Bharti may hit takeover wall

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MUMBAI: The Securities & Exchange Board of India has likely compounded the hurdles for Bharti Airtel in its efforts to create the world's thir d-largest mobile phone company with South Africa's MTN Group, unveiling a rule change on Tuesday which will make the deal more expensive for MTN.

The Indian regulator, which had said in an "informal guidance" in June that holders of American Depositary Receipts or Global Depositary Receipts may not have to offer to buy an additional 20% from minority holders unless these instruments are converted into ordinary shares, on Tuesday amended the rule. It now says anyone holding GDRs or ADRs with voting rights of 15% must offer to buy 20% from minority holders.

``This change could throw a spoke in the wheel for the Bharti-MTN deal as this would conflict not only with the MTN shareholders' desire to exercise control over Bharti without having to make an open offer but could also make the structure difficult from an FDI perspective,'' said Siddharth Shah, head of the corporate and securities practice group at Nishith Desai Associates.

But Bharti said it would seek exemption for MTN from making an offer, which could cost the South African company about $ 6.78 billion, calculations based on Tuesday's closing market price of the Bharti stock show. In a statement, India's largest mobile phone firm said the deal structure with MTN would be "fully compliant" with laws in both countries.

"All relevant approvals, including exemption from open offer from SEBI (if required), would be sought at an appropriate time," it said. Sunil Mittal, the founder of Bharti who has extended the negotiation deadline twice to buy a 49% stake in the South African company, offered a slew of concessions recently to craft a $23 billion deal that would have 200 million customers from Cape Town to Kashmir. He is also battling a demand for dual listing of the companies by the South African government which Indian laws do not allow now.

"In tune with market developments, the Board decided to amend the Takeover Regulations to provide that where the ADR/ GDR holders are entitled to exercise voting rights on the shares underlying GDRs /ADRs by virtue of clauses in the depositary agreement or otherwise, open offer obligations shall be triggered upon crossing the threshold limits," said a Sebi release.

" If you are holding an ADR or GDR with voting rights, you have to make an open offer,'' said SEBI Chairman C.B. Bhave. Bharti's proposed takeover of MTN involves issuance of GDRs to the South African telecom firm and its shareholders, which would add up to 36% of Bharti's equity, triggering the takeover regulations.

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