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TRAI/FY22-23/49
Dated: 06.09.2022

To,
Shri Amit Sharma,
Advisor (Finance & Economic Analysis)
Telecom Regulatory Authority of India,
Mahanagar Door Sanchar Bhawan,
JawaharLal Nehru Marg,
New Delhi – 110 002.

Subject: Response to Consultation Paper on “Rationalization of Entry Fee and Bank Guarantees.”

Dear Sir,

This is in reference to TRAI’s Consultation Paper on “Rationalization of Entry Fee and Bank Guarantees” dated 26.07.2022 (CP No. 10/2022).

In this regard, please find enclosed our response for your kind consideration.

Thanking You,

Yours’ Sincerely,
For Bharti Airtel Limited

A handwritten signature in black ink, appearing to read 'Rahul Vatts', is placed over a light blue rectangular background.

Rahul Vatts
Chief Regulatory Officer
Encl: a.a

Response to Consultation Paper on Rationalization of Entry Fee and Bank Guarantee

Executive Summary:

We thank the Authority for this Consultation Paper and giving us the opportunity to respond to issues of the Entry Fee (“EF”) and the Bank Guarantees (“BGs”). While revisiting the very need & quantum of these financial instruments, credence must be given to the existing commitment of telecom licensees, the serious capital investments made by them in networks and the role this sector needs to be play in a rapidly digitizing economy

In summary we recommend the following:

Entry Fee (EF):

1. EF should not be revised downward. Present EFs are no entry barrier for serious telecom players.
2. If an applicant (same entity) reaches the maximum amount as prescribed for all authorization under UL (Rs. 15 Cr), no further EF be charged for remaining authorizations
3. EF for each authorization should continue to be charged separately based on the scope of license and as per current practice

Bank Guarantees (BGs):

4. The concept of BGs should be done away with. Indian Telecom market is mature enough and precious capital/fund blocked in BGs should be put-to better productive use
5. **Imposition of BGs to securitize dues is not consistent with other statutory dues like tax dues - there are no requirement of BGs under Income Tax Act or under GST laws to securitize such due payments.**
6. Reducing the regulatory levies on the sector to recover only the cost of administering the license/ resources, is better approach to reduce and mitigate the risk on dues thereby further limiting the need of securitization.

We provide our detailed comments and answers to specific questions in the following sections.

Response to Consultation Paper on Rationalization of Entry Fee and Bank Guarantee

Preamble

Entry Fee, and Bank Guarantees to securitize the licensing and performance obligations under the specific Licenses are important Regulatory costs that need serious consideration, as:

1. It puts financial obligations on the licensees, that can be very daunting if excessive or not in sync with the time, blocking precious funds/capital and
2. Need, extent & quantum of these can impact sustainable competition and thus correct approach is necessary for orderly growth of the sector

Inability to address the above two objectives can cause serious market distortions. A balanced and approach can help create a robust, resilient, competitive and financially viable sector, to the ultimate benefit of socio-economy.

The two instruments serve two different purposes.

The Entry Fee plays an important role for ensuring that financially credible and serious players enter the telecom industry and adhere to critical parameters while operating in an industry of vital importance. It is putting the seriousness on table to establish the intent in a sector, that requires billions of rupees annually and substantially more every 5-7 years for technology upgradation and new services. Even where networks may be light for offering limited services under different service authorizations (e.g. NLD/ILD), the principle of having seriousness of intent at the entry, should not be diluted.

The BGs come next i.e. once a player has entered in the market, it needs to have rolling capital to not only fund the CAPEX, but also manage substantial OPEX. Hence, the working capital and/or funds requirement should be allowed to be put to best use in serving the customer once in the market. **Blocking of huge funds towards securitization of Government dues which is more towards compliances creates additional burden and can limit the expansion and growth of networks and services.**

Both the instruments if applied in tandem and in considerable proportion, limit the potential of the sector. In-fact, having BGs which are post entry requirement – serve no other purpose except satisfying the requirement of securing risk of default on government dues, **which, automatically mitigate if a serious enough and trustworthy player operates in the market.** Hence, it could be a better option that entry fee is robust enough for a serious player to enter in the market for the type of service authorization it seeks and, to give comfort to the licensor / regulator that it will be equally putting the serious efforts in spending in infrastructure and services post entry. An entry fee along with the appropriate minimum net worth and paid up capital should address the concerns.

Response to Consultation Paper on Rationalization of Entry Fee and Bank Guarantee

At the outset, Airtel welcomes deliberation on the important issue of rationalization of Entry Fee and BGs. Continuous simplification of the regulatory regime and easing of the financial burden will lead to a positive payback for the government, TSPs and customers that depend on telecom services.

Entry Fee:

One of the rational for imposing Entry Fee ('EF' has been the extensive usages of public resources by firms in certain industry. As has also been pointed out by the Authority, *"while entry fees are imposed to reckon for use of public resources as well as to inhibit non-serious players,..."*

Further, requirements of national security like lawful interception, data protection and privacy of customer data are equally critical, and complying with them is responsibility of every sectoral player. These requirements need serious investments into telecom systems and capabilities.

Thus, EF **(along-with minimum net worth and paid up capital) should determine the seriousness of an entrant/operator at the first step itself**, and, post obtaining license, such a player shall be free to create confidence by investing in networks and services than getting loaded with BGs.

Contextually too, the Government has constantly reformed the licensing framework, consistent with technological and service developments, and post the introduction of Unified License (UL) that allowed different services authorizations in various combinations (national, state); the entry fee has already been rationalized substantially in a fair, reasonable and equitable manner.

Apropos, there is no need for any reduction in entry fee for any license / authorization. Statistically too, this assertion about entry fee not being a barrier is proven without doubt:

- a. The number of Telecom VNO Licenses (Access Service) has risen from 28 (cumulative Nos.) in 2017-18 to 346 in 2021-22. Similarly, Telecom VNO Licenses (ISP) have risen from a mere 73 (cumulative Nos.) in 2017-18 to 489 in 2021-22. Thus, it could be well inferred that the entry fee has not in any way impacted the number of players in the sector and the present level of Entry Fee is not acting as a barrier for new entrants.¹
- b. Rather huge growth of VNO and ISP licensees that has happened within the current Entry Fee, has not resulted in equivalent levels of actual service launches. Thus, the real issue here is not, the current level of entry fee, rather it is the post entry, serious investments and high regulatory levies that deter many entities.

¹ Source: <https://dot.dashboard.nic.in/DashboardF.aspx>

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Bank Guarantees:

India's telecom market has matured, and serious licensed players have demonstrated in last 25 years, that, what they need from policymakers are less onerous financial obligations and freeing up precious capital/ funds to be deployed into network and services. To that extent, the Cabinet reforms of last year, already recognized this fact, and reduced the BGs requirement.

We believe that government can go a step further in having faith in sectoral players, and do away with the BG requirements (PBG and FBG both) altogether, in the spirit of reforms.

In other services segments too, the Government has taken progressive step and no Bank Guarantee is required for registration of Other Service Providers (OSPs), Public Data Office Aggregator (PDOAs) and In-Flight and Maritime Connectivity Authorisations.

Imposition of BGs to securitize dues is also not consistent with other statutory dues like tax dues - there are no requirement of BGs under Income Tax Act or under GST laws to securitize such due payments.

As soon as the Government put faith in the sector last year and reduced BGs, the industry resoundingly responded by committing into launch of 5G services and spectrum auctions this year. **It allowed TSPs to prepone the future liability of deferred payment, and some of them pre-paid their deferred Spectrum liability.**

This clearly highlights that precious capital / funds can always be put to better use by a serious player in the market, by investing in networks and services, which would also be in line with national priorities such as the need to roll-out 5G swiftly, accelerate the digital economy, ensuring connectivity for all. The telecom players already assume a high degree of business, operational and reputational risk. Between the Licensor and Licensee, a win-win paradigm is important so that both business and socio-economic objectives are met.

In summary, while there is a case for retention of entry fee to ensure that serious players participate in the industry, **Airtel believes that the BGs should be completely eliminated in order to free up working capital for network expansion.**

With the above context setting, we now provide our response to questions raised in the consultation paper.

Response to Consultation Paper on Rationalization of Entry Fee and Bank Guarantee

Responses to Questions on Entry Fee (Chapter II)

Q1. Should the entry fee be rationalised from the present levels in the UL and UL (VNO) licenses? Please support your comments with detailed justification.

Q2. If the answer to Q1 is yes, should the entry fee be rationalized across all authorizations or some specific authorizations, both within each license and across licenses? Please justify.

Q3. What should be the methodology for arriving at the rationalized entry fee and/ or other terms and conditions for each authorization? Please provide the detailed rationale for each authorization.

Q4. Should a uniform Entry Fee be charged for each of the authorizations in the UL and UL (VNO) licenses, both within each license and across licenses? Please justify.

Airtel Response

While Telecommunications is an essential service and must be available to all citizens, and needs healthy sustainable competition to benefit the consumers, it is also a strategic and sensitive sector (security, data protection and privacy) that needs credibility and viability. **Thus, the entry fee should be the first yardstick (along-with minimum Net-worth and Paid-up capital) to invite serious players into the industry.**

To that extent, we believe that the current level of entry fee is affordable, and not a deterrent, and hence there is no need to be rationalize it downwards. Statistically too, this is clear:

- a. The current entry fee has already been reduced through various amendments in the License by DoT. The Government already delinked the allocation of spectrum from license in 2013 and significantly reduced the entry fee from Rs. 1,658.57 crore under UASL 2003 to Rs. 15 crore under UL 2013 regime for a pan-India access License.
- b. The number of players in the sector is driven by business viability and ROCE. The business viability of the telecom sector has been adversely impacted by high levies and unsustainable tariffs. Despite this, the number of Telecom VNO Licenses - Access Service Licenses has risen from 28 (cumulative Nos.) in 2017-18 to 346 in 2021-22. Similarly, Telecom VNO Licenses - ISP licensees have risen from a mere 73 (cumulative Nos.) in 2017-18 to 489 in 2021-22. Thus, it could be inferred that the entry fee has not in any way impacted the number of players in the sector and the present level of Entry Fee is not acting as a barrier for new entrants.²

² Source: <https://dot.dashboard.nic.in/DashboardF.aspx>

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- c. In-fact, if anything, it can be counter argued that this growth of VNO and ISP licensees that has happened within the current Entry Fee, has not resulted in equivalent levels of actual service launches. Thus, the current level of entry fee is not the bottleneck, rather it is the post entry serious investments coupled with high level of regulatory levies and taxes that deter many entities.

Irrespective of the nature of license, the Entry Fee should not be reduced, in order to ensure that healthy competition and level playing field prevails in the industry which would enable the sector to attract investments and encourage only serious players into sector.

Issue of Entry Fee for Individual UL Authorisation vis a vis full UL Authorization in one go:

While the maximum UL entry fee for all service areas and all service authorisations amount to Rs. 15 Crore, however this amount is breached in case an existing licensee entity who has a specific/limited authorisation expands into more authorisations and/ or service areas individually. The sum total of individual authorisations and ULs can amount to ~Rs. 27 Cr. if the entity acquires full gamut of UL authorisations individually across service areas but over different period of time. For instance, if a single application is made for all authorizations (including Access and carrier authorizations) under UL, the total entry fee is Rs. 15 Cr but if applications under UL are made just for 16 Access Authorization the desired entry fee would be Rs. 16 Cr. This would further increase if the same applicant applies for other authorization under the same UL. TSPs were granted initial licenses at different period and hence the renewals also happen at different time intervals. TSPs should not be discriminated for such legacy issues.

This disparity and competitive disadvantage should be removed, and an entity which wants to expand into new authorisations, in a progressive manner due to commercial and financial reasons, should not be made to pay more than the maximum amount of Rs 15 Crore.

Therefore, we recommend that **as soon as an applicant (same entity) reaches the maximum amount as prescribed for all authorization under UL, no further entry fee should be charged for adding the remaining authorizations under UL.**

Q5. What should be the amount of the uniform Entry Fee for various authorizations? Please justify.

Airtel Response

At the outset, we do not agree with having a uniform Entry Fee for various authorizations, and any attempt to bring uniformity across authorizations will defy the very basic premise of having separate

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services authorization itself. If the individual authorisation fees needs to be uniform, then where is the rationale for services to be individually authorized at first place?

A uniform entry fee for different authorizations means that any player can enter into any service segment without commensurate capital and technical commitment, which other players have been made to undergo previously. This clearly will be a discriminatory and may lead to serious non level playing issues and dilute the techno-commercial aspect of having separate scope of services for separate authorisations e.g. the present fee for various Authorizations within UL varies from INR 0.002 Cr. for M2M 'C' (SSA) and ISP 'C' (SSA) to INR 1 Cr. per Access Service for a LSA. The differentiation in authorisation is also to account for vast difference in services, their scope, technical aspects and seriousness required. Hence it will not be prudent to have one uniform EF for all service authorisations.

The only exception would be in context of our previous submission i.e. once the same entity has expanded its authorization and reached the max limit of 15 Crore EF, there should not be any further amount of EF charged for any additional authorization.

In view of the above, EF should be continued to be charged separately for each authorization and there should not be any uniformity in this. Each authorisation should continue to be along-with appropriate minimum Net Worth and paid-up Equity criteria.

Q6. Should the Entry Fee in licenses/ registrations/ authorisations/ permissions, other than UL and UL (VNO) be rationalized? If yes, please provide the reasons and appropriate levels of entry fee for each of these licenses/ registrations/ authorisations/ permissions.

Airtel Response

As per Appendix-VII of TRAI's consultation paper, except for MNPO license and Captive VSAT license, no Entry Fee is currently prescribed for any of such indicated licenses/ registrations/ authorisations/ permissions, thereby making it effectively free to enter for any entity / player. As regards MNPO licensee and Captive VSAT license, the present fees are appropriate given scope of their licenses and hence require no further rationalisation.

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Responses to Questions on Bank Guarantee (Chapter III)

Q7. Is there a need to continue with the practice of the Bank Guarantee in various licenses/authorizations? Please Justify.

Q8. If the answer to Q7 is no, then what practice should be followed to secure the Government dues and performance of service providers?

Q9. Is there any justification for merging the two bank guarantees i.e., Financial Bank Guarantee and Performance Bank Guarantee? Please give detailed justification.

Q10. What should be the methodology to calculate the amount of merged Bank Guarantee? Please Justify. What should be associated terms and conditions with reference to financial and performance parameters?

Q11. What should be the amount of merged bank guarantee that should be made applicable for new entrants during the first year? Please justify.

Q12. What should be the methodology to review the merged Bank Guarantee and after how much time? Please justify. In case of failure to meet only performance parameters or only financial parameters what should be the methodology for partial encashment of BG?

Q13. Should the merged bank guarantees be applicable for new entrants as well as existing licensees other UL/UL(VNO)? Please give justification for your response.

Q14: Is there any need to merge or review the bank guarantee for the licenses/ registrations/ authorisations/ permissions other than UL and UL (VNO)? Please justify.

Airtel Response

We firmly submit that there is **no need to continue with practice of BGs** in various license/authorisations.

A BG is a financial backstop offered by a lending institution as a security that if the debtor fails to settle a debt or meet its obligation, the bank will cover it. At present, DoT requires the bank guarantees (including on license renewal) to protect its interest towards:

1. Securitization of LF and SUC due payments
2. Create obligation for Roll-out

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The industry has matured over last 28 years and the existing players have ably demonstrated their performance and experience, thus time has come to enable industry to be able to mobilise and deploy the precious funds/capital in generating value for all stakeholders by putting more investments into digital infrastructure, networks, services.

While the Government took progressive steps last year when it reduced the value of BGs by 80%, still considerable amount remains locked in BGs. On a conservative basis, we estimate that >Rs. 7,000 cr. may still be locked in terms of BGs with DoT for the industry as a whole.

The amount blocked in BGs benefits none (neither TSPs nor the DoT), except perhaps the lenders. Rather, if such securities are released, it shall free up the working capital flow for the TSP's and remove the infructuous payment of charges and would generate value for the TSPs. This benefit was seen recently when relaxation in BG norms unlocked the value for TSPs who reciprocated the same by making pre-payment of deferred Spectrum Auction payment as well as participating overwhelmingly in the recently concluded 5G Auction.

Imposition of BGs to securitize dues is also not consistent with other statutory dues like tax dues - there are no requirement of BGs under Income Tax Act or under GST laws to securitize such due payments.

The aspect of securitizing the Government dues: While telecom companies are at the center of the economy today, having already invested huge money in building the network, participating in the Auctions, have generated huge value for the exchequer, apart from increasing contribution from indirect taxes like GST.

In recent auctions, the Government also decided to not securitize the deferred Spectrum Auction payments as well as the MROs, which was a norm previously.

The Government has also taken progressive step as no Bank Guarantees are required for registration of Other Service Providers (OSPs), Public Data Office Aggregator (PDOAs) and In-Flight and Maritime Connectivity Authorisations.

Thus, there should not be concern for securitization of Government dues from established players. Their success and failure shall have a huge bearing on the economy itself.

The risk to government dues is actually emerging due to high levels of recurring and sector specific levies i.e. LF/ USO fee/ SUCs. The time has come to substantially rationalize these levies and recover the cost of administration of license only, since the direct and indirect contributions from auctions, GST today much surpasses the recurring levies.

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We strongly suggest that the Government/Authority should annually review and assess the financial position of industry so that government can take informed and appropriate action in time.

Therefore, we strongly recommend that:

- There should not be any requirement of BGs of any sort. This would release capital/fund to be deployed into network and services investments
- Imposition of BGs to securitize dues is also not consistent with other statutory dues like tax dues - there are no requirement of BGs under Income Tax Act or under GST laws to securitize such due payments.
- Mitigate the risk of securitization by substantially reducing the regulatory levies (LF/USO/SUC) to recover only the cost of administering the license/resource
-

Q15. Any other relevant issue that you would like to highlight in relation to the above issues?

Airtel Response

The Indian telecom sector continues to attract high levels of recurring and sector specific levies i.e. LF/ USO fee/ SUCs. The time has come to substantially rationalize these levies and recover the cost of administration of license only, since the direct and indirect contributions from auctions, GST today much surpasses the recurring levies. This will also substantially mitigate need of securing government dues.