increase the CAPEX for operators and have an indirect affect to increase the import bill of electronics and telecom of India besides delaying implementation/roll-out of critical networks

7) Re-import of used spares post repair and ease of import of used R&D equipment

Currently Ministry of Environment and Forest (MoEF) and MeitY (Ministry of Electronics & IT) to prevent old electronics equipment from being imported into India under the e-waste policy and the “Make in India & Digital India Campaigns” to reduce

electronics import in the country have restricted import of old electronics equipment older than one year and to re-export within 3 years.

i) R & D LABS

Global companies are establishing R&D labs in India and R&D projects typically deploy used capital equipment for such projects. R&D activities are carried out on a collaborative approach between different R&D labs of vendors at multi location, which requires during testing and project phase shifting of capital equipments for R&D purpose between different R&D locations globally.

ii) R & R

As per standard global hardware repair and return practice for equipment under warranty and annual maintenance contracts, for cases where it is not possible to repair the hardware locally it is generally sent to a centralized repair hub which has relevant expertise and inventories of components to undertake specialized repairs. However, in some cases (may be 20-30%) it is not possible to repair or return hardware with same serial number, due to damage to card, product discontinuity, non-availability of components etc. hence in such cases, same card with different serial number is supplied.

Recommendation: Capital goods for R&D purposes with no further sale or commercial transaction motive should be free to import. Further R&D equipment has longer life cycle and there should be no need to re-import the same. Else global companies would be forced to move out the R&D operations to other suitable locations.

- 8) **WPC clearances** – time taken for clearances needs to be improved greatly and a monitoring mechanism need to be in place for the abnormal delays with reasons. Significant amount of work on development of new technologies is being moved to other countries because of uncertain and delayed approval processes.

Recommendation:

Modernisation & improvement of WPC to grant it a unique position of a nodal agency responsible for efficient management of spectrum and for it to provide time bound response to all activities/queries related to SACFA clearance/Issue of Import License etc

- 9) 24x7 Custom Clearances – A barrier for Exports and Imports as well (takes longer for clearances Vs other countries 1 or 2 days). To keep mobilizing the Industry and economy, availability of Customs clearance 24x7 all around the year would be very beneficial. This will be a very important step in optimizing productivity of the country and economy. And ensure that resource wastage and idling due to unavailability of material because of long Customs holidays becomes a thing of the past.

- 10) TEC I/F approvals – Age old process to interconnect (POI) with BSNL and MTNL. Time required to have this approval varies from 1 year to many years. Interface approvals requirement needs a review and should be discontinued with.

Interface approvals requirement for the Point of Interconnect (POI) with BSNL and MTNL should be discontinued. This was a requirement that was established during pre-**economic** liberalization in **India** and pre-national telecom policy & telecom reforms, where DoT/ BSNL was only the provider of fixed telephony services as a

national carrier. This policy of Interface Approval requirement to induct or interface equipment with the National carrier would have been implemented to stop non-standard equipment's that could cause damages to the switching equipment, when "Solid State Relays" are operated (may be to prevent relays generating high currents asymmetrically damaging the connected apparatus).

With the prevailing advancements in technology, products being developed, miniaturization of silicon components and most importantly the products being manufactured by the reputed global manufacturers based on international standards such as ITU, 3GPP, ETSI, ANSI etc.; it is highly unlikely that an equipment being interfaced with BSNL/ MTNL would cause any damage; that is not causing to private telecom operators when they are interconnected with each other at their POI's.

Also, time required for this approval stretches beyond one year at times and DOT need to review this practice and discontinue it. Operators have a robust system under which every node is thoroughly tested before induction. No testing is required if two Private operators interconnect, hence there is no rationale for this to be mandatory for POI with BSNL / MTNL.

We request Government of India to abolish the age old requirement of TEC I/F approval as part of improving ease of doing business conditions

11) **Ensuring Intellectual Property Rights, Effective Protection & Enforcement and Computer-Related Invention (CRI) policy:**

India has made some progress in bringing the protection of IPR in line with modern international standards in areas such as patents and copyright. However, their effective enforcement is critical to our businesses, yet innovative companies operating in India continue to face significant challenges. Without proper protection of regulatory data, any incentive for innovation, commercialization and trade of products and technologies will be significantly reduced. In addition, India has a regrettable history of denying or revoking patents and of forcing IP holders to grant compulsory licenses and limiting the opportunities for market economics to operate freely within copyright-based industries.

12) **Computer-Related Invention (CRI):** The recent CRI policy is detrimental to ICT sector at large and to Digitalization efforts of Indian Government including Make in India and Digital India. The present CRI Guidelines actually put a complete bar on patentability of applied research in areas such as the ICT sector, and effectively eliminates an entire technology field from patent eligibility. While the world is moving towards virtualization and Cloud, Software development and innovation plays key role and require significant R&D investments.

Also, the current CRI guidelines, 2016 are not consistent with the prevailing Law. It effectively puts a blanket ban on computer implemented inventions which will negatively impact IP reliant corporates and freezing innovation cycle.

Recommendation:We request Government of India to reconsider implementing the new CRI Policy that's not protecting innovations and investments made in Research of Development of Products (both SW & HW) and Services.

13) **Dividend Distribution Tax:** New formula in FY2014-15 budget raised the tax on dividend payout

The government rejigged the method of computing the dividend distribution tax. In July 2014, it was proposed that income and dividend distribution tax will be levied on gross amount instead of amount paid net of taxes that has led to a slightly higher tax. As per current rules, DDT (the Dividend Distribution Tax) is 15% plus additional surcharge. The effective tax rate comes to around 16.995%.

The government's new method to calculate the dividend distribution tax will effectively increase the effective tax rate, for instance if Rs. 85 was the dividend amount and 15% of it was DDT, new proposals would mean DDT is levied on Rs. 100 and thus the tax will go up by around 2.25%,"

The higher tax being paid by companies will essentially mean investors get lower dividend. This would discourage FDI in to the country and India being perceived as a non-favorable/ not as a business viable destination by large global investors community.

Recommendation:Request the government to the possibility of getting dividend taxation back to the earlier level and reduce the effective DDT

Standardisation

14) **Updates on regulations: transition periods are too short. It is suggested that these may be aligned with 2 year transitions as is a practice in EU and other parts of the world**

By setting the transition period for updates and amendments to (Bureau of Indian Standards (BIS) regulation too short, the industry and the test labs cannot fulfill the required actions to comply with the updated regulations. Due to this, BIS has to postpone due dates for regulations and amendments several times which weakens the credibility of BIS: our suppliers do not respond that quick anymore because they are counting on a relaxation of the transition period.

Recommendation:

We request BIS to consider a sufficient transition period say 2 years and during this transition period allow concurrent application of both old and new editions. This practice would also help BIS avoiding frequent extensions and its implementation as suggested by Industry. Considering availability of components and mobilization of resources and suppliers (OEM/ODM), re-manufacturing & required test time the least minimum time for this transition time is one year.

Please note - The EU harmonization process works well, the transition period for EU standards is three years and for any new/amended legislation it is 2 years. In EU concurrent application of both old and new editions are allowed during this transition period.

15) Acceptance of international CB safety report and EMC report from laboratory, recognized by ILAC or EA MLA for BIS registration

The shipment of samples for test to BIS test labs is time and cost consuming. Other countries accept CB report and EMC report to grant certificate after review by their certification engineers.

Recommendation:

As the CRO scheme has matured well, items compliances are getting in place, we request BIS to accept the CB report and EMC report from accredited laboratory outside India **also** when products are tested according to the applicable international standards technical equivalent to Indian Standard in force.

This would be in line with Article 12 of “THE BUREAU OF INDIAN STANDARDS ACT, 2016 NO. 11 OF 2016 [21st March, 2016.]”:

Quote

12. (1) The Bureau may notify a specific or different conformity assessment scheme for any goods, article, process, system or service or for a group of goods, articles, processes, systems or services, as the case may be, with respect to any Indian Standard or any other standard in a manner as may be specified by regulations.

Unquote

ILAC: International Laboratory Accreditation Cooperation

EA MLA: European Accreditation Multilateral Agreement

16)Registration validity: include option for 5 year initial registration validity

As per current provisions, every registration needs to be renewed after every 2 years, even if neither the registered products, nor the applicable standards were updated. It is a short period especially when there is no change in the registered product.

Recommendation:

Please note - 2 years’ renewal may be suitable for consumer products but for high precision technology equipment the typical lifetime is more than 5 years.

We therefore ask BIS to consider the possibility to have an initial validity of 5 years when registering a new product with BIS and afterwards renewal period can be 2 years.

- ⇒ Implement an initial registration validity of 5 years next to the existing 2 years.
- ⇒ In order to differentiate if needed the validity date may be linked to the cost of a product (more expensive (if cost > 5K USD) -> longer validity of 5 Year is permissible)