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Team South Africa bats for MTN

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MUMBAI: A delegation of South African officials told Indian policymakers on Thursday that the latest change in takeover rules would make it more difficult for telecom major MTN to execute its deal with Bharti Airtel. The six-member South African (SA) team spent over two-and-a half hours flagging off its concerns on a host of issues, including the latest change in the rules governing takeovers in India.

South African officials, who met the Securities & Exchange Board of India, or Sebi, the Reserve Bank of India, or RBI and finance ministry officials in Mumbai, sought an exemption from a clause that mandates purchase of a 20% stake from minority holders if an entity's stake in a company touches 15%.

Changes announced by Sebi on Tuesday would mean that MTN would have to make an open offer to acquire 20% from minority shareholders. This will render the deal less attractive for it considering that the South African company would have to pay out close to $6.78 billion.

Officials, familiar with the discussions, said the SA delegation was unhappy about the latest decision of the Indian capital market regulator to amend the takeover norms since in its view it could lead to undesirable changes in the management of Bharti. This is because if MTN makes an open offer for a further 20% stake of Bharti Airtel, it would emerge as the largest shareholder in the Indian telecom giant, something which the Bharti Group may not be comfortable with.

Bharti, according to the earlier proposal, has said that it would hold a 49% economic interest in MTN. But if the open offer is also taken into account, then MTN could emerge as the single-largest shareholder of the telecom company.

“With this change in stance by Sebi on GDRs/ADRs, the parties may need to go back to the drawing board on the structure. Open offer may not be a viable option, since not only it changes the commercials of the deal significantly, it would hit the FDI sectoral cap roadblock for Bharti,” says Siddharth Shah, head of corporate and securities practice at Nishith Desai Associates.

“However, MTN could consider whether it is comfortable with only the economic rights and not voting rights in which case Sebi amendments may not have an impact on the deal structure,” Mr Shah added. Bharti officials declined comment.

The Indian government has consistently said it is not in favour of carrying out policy changes to facilitate a single corporate deal, even as South African officials lobbied with regulators that easing of norms is vital for the deal.

A senior member of India's Cabinet reiterated this position on Thursday. “Nobody is in a position to talk about policy changes,” commerce minister Anand Sharma told the media in New Delhi, adding that it was not possible to change policies to benefit a single company. Mr Sharma, like his other senior Cabinet colleagues, has gone on record to say that the government was, at least in-principle, supportive of deals entered into by Indian companies for overseas buys.

The SA delegation, comprising officials from the national treasury and the country's central bank, met Indian officials, including KP Krishnan, joint secretary in the finance ministry, who is also on the board of Sebi, to overcome the potential stumbling block.

Under the proposed scheme of arrangement announced in May, MTN will hold a 36% stake in Bharti Airtel through Global Depository Receipts to be listed in Johannesburg.

The South African government has also sought dual listing of the companies which is not favoured by RBI, as it would require the full convertibility of rupee. Under dual listing, where the shares are listed on different exchanges (Indian/Johannesburg) it allows investors an option where they want to trade besides it provides liquidity.

South Africa wants Bharti to be allowed dual listing in Johannesburg so that its shares, and not depository receipts, can be traded in South Africa. The problem here is that dual listing is linked to the full convertibility of the rupee which is not allowed in India. The Indian rupee is partially convertible with entities free to exchange it to pay for trade in goods and services.

(With inputs from our New Delhi Bureau)