

Telecom Hotline

February 07, 2012

SUPREME COURT CANCELS 122 TELECOM LICENSES WITH GOOD INTENTIONS

CAN INDIA'S INTERNATIONAL INVESTMENT AGREEMENTS RESCUE AFFECTED FOREIGN INVESTORS?

Several non-governmental organizations and individual citizens ("Petitioners") had filed a public interest litigation¹ against the Union of India and various private companies in relation to allocation of 2G spectrum. In relation to this public interest litigation, on February 2, 2012 the Supreme Court of India ("SC") criticized the first come first served policy of the government for distribution of 2G spectrum and delivered an order against thirteen respondents² ("Respondents") cancelling 122 telecom licenses granted in various service areas for 2G spectrum. The SC has also levied fines against certain telecom operators and directed the Telecom Regulatory Authority of India ("TRAI") to formulate a fresh policy for allocation of 2G spectrum.

Vide this order the SC has not only sent out a very clear message that when a government policy is not transparent or fair, it is liable to be struck down, but the SC has also gone ahead and quashed the very licenses which the government issued under the said policy. As such the order of the SC has resulted in mixed reactions and is bound to have far reaching consequences particularly in the following respects:

1. The foremost effect will be on the Respondent operators and their investors whose licenses have been cancelled by the order. This cancellation has resulted in investor uncertainty and while the order is clear that the allocation of 2G spectrum is to be done afresh, it is to be considered whether the operators who were legitimately conducting business in India should be given certain 'grandfathering' treatment with respect to the investments already made by them or be compensated in some other form.
2. The order will also impact the telecom supply chain in the Indian telecom industry. There are various companies which have large orders and commitments from these licensees for supply of various telecom network hardware, software and services; the potential loss of a major customer/s in India is a cause of serious concern to such vendors. It will need to be examined whether the supply arrangements under which such vendors operate would provide them with any contractual remedies. Disputes and litigation may ensue at various levels.
3. The SC order does not mention what is to become of the end subscribers of the affected Respondent operators. Such customers may be ported to other service providers as part of the mobile number portability regime introduced in India.

It remains to be seen whether the aggrieved parties will file for review of the SC order. Review can be done generally when there are errors on the face of the record or new evidence has to be admitted or in extreme unusual circumstances. Another remedy that is available to foreign investors is to exercise their rights under the International Investment Agreements ("IIA") which India may have signed with their parent states. Investors whose parent states do not have IIAs with India but have invested through other jurisdictions may be able to explore the option of invoking the IIAs of such jurisdictions.

To read the complete hotline, please click [here](#).

Telecom Practice Group

You can direct your queries or comments to the authors

¹ Writ Petition (Civil) No 423 of 2010

² Respondents in this matter are as follows (1) Union of India through its Secretary, Department of Telecommunications, (2) Etisalat DB Telecom Pvt. Ltd. (Swan Telecom), (3) Unitech Wireless Group (4) Loop Telecom Pvt. Ltd. (ShippingStop Dotcom P. Ltd.), (5) Videocon Telecommunications (Datacom Solutions Pvt. Ltd.) (6) S Tel Ltd., (7) Allianz Infratech (P) Ltd., (8) Idea Cellular Ltd. & Aditya

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