Report on

Economic Analysis of Competition
and Merger Issues in the Indian Telecom Sector

Under the Guidance of:
Mr. Praveen Kumar Purwar
Advisor (FA)
Competition Commission of India

Submitted By:
Nishita Sinha
Intern: (May’11)
M.A Economics
Jawaharlal Nehru University
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**Importance of Communication**

Communications are cornerstone of modern economy and have the ability to influence the development of our society in economic, social and also political terms. It is one of the basic components of any country’s infrastructure. It is recognised as one of the key sectors of the society. It holds such an important place not only because of its economic significance but also because of its importance in the continually evolving society. Communications are not only a service of general or public interest but one could say that they are an intrinsic part of the basis upon which a large portion of the future of the society is founded. In today’s modern world, all the economies whether developed or developing are well aware of the various opportunities and to capitalise on these opportunities they need to get their infrastructure right. Any kind of infrastructural bottleneck can result into economies losing upfront.

**The Indian telecommunication sector**

The telecommunication industry is the fastest growing industry in every country. Over the last decade and particularly over the last five years, India has registered an impressive growth in the telecommunications sector; 1\textbf{India now has a total of 846.32 Million Telecom subscribers, comprising of of 811.59 Mobile subscribers & 34.73 wireline subscribers. The Indian Tele-density now stands at 70.89\%}. India today has the world’s second largest network which is growing at a rate which is unmatched by any other country in the world. With the connections now growing at a faster pace in rural areas as compared to urban, it is expected that as India crosses the 1 billion mark, the rural teledensity will grow from the current value of 32.95\% to 40\%. The sector is growing at 45\%per year which has been made possible through continuous effort of the government during the recent years. The telecom sector of India has thus contributed to a great extent towards the socioeconomic development of India.

<table>
<thead>
<tr>
<th>Rank in world in network size</th>
<th>3rd</th>
</tr>
</thead>
<tbody>
<tr>
<td>Teledensity (per hundred populations)</td>
<td>52.74</td>
</tr>
</tbody>
</table>

**Telephone connection (In million)**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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<tbody>
<tr>
<td>Fixed</td>
<td>36.95</td>
</tr>
<tr>
<td>Mobile</td>
<td>548.32</td>
</tr>
<tr>
<td>Total</td>
<td>621.28</td>
</tr>
<tr>
<td>Village Public Telephones inhabited (Out of 5,93,601 uncovered villages)</td>
<td>5,69,385</td>
</tr>
<tr>
<td>Foreign Direct Investment (in million) (from April 2000 till March 2010)</td>
<td>4070</td>
</tr>
</tbody>
</table>

1 TRAI data
The Sub-divisions of the Telecom sector

The above figures in the table can be explained in terms of the various proactive decisions taken by the government and contributions both by the public and private sector. The telecommunication sector can be broadly segmented on the basis of the type of services provided under the following categories:

**Reform measures**

Some of the important initiatives taken by the government for the growth of the telecom sector are the following:

1. Liberalisation: The process of liberalisation began in 1991 with the announcement of the new economic policy. Telecom manufacturing was delicensed in 1991 and value added services were declared open to the private structure in 1992 following which the radio paging, cellular mobile and other value added services were gradually opened to the private sector.

2. National Telecom Policy 1994: In 1994, the government announced the National Telecom Policy which defined certain important objectives including availability of telephone on demand, provision of world class services at reasonable prices,
improving India’s competitiveness in global markets. It also announced a series of specific targets to be achieved by 1997.

3. Telecom Regulatory Authority Of India: The entry of private service providers brought with it the inevitable need for government regulation. The Telecom Regulatory Authority of India (TRAI) was thus established with effect from 20TH February, 1997 by an act of Parliament, called the Telecom Regulatory Authority Of India Act, 1997 to regulate telecom services, including fixation of tariffs for telecom services which were earlier vested in the central government.

The TRAI act was amended by an ordinance, effective from 24TH January, 2000 establishing a Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT) to take over the adjudicatory and disputes functions from TRAI.

4. New Telecom Policy 1999: The most important milestone and instrument of telecom reforms is The New Telecom Policy, 1999 (NTP 99). It was approved on 26TH March, 1999. NTP-99 laid down a clear roadmap for future reforms, contemplating the opening up of all the segments of the telecom sector for private sector participation. It clearly recognized the need for strengthening the regulatory regime as well as restructuring the departmental telecom services to that of a public sector corporation so as to separate the licensing and policy functions of the Government from that of being an operator.

5. Unified Access Service Licensing Regime: It marked the end of licensing regime in the Indian Telecom industry. It eliminated the need for different licenses for different services. Players were now allowed to offer both mobile and fixed-line services under a single license after paying an additional entry fee. It helped in aligning convergent technologies and services.

6. Access Deficit Charges (ADC): ADC makes it mandatory for a service provider at the caller’s end to share a percent of the revenue earned with the service provider at the receiver’s end in long-distance telephony. This subsidises the infrastructure costs of the service provider enabling access at receiver’s end, especially because rental for fixed-line services is low. Revision in the ADC’s is expected to be followed by further tariff reduction in telecom services.
7. Universal service Obligation (USO): The USO policy was laid to widen the reach of telephony services in rural India. This system was put in place to bridge the wide gap between urban and rural teledensity. All telecom operators are bound to contribute 5 percent of their revenues to this fund. This system was put in place to bridge the wide gap between urban and rural teledensity. Initially, only basic service providers were under the purview of USO. Later, its scope was expanded to include mobile services also. Although it increases the cost burden for the telecom companies, USO helps in building the telecommunication infrastructure in the rural areas.

8. Foreign direct Investment: FDI in Indian Telecommunications Industry is one of the most crucial parts that have caused such a hike in the telecom market so far. India, in the past 15 years have received 10,000 crore of foreign direct investment and 26 percent of the sum have been invested on the cellular segment. Telecom is the third largest sector to attract FDI in India in the post-liberalisation era. Foreign direct investment (FDI) ceilings have been raised from 49 per cent to 74 per cent in telecom services sector. For telecom equipment manufacturing and provision of IT-enabled services, 100 per cent FDI is permitted.

- The telecom industry in India is undoubtedly the showpiece of reforms that have been initiated since 1991 in the country. From an almost monopoly till the early 1990s when mobile call rates were as high as Rs 16 per minute, the telecom space has evolved into a vibrant industry with at least half a dozen players and call rates as low as 1 paisa per second at the last count. However, in some ways the reforms have proved to be too successful. India currently has the lowest ARPU (ARPU - A primary element of valuation and analysis of wireless companies. It reflects the average amount of revenue generated by each subscriber) across the world, low enough to raise questions on the sustainability of the current business model.
- Additionally, the recent auction for licenses that took place in 2007 has prompted a further spate of entry and a further round of price wars. The government also put in place the eco-system by creating good institutions like the TRAI and TDSAT which were necessary to attract private investments in the sector. As the duopoly structure stabilised, government issued third and fourth licenses promoting competition. The government then came up with Unified Access Service Licensing (UASL) in 2003, which made it possible for TATA and Reliance to provide mobile services through CDMA platform originally built for basic services, fuelling competition further.
Competition Trends in the Telecommunication Sector

In the last two years, telecommunication markets have witnessed significant falls in the value of shares and market capitalisation, within the broader context of a global economic slowdown. From a competition angle, difficult market condition has resulted in a reduction in the number of market players in some countries along with the overall decline in market entry and investment in the sector\(^2\). Despite the setbacks faced by telecommunications markets, the established trend has nonetheless been towards greater competition in telecommunications market. Throughout the late 1990’s and continuing to the present day, the number of countries introducing competition in basic telecommunications and wireless services has increased steadily.

We have some data which will enable us to make a decadal comparison of the competitive scenario in the sector

\(^3\) In 2002 despite this encouraging trend toward market liberalization, there are still significant concerns that remain as to the true extent of meaningful competition in telecommunications market worldwide. In the provision of basic services for example, although more than 79 countries have allowed some competition in local service markets in 2001, only 46 countries had a second line operator to compete with the incumbent. Similarly, although over 81 per cent of countries claimed to allow competition in their cable TV markets last year, the real number of countries with effective competition is far fewer.

Now let’s compare the above data with the recent ones and analyse how far Competition in Indian telecommunications sector has gained its real meaning.

India’s teledensity has improved from under 4% in march 2001 to around 53% by the end of March 2010. Cellular telephony has emerged as the fastest growing segment in the Indian telecom industry. The mobile subscriber base (GSM and CDMA combined) has grown from under 2 m at the end FY00 to touch 584m at the end of March 2011 (average annual growth of nearly 76% during this ten year period). Tariff reduction and decline in handset costs has helped the segment to gain in scale. The cellular segment is playing an important role in the industry by making itself available in the rural and semi urban areas where the teledensity is the lowest.

The fixed line segment has actually seen a decline in the subscriber base. It has declined to 34.8 m subscribers in February 2011. The decline was mainly due to substitution of landlines with mobile phones.

\(^2\) See financial times, 5\(^{th}\) September, 2001
\(^3\) ITU, Trends in Telecommunication Reform 2002, Chapter 1
As far as broadband connections are concerned, India currently has a subscriber base of 8.8 m. It has grown at an average annual growth rate of 40% since 2008. The auction for broadband wireless license and spectrum has concluded recently. The government is expected to allocate spectrum before the end of this year. This will further boost the broadband penetration in the country.

4 **Key Points**

**Supply**: Intense competition has resulted in prompt service to the suppliers.

**Demand**: Given the low tariff and environment and relatively low rural and urban penetration level, demands will continue to remain higher across all the segments.

**Barriers to entry**: High capital investments, well-established players who have a nationwide network, license fee, continuously evolving technology and lowest tariffs in the world.

**Bargaining Power of Suppliers**: Improved competitive scenario and commoditisation of telecom services has led to reduced bargaining power for services providers.

**Bargaining Power of Customers**: A wide variety of choices available to customers both in fixed as well as mobile telephony has resulted in increased bargaining power for the customers.

**Competition**: Competition has intensified with the entry of new cellular players in circles. Reduced tariff has hurt all the operators.

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4 Economic Issues (Telcos) 2003
**Financial year 2010**

- FY11 saw the continuance of strong growth for the Indian telecom market which witnessed a 45% YOY increase in its subscriber base during the 12-month period. The end of March 2011, the country’s total subscriber base stood at 621m. The teledensity level stood at level by the end of the fiscal.

- Growth remained robust in the GSM mobile space. GSM added 87 m subscribers during the year. After a strong 50% YoY increase in subscriptions during FY09, the GSM industry recorded another good performance during FY10, growing subscriber base by 22% YoY to about 479 m.

- During FY10, India’s mobile subscriber base grew by 49% YoY, from 392 m to 584 m, while the fixed subscriber base declined by about 3%, from 37.9 m to about 36.9 m.

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**The economic theory behind competition issues**

For a long time government regarded the telecommunication markets as natural monopolies. Gradually, however, this concept was eroded. Governments came to realize that not all segments of the telecommunications industry exhibited characteristics of a natural monopoly while at the same time technological advancements reduced previously prohibitive fixed costs and increases in demand required the installation of new capacity.

**The transition to competition**

Despite market liberalization, certain characteristics of telecommunications markets have nevertheless favoured the continued concentration of market power in the hands of incumbents. Some of these include:

- Strong network effects that reflect the desire by customers to make and receive calls from anyone (the value of any-to-any connectivity), causing customers to choose large networks over smaller networks in the absence of interconnection;

- Large sunk costs involved in the construction of essential facilities such as local networks;

- The long legacy of statutory public monopoly in telecommunications which has afforded the incumbent:

  5 www.trai.gov.in
1. Scale and scope economies;
2. Benefits of established networks such wide subscriber base, deep pockets and market experience

In many cases, these barriers to competition are aggravated by the abusive behaviour of incumbent operators that exploit their position in a market to prevent or reduce competition in the market. Given the market imperfections and the risks to competition, most governments have taken the decision to intervene directly in the market in order to guarantee access to essential facilities and networks controlled by the incumbent so as to mitigate networks effect and large sunk costs and to prevent anti-competitive behaviour.

**Entry Barriers and Entry Deterrence**

In this section we address the following question: **If oligopolies make pure profits, why does free entry not occur until competition brings down the price so that existing firms will no longer make above normal profits??**

Barriers to entry are considered an important structural characteristic of an industry. The competitiveness and the performance of an industry are strongly influenced by its entry condition. There can be many reasons why entry may not occur. Bain’s pioneering work (1956) specified three sources of entry barriers: absolute cost advantages of incumbent firms, economies of scale and product differentiation advantages of incumbent firms such as reputation and goodwill. Other reasons include the learning experience possessed by the existing firms, consumer’s loyalty to brands already consumed and availability of financing.

In this section we briefly discuss entry barriers.

We regard entry barriers as the conditions that are not controlled by the incumbent firms that explain why entry does not occur.

**Concentration and fixed costs in non-competitive market structure: an example**

Let us demonstrate the relationship between fixed cost and concentration by means of an example. Consider a monopolistic competition in the differentiated-products environment. In this environment firms have to bear a cost, implying that in equilibrium there will be entry of a finite number of firms.

**Sunk costs generate entry barriers**
By sunk costs we mean costs that cannot be reversed or for which the investment associated with paying them cannot be converted to other causes or resold to recapture part of the investment cost.

Following Stiglitz (1987), we now demonstrate how in a market for homogenous product, the existence of even small sunk cost can serve as an entry barrier, so that entry will not occur even if the incumbent continues to make a monopoly profit. There are two firms, A and B, both capable of producing an identical product with identical constant marginal costs. Firm B is potential entrant. If firm B enters, it has to sink x dollars into that process. Firm A is the incumbent monopoly firm earning a profit \( \pi^A = \pi^M - x \), where \( \pi^M \) is the monopoly’s profit level, not including the entry cost it has already sunk in.

**In this case**, the potential entrant (firm B) moves first by choosing whether to enter or not. In case firm B chooses not to enter, it saves the entry cost x and therefore makes zero profit. In this case firm A remains a monopoly and makes the monopoly profit less the entry cost it sunk earlier. In contrast, if firm B enters, the firms are assumed to set their prices simultaneously, yielding a Bertrand equilibrium where price equals marginal cost. In both case, firm makes a loss equal to the sunk cost.

Thus, in equilibrium in case of homogenous products, for any sunk cost satisfying \( 0 < x < \pi^M \), firm A will earn profit \( \pi^A = \pi^M - x \) and firm B stays out.

In this case the entrant foresees that after entry occurs, the incumbent will switch from being a monopoly to being in an aggressive price competition leading to marginal cost pricing. In the light of above theory, we take a look at some of the issues in the telecom sector, and explain what the other entry is and exit barriers affecting competition. We also look at other factors that are alluring to the potential entrants in the industry.

**Competition Issues in Indian Telecom sector**

We look at some of the issues in telecom:

- **Unbundling of copper local loop** - The incumbent operators BSNL/MTNL enjoys a dominant position in wireline segment of telecom market with a market share of nearly 88%. Let’s have a look at some figures:  

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6 Telecom watch
<table>
<thead>
<tr>
<th>Operator</th>
<th>Total Sub Base as On 31st Jan’11</th>
<th>Total Sub Base as on 28th Feb’11</th>
<th>New Additions in Feb’11</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSNL</td>
<td>2,54,77,320</td>
<td>2,53,78,036</td>
<td>(99,284)</td>
</tr>
<tr>
<td>MTNL</td>
<td>34,62,888</td>
<td>34,58,399</td>
<td>(4,489)</td>
</tr>
<tr>
<td>Airtel (Telephone)</td>
<td>32,68,637</td>
<td>32,80,659</td>
<td>(12,022)</td>
</tr>
<tr>
<td>Reliance Infocomm</td>
<td>12,26,926</td>
<td>12,32,060</td>
<td>5,134</td>
</tr>
</tbody>
</table>

The MTNL operates in Delhi & Mumbai and BSNL operates in the rest of the country. Both these organisations have been carved out of the government i.e. the department of telecom and historically enjoyed the privileges being a government department such as right of way, the strategically located land and buildings and other infrastructural facilities. These organisations enjoys dominant position in wireline telephony and using this infrastructure including copper local loop in acquiring dominant position in internet service provisions specially in broadband segment.

Thus in order to encourage competition in the telecom sector, it is necessary that the other telecom licensees should have the access to the copper local loop on non-discriminatory basis for fair competition in these segments of the telecom.

As can be seen from the table above the share of BSNL and MTNL is way more than the private players. In order to facilitate competition in this sector, it is necessary that the copper local loop being an essential facility may be unbundled for all the telecom operators on non-discriminatory basis at fair prices for greater competition.

The successful management of competition can be a catalyst to obtaining lower prices and increased consumer choices in developing country.

2. Access to optical fibre network- The optical fibre as of now is the backbone of telecom transmission network. The largest optical fibre has been built by the incumbent operator BSNL who is also the long distance operator. The private sector players such as Bharati and Reliance have also constructed optical fibre cable network connecting mainly cities and towns but their presence is very limited in the rural areas and difficult terrains. However, BSNL enjoys the dominant position in the market not only with respect to the number of kilometres cable laid but also its reach to various blocks, headquarters and villages. To provide the telecom services on competitive basis by various telecom operators, it is essential that access may kindly be provided to various optical fibre networks on non-discriminatory and at fair rates to various operators for bringing the competition in various telecom products especially in the high speed internet access and leased line segment.
The advantages and benefits that telecommunication can bring to education, commercial, medical and governmental activities are too numerous to mention, suffice to say that its expansion plays an important role in the economic and social development of a country. One important benefit of a penetrative telecom infrastructure is that it can enhance instant communication between people in distant places around the globe. In other words, increasing the number of phone lines per inhabitant, teledensity, can help put a country on the world map through enhanced domestic and global trade. This will pave the way for a stronger economy.\(^7\)

Therefore, the access to various optical fibre networks on non-discriminatory and at fair rates will lead to competition benefits.

3. **Carrier Access Selection**: Commercial practice of conditioning the sale of one product on the purchase of another product; such practices may reduce competition. The economic theory suggests that a firm which enjoys market power in one market (tying market) may, under certain conditions, be able to leverage this market position or dominance into another market (tied market), squeeze competitors out of this second market and then raise prices above the competitive level.

The telecom subscriber in India does not enjoy facility of selecting their carrier for making the long distance and international calls. In many of the countries the telecom subscribers enjoys the facility of selection of the carrier of their choice instead of the choice of the local service provider at the time of making NLD/ILD calls which further led to the competition and greater benefits to the consumer and the economy. It will also do away the present scenario of product tying of local access and NLD/ILD product. India has reached to the telecom penetration level of more than 50% and cross subsidisation of cost of calls in one segment to other segment in either explicit or implicit manner is no longer required. Therefore to bring increased competition and greater empowerment to the customers in choosing their carrier for making NLD/ILD calls will result in greater transparency and avoidance of product tying.

4. **No provision for number portability in fixed line segment**: Further, no guidelines have been issued for implementation of number portability in the fixed line segment. By providing more power to the customers in selection of their service providers without changing the directory number will bring greater competition in Telecom market. The Indian economy remains highly underpenetrated in terms of broadband connections, apart from

\(^7\) © 2002 BETELCO.
high cost of devices (PC and laptop), lower wireline connections have been one of the major factors inhibiting broadband penetration. Broadband is one of the key catalysts for economic development and major initiatives by both the government and service providers are needed to increase its penetration. Therefore, the number portability must be implemented on a priority basis in all this segment and other initiatives be taken to increase the number of wireline consumers.

5. Provision of internet based voice calls in the domestic segment: At present, the regulations do not permit IP telephony in the domestic segment though it is allowed for making international calls. This regulatory prohibition is hindering the competition in voice segment and denying the greater choice to the customers.

6. Non-permissible to cable operators for voice telephony: In various countries of the world, the cable operators are allowed to provide the various telecom services including the voice calls. However, in India the cable operators are not allowed in the voice segment can be internet service provider after taking the ISP license issued on city or circle or national level. The regulatory impediment in India to the cable operators in entering the voice segments is restricting the competition.

7. Revenue Share Fixation: Value Added Service (VAS) in telecommunication industry refers to non-core services, the core or basic services being standard voice calls and fax transmission including bearer services. They are used as a tool for differentiation and allow mobile operators to develop another stream of revenue.

The various telecom operators are providing numerous value added services either on subscription basis or on itemised basis to its subscribers by making back-hand arrangements with various value added service providers on revenue share model. In the revenue share model the telecom infrastructure for delivery of these services to the customer is provided by the telecom operators and the content/services and necessary delivery platform is provided by the value added service provider. It has been observed that the telecom service providers are retaining the revenue share up to 70% in various agreements and balance amount is shared with the value added service provider. The skewed arrangement in favour of telecom service providers is being alleged as one of the cause of high charges of the value added services. The telecom operators have been accused that the revenue share and the charges levied on value added services is in disproportion of their cost of delivery. The access to the customer through telecom infrastructure is providing the near monopolistic rights to telecom companies in respect of their subscribers in delivery of the contents which has been adversely used for not only taking higher revenue share but also leading to
inappropriate charging to the customers. Thus, the price of VAS needs to be reduced to an extent where consumers are provided with various value added services apart from basic service of calling which will make the Indian telecom sector competitive on a global platform.

10. Clash between the regulatory authority and the CCI: There are issues regarding overlap between Competition Policy/Law and sector specific regulatory authority. Regulation of an industry has three primary dimensions-technical, economic and competition. These three elements have to be distributed between the sectoral regulation and the CCI. There is a requirement to create systems to ensure co-operation between CCI and other sectoral regulators. Conflicts may arise due to different prioritisation of their respective goals by the CCI and sectoral regulators. The different methods used for resolution of same problem may cause conflicts. There exists legislative ambiguity on interpretational basis. The telecommunication Act provides TRAI to deal with competition issues while the Competition Act, 2002 is already mandated to deal with the same. The greater the number of laws dealing with sectoral regulation, the more is the chances of unintended legislative ambiguities or omissions.

11. Incumbent Wrath: Incumbent’s wrath is the word coined to signify the leverage the players in the market commands. The existing players are well settled and entrenched in the market with an established network all over. The incumbents grow because of an established network presence, a brand that consumers are aware of and sheer economies of scale. By leveraging these points of strength, these players are able to fight late entrants and challengers more effectively. That is certainly what is happening between the incumbents (Airtel, Vodafone, Idea, Reliance Communication, and Aircel) and the challengers (Datacom, Unitech, Swan Telecom, Shyam, and Loop ). The piece under contention is the mobile termination charge which one operator pays to the other when the customer of the further uses the roaming charges of the later. This is 30 paise a minute charge as of today. This is charged to the consumer as the cost of roaming. With an all India footprint (or 80% coverage), the incumbents effectively donot have to pay termination charges. The full coverage ensures that calls are terminated within their network. The incumbents have either been pocketing the termination charges or passing them to consumers “no roaming charge” kind of schemes. This factor makes the industry unattractive for the new entrants and investors.

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8 Indian Institute of Management, Bangalore © 2008
12. Declining ARPU: Average revenue per user (ARPU) today is around the theoretical $5 break point. In mature markets an ARPU under $5, does serious harm to the bottom-line. In a growing market like India, the strain of a decreasing ARPU may not be significantly visible presently. However, with markets maturing, the focus will shift from growth to sustainability. The new classes of consumers are mostly rural and their ARPU would be well below $5 (probably $3-3.5). Managing bottom-lines at such low levels of revenue per user and increasing costs of acquisition will prove to be a challenge for new entrant and investors.

13. Licensing policy: The government has provided six new 2G licenses to telecom operators at a fee of Rs. 1650 crore in 2008 on first come first serve basis. This distribution took place after seven years of the previous distribution. Later, some of the players sold their licences instead of launching new services. In recently held 3G licences auction all the incumbent private players managed to get licenses for 9-13 circles. It has been evident that the delay in the 3G auction, auction procedure and the head start given to the incumbent public players has caused lot of unrest in the industry. Also, the auction considered to be as overpriced has left private players with a lot of debt in their kitty. Government licensing policies, and a 74% FDI cap in telecom sector has made industry unattractive to new entrant and investors (negative factor). In light of the above factor the overall threat of new entrant is low and the industry becomes unattractive to new entrants and investors.

14. The Spectrum Issue: Spectrum is the most important resource that is required for providing mobile services. Given that spectrum is a finite resource, the availability of the same would be inversely proportional to the number of operators. Thus, larger the number of service providers smaller will be the amount of spectrum available to each of them.

Scarcity of spectrum leads to higher capex on deployment of mobile networks for the operators as they need more cell sites to improve service quality. Further the growing usage of spectrum and the resultant scarcity may lead to re-use of spectrum and increase chances of congestion in networks leading to constraints on service quality. Evidently, the competition in the industry is expected to intensify further with the entry of new players, both domestic as well as foreign players. With the competitive intensity of the industry already at such high levels new operators might find it difficult to gather significant share in Indian telecom market. While the new players may benefit from a faster network rollout through tower sharing, they will face challenges in terms of high subscriber acquisition costs and lower ARPU customers.
16. **Convergence of services**: Telecom companies are bundling broadband, voice, wireless, video and other emerging technologies together, as well as a variety of value added content, in an effort to remain competitive, offer seamless services and attract more customers. The problem could arise when we hypothesize a situation where one company could offer these bundled services at a cheaper price (incumbent wrath) than the other small firms or new entrants.

Again, an entry barrier for potential entrants.

**Other Issues**

15. **Undifferentiated product**: The products in the telecom sector are relatively undifferentiated. Product, service, and technology innovations are easily copied by the competitors. This is a negative factor for the industry.

16. **Price sensitivity of buyers**: Undifferentiated offering makes buyers price sensitive. Price sensitivity of the buyers induces a constant threat of price war in the industry. Hence, this factor is negative for the industry.

17. **Buyer concentration**: Most of the buyers are concentrated in urban India. The teledensity in urban area is about 119% and that in the rural area is 26% with an overall teledensity of 53%. The urban area having high ARPU potential is already saturated and rural areas are unattractive for the industry. This is a negative factor. Considering the factors above the overall bargaining power of the buyers are high, hence, the industry becomes unattractive for entry.

18. **High Exit Barriers**: Telecom industry is a capital intensive industry with high sunk and fixed cost due to specialised equipment, spectrum cost, etc. This raised the exit barrier for an existing player to a very high level. As a result, in order to sustain in the market the players compete and fight up to the bleeding point. This makes industry unattractive for potential entrants.

19. **Short-lived Advantage of Innovation**: In order to differentiate form competitors the industry players are investing heavily in technical innovation and marketing strategies. But, due very nature of the industry the technology readily becomes obsolete. Moreover, the
product and service innovations are easily imitated by the competitors due to lack of mature intellectual property protection laws. This factor fuels the competition in the industry **leading to a Bertrand solution** and makes the industry unattractive for the entrants.

20. **Termination charges**, a part of Interconnection Usage Charges (IUC), are a levy paid by one operator to another on whose network a call ends. This is 20 paise a minute as of today. The incumbents thus enjoy their position with almost 80% coverage as a result of this disproportionate cost structure.

21. **Price Parallelism**: There have been issues of simultaneous price hike in the industry. Tariff revision by same scale cannot be a mere coincidence.

Eg- earlier in 2008, notices were issued against GSM operators Bharti Airtel, Vodafone Essar and Idea Cellular for allegedly indulging in price parallelism (together they control around 65% of the GSM-based mobile services market) to distort competition.

22. **The issue of Interconnection**: Interconnection allows subscribers, services and networks of one service provider to be accessed by subscribers, services and networks of the other service providers. If networks are efficiently interconnected, subscribers of one network are able to seamlessly communicate with those of another network or access the services offered by other networks. Without interconnection the market would develop as discrete islands and economic benefits associated with market expansion and liberalization would be limited. It is essential for competition to develop to allow the subscribers of one network to communicate with those of another network. In a broader sense the term interconnection refers to the commercial and technical arrangement under which service providers connect their equipment, networks and services to enable their customers to have access to the customers, services and networks of other service providers. Interconnection is the lifeline of telecommunications. It is one of the foundations of viable competition which in turn is the main driver for growth and innovation in telecommunications markets. This holds true for all service markets from traditional telephony to IP and multimedia services. Good interconnection arrangements would promote efficient infrastructure development, providing incentives for operators to build networks and use parts of other networks. Conversely, inappropriate interconnection requirements act as barriers to competitive entry, undermining investment in new infrastructure and depriving the public of innovative and attractive service options. Telecommunications networks are intrinsically different from other infrastructure like roads and power because of the network externalities involved. The
value of the network to the users increases as more customers join the network. Interconnection with other networks increases this value further by increasing the number of people the subscribers of this network can call and the range of services they can access. With increasing competition comes plurality of operators and services and the importance of interconnection further increases. If a subscriber of network A requires to call subscriber of Network B then A has to have interconnection with B as B has monopoly over termination of calls on his subscribers’ equipment. If Network B is in another circle then an National Long Distance (NLD) operator might be involved in carrying the call and both A and B should be connected to NLD for this call to mature. With technological developments, the range of services that depend on interconnection has increased. Efficient interconnection has become an essential input to all types of voice calls, data services, Internet, messaging, broadband and a wide range of applications, content services, e-commerce.

**Interconnection Usage Charge (IUC)**: IUC are wholesale charges payable by one telecom operator to the other for use of the latter’s network for originating, terminating or transiting/carrying a call. These charges are usually based on cost and indicate a fair compensation for use of one service provider’s network resources by another service provider. The IUC concept as evolved by Telecom Regulatory Authority of India (TRAI) has so far proved to be a suitable approach to interconnect pricing in a competitive, multi-operator environment. It has given service providers sufficient flexibility in fixing tariffs for its customers. The framework of Interconnection Usage Charges was established by the Telecom Regulatory Authority of India through “The Telecommunication Interconnection Usage Charges (IUC) Regulation, 2003” (1 of 2003) dated 24th January 2003 implemented from 1stMay 2003. This IUC Regulation introduced the regime of calling party pays (CPP). The originating, carriage and termination charges were based on the type of network in which call originated or terminated and distance travelled in a service provider’s network. In case of the cellular network, the charges were also based on whether the destination network was in a metro or a nonmetro city. The termination charge then varied from Re 0.15 (15 paisa) to Re 0.50 (50 paisa) and carriage charges were from Re 0.20 (20 paisa) to Rs 1.10 depending on the distance.

Thus, the TRAI under its regulatory provisions is focussing on IUC in order to make the interconnection completely fair.

Despite the presence of the many competition preventive factors in the telecommunication sector as mentioned above, what is allowing the entry of small competitors like Uninor, Aircel, Docomo, MTS, etc... What is the economics behind this???
Let’s try to prove the fallacy of the sunk cost theory as an entry barrier in the present scenario of the telecom sector by giving the following reasons:

- **Infrastructure Tenancy Cost**: The high capex in towers is one scary part of the telecom business. The cost of active equipment is estimated to be 40 percent of the telecom operator's total capex, while the balance is accounted for by passive infrastructure. For example, Bharti has invested close to Rs. 230 billion to create the cellular infrastructure with 45,000 towers across the country. Typically, a ground-based tower costs Rs. 25-30 lakh. A roof-based tower can be built for Rs.13-14 lakh. On having a look at the additional 1,10,000 towers that were installed from March 2007 to March 2008 at a conservative cost of Rs. 15 lakh per tower—some Rs. 16,500 crore would have been sunk into them as capex. Additionally, cost of maintaining one tower (active + passive) is estimated at Rs. 60,000-65,000 per month. However, if a telecom service provider decides to rent the passive network from a tower company than the telecom service provider in that case would need to pay monthly rent of Rs. 40,000 per tower for passive network and operating expenses close to Rs. 40,000-45,000 for active network. The monthly outflow of a TSP would be close to Rs. 80,000-85,000 per tower per month. Furthermore, tower sharing among telecom service providers is just 25% as compared to 90% in the west and some operators are not even willing to share towers. However, with the recent announcement made by BSNL about leasing its towers which will help both the older and newer players to penetrate into new markets. This factor makes the telecom industry moderately attractive for the new players and investors.

- **Customer Switching Costs**: The cost of new connection is very low, or one can say new connections are available for free. Moreover, with the introduction of mobile number portability switching has become all the more easy. TRAI expected that the subscriber has to pay not more than Rs. 200, some operators have estimated the charges can be as low as Rs. 20. The TRAI statistics for May 2010 shows subscriber switching capacity of 20% with a yearly growth rate of 12.75%. This factor gives new entrant and investors a reason to entry this industry.

- **Falling ARPU**: Falling ARPUs, is a natural consequence of progressively adding customers from lower income segments, division of household telecommunication expenditures between separate cell connections by family members and fall in prices due to fierce competition. After the recent launch of services by new entrants, currently 10 to 11 operators in a circle are jostling with each other for the same pie. Yes, falling ARPUs have definitely created a concern among many observers. For

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10 Telecom Solutions 2007
instance over last one year MOU (Minutes of Usage) per customer fell by around 10% but ARPU’s has fallen by around 30%. **Yet, the industry is not unattractive** as some observers are portraying it to be. Despite the 1p/second scheme, if we take into account the income through rentals or administrative charges as it is for prepaid, the GSM operators are still earning close to 71 paise per outgoing MOU and their average ARPU are around Rs 164 per customer per month. The large operators like Airtel are still clocking 40% EBDITA margin, even in the latest quarter.

Assuming a 10 year life for network, the depreciation cost boils down to $4 per year. Now to this add cost of capital @ 12% p.a. and you have an additional expense of $5. Finally add operational expenses of approximately $17 per year. The total expense per year per customer is $26. Given ARPU’s of Rs 164 per month this can be covered in approximately 6-7 months. Also with regard to the low ARPU’s we need to realize that while in this industry the capital expenditure requirements are high and most of the costs are fixed costs, there is negligible marginal cost of adding a customer. Unlike in landline segment, access infrastructure (radio spectrum) for cellular is shared between customers. Customer requires and uses access infrastructure only when he/she plugs in to talk or transfer data, generating revenue either through outgoing call charges or incoming termination charges. Therefore, larger number of customer can be allocated/dimensioned for a single tower if the average traffic is lower, which is the case if you are adding low ARPU customers to the network.

The problem you can argue is with the operators offering services on CDMA platform where the reported ARPU’s are less than Rs 100 per month. However, here also is the problem of an inflated denominator due to a number of sleeping customers who were enrolled during various attractive invitation offers but neither have been active on the network nor are deleted from the system.

- **Total revenue as an argument for entry in the Indian telecom entrants:** If we see the total revenue of the industry it currently stands at Rs 1.3 Lakh crores\(^\text{11}\) which mean that even if we have 6-7 operators, each can be a 6-7 billion dollar revenue company, which is huge and this is when telecom penetration in India is only 46%. In rural areas it is only 18%. Many of these uncovered people currently do not have incomes to afford a phone but as the India growth story continues they will soon come into the fold. If you see there is a 5-6% growth in revenue quarter on quarter and a 25-30% growth customer take off. The demography due to large young population is promising and internet services are bound to increase. It is still an attractive market for new entrants. Current share of rural customers in the total subscriber base is only 30% as against 70% of urban customers. We may say the

\(^{11}\) See Economic Times, September 2010
market is saturated when this ratio is reversed and rural accounts for 70% of the total customer base.

- **Negligible threat of Substitutes**: The threat that substitute products pose to an industry's profitability depends on the relative price-to-performance ratios of the different types of products or services to which customers can turn to satisfy the same basic need. The threat of substitution is also affected by switching costs— that is, the costs in areas such as retraining, retooling and redesigning that are incurred when a customer switches to a different type of product or service. The potential major substitutes for telecom industry are voice over internet protocol (VOIP), emails, satellite phones, instant messaging, etc. Among the several substitutes VOIP has emerged as the biggest threat. Applications like Skype and Google voice chat have been extremely popular among younger generation users and are fast emerging as preferred means of communication. However, considering the current penetration of the substitutes and spread of the telecom industry these substitutes does not pose any major threat providing a mildly positive outlook to the investor.

**Now, we turn to a very important aspect in any Telecom Sector- Network Externality**

Telecoms networks and services are usually characterized by two types of externalities:

**Network externalities and Call externalities.** Network externalities do exist, when the willingness to become a subscriber to a certain network depends on the subscription of other users to the same network. One reason to become a subscriber relates to the ability to communicate to certain other users. In microeconomic terms: the utility functions of network users are interrelated. In a microeconomic less precise but empirically and statistically plausible and pragmatic way, network externalities are usually defined as follows: the more subscribers join a network, the more valuable subscription becomes. More people can be reached and contacted than before. New subscribers decide to join the network because there is a larger number of people to whom they can make a call and from whom they can receive a call. This effect does not only hold for one particular network. It is also valid over and above a number of networks, if these networks are interconnected to each other such that subscribers of one network can communicate to subscribers of the other network. This relationship is one of the reasons for mandatory interconnection, namely to maximise the value of communication opportunities for a great community of users. Not taking care of externalities within the pricing regime would imply to reach a socially suboptimal network size. In other words, there is a welfare loss of not internalising the network externality effects.

These effects are called externalities because they do not generally enter into the decision of a particular user to become a subscriber, unless the pricing regime is adopted to take account of these interdependencies.
There is another important externality in telecoms related to calls, which is often neglected although it has a high degree of relevance in our context. Normally both the calling and the called party derive utility from communicating to each other, and not only the calling party. If the general pricing principle of calling party pays is applied, it is only the welfare of the calling party which defines the willingness to pay for a particular call. In that sense, there are call externalities, which imply that the number of calls is less than would be appropriate according to normal welfare standards.

The network externality in telephone networks may be characterised fairly simply. What I am willing to pay to join a network is a function of how many others I can call (and can call me). The standard economic analysis of this externality concludes that the nth person to join a network should pay a price below her costs to induce her to subscribe. She does not, in evaluating the costs and benefits of a telephone, consider the benefits she provides to others. As a result the higher cost may result in denial of connection and thereby a loss in social welfare. The difference between a network effect and a network externality lies in whether the impact of an additional user on other users is somehow internalised. In seeking to address one phenomenon (i.e. the network effect) operators may alter related factors (i.e. network externalities). Network operators, for example, co-operate in the creation and use of standards to permit communication across different networks in recognition of the network effect. They do so because the benefits (interconnectivity) outweigh the cost (making standards). Their actions reflect demand from their customers, who would be quick to complain if their communication options were limited and, who ultimately bear the cost of the standardisation. An important point, that needs to be recognised in all discussions on network externalities, is that network operators have incentives to internalise the phenomenon as they strive to enhance the network effect.

The classic problem with network externalities is the challenge of identifying beneficiaries that might otherwise directly contribute to the cost of adding new telephony subscribers.

The introduction of Short Message Service (SMS) provides a good example of operator internalising externalities and taking into account the network effect. Initially, SMS was not planned as a commercial service. The original purpose was for operators to share information with customers as well as staff. The unplanned side effects were to enable users to text message to each other and for operators not to be able to bill users for this service. This meant the economic value of a positive externality, for consumers, was not being captured by producers. As an unplanned side effect, rather than a commercial service, SMS also had limitations. These included users, on one network, not being able to text users on another network. Struck by the growing popularity of the phenomenon, operators internalised the externality by introducing pricing and billing systems for SMS and added value, by enabling transmission across networks to enhance the network effect.
It is not just in pricing that operators may take network externalities, or the network effect, into consideration. Operators invest in networks, for the most part, with an anticipation of future growth. A significant factor is the economics of building and maintaining networks in relation to that growth. The cost of putting into place capacity for future requirements may be marginal compared with adding that capacity, or replacing a system, at a later stage. Nevertheless, that investment must be paid for by shareholders, in anticipation of future growth and returns, or increasingly, as the network grows, by subscribers. In this manner, network operators are already acting to internalise network externalities by addressing network effects. By getting today’s subscribers to contribute to a network’s joint and common costs they lay the foundation for new subscribers. Operators have, arguably, identified the beneficiaries of future growth, at least in part, as being those people already on a network. As such, existing subscribers are compensating new subscribers even if they may not directly benefit, from any particular subscriber joining a network, or take the benefit for others into account in their own decision to subscribe.

**Internalisation of Network Externality by the Consumers**

Consumers also internalise, what may otherwise remain externalities, when they perceive direct benefit for those they call and who call them. In some countries fixed lines may be retained by people with mobile phones due to lower termination charges and consequently, lower call charges for other users calling them. On mobile networks different individuals, sharing a relationship, may select the same network to benefit from reduced ‘on-net calls’. Some may purchase SIM cards on more than one network for the same purpose. Consumers also buy telephones or telephone service for each other. Family members routinely buy service for each other in recognition of the benefits of calling and being called by each other. While this is well recognised at the national level there is a growing international element to this phenomenon which acts to internalise network externalities. Needless to say the strongest positive network externalities are geographically local, with family and friends, or with local business intermediaries, accounting for many tariff plans which take this into account.

**The New Telecom Policy 2011 – The proposal**

- **Application**
  
  Telcos should file their renewal application 30 months prior to the renewal date.

- **Mergers & Acquisitions**

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12 See economic Times; March 2011
Mergers and acquisitions should be much more liberal. A minimum of six competitors would be required in each circle, including BSNL (Bharat Sanchar Nigam Ltd.).

✓ **Delink from License**
The spectrum should be delinked from license and the aspect of spectrum sharing should be given due consideration.

✓ **Drafting Committee**
A drafting committee for the National Spectrum Act should be formed under the able guidance of retired Judge Mr. Shivraj Patil.

✓ **Broadband Committee**
The DoT should form a broadband committee to look into national broadband plan issues and this committee should be headed by IT advisor to the Prime Minister, Mr. Sam Pitroda.

✓ **Spectrum Audit**
Agencies should regularly audit of spectrum to ensure its proper functioning and usage.

### A Brief Review

- **Spectrum Issue:** After a controversial few quarters, owing to the 2G spectrum scam, and the resignation of Telecom Minister A. Raja, the Indian Government has said that it intends to let forces determine the cost of the spectrum, and will consider the adoption of an auction based process for allocation and pricing of spectrum. There is no level playing field, as each operator has about 4 MHz to about 10 MHz of spectrum, while globally it would be in the range of 22 MHz to 25 MHz of spectrum. **The unbundling of telecom license from spectrum will ensure a level playing field, but does a level playing field always ensures a fair play??**

Service providers will get a Unified Service Access licence, allowing them to provide any of telecom services, but they’ll have to obtain spectrum for that particular service through a market driven auction process. Earlier, during the controversial 2008 allocation, licensees were given spectrum along with the license, as start-up and contracted spectrum. 6.2Mhz of spectrum was allotted to each service provider, but quite a few of them so far only have got the basic start-up spectrum of 4.4 Mhz
and are awaiting the rest of the 1.8Mhz as contracted spectrum. For new licences there will be no start-up or contracted spectrum bundled with the licence.

Why not go for subscriber based allocation of spectrum??
If a telecom operator is providing services which attract more users, allocation of spectrum should be made to him – this ensures that the consumer experience doesn’t suffer, and rewards service providers who provide better service. That said, they should made to pay for buying excess spectrum, and perhaps allowing trading in spectrum means that the demand and supply situations are taken into account, even for telecom operators who are hoarding spectrum. If a particular telecom is unable to acquire customers in a particular circle, why not allow him to rent it out to the operator that is doing well? The end goal should be to serve consumer interest, and ensure that spectrum available is being efficiently utilized.

Merger Issues In Telecommunication
The telecommunication industry is the fastest growing industry in almost every country. Both, technology advance in the telephony industry in general, and in the wireless technology in particular, as well as technology advance of the Internet contributed the most for the fast growth of this industry. Telecommunication services constitute the most natural example of network externalities, since by definition, the nature of these services involves communicating with a large number of people.

Mergers and acquisitions in the telecommunication industry have grown by substantial proportions in India since the mid 1990s. Economic reforms undertaken in the 1990s in India opened up the telecom sector which used to be a predominantly state controlled one. Private investment in the telecom sector in India not only facilitated the rapid expansion of telecom services in the urban, as well as rural parts of India, it also provided the opportunity for mergers and acquisitions in this sector.

Rationale behind Mergers in the Telecommunication Industry
- Acquisition of licenses or geographical territories
- Acquisition of spectrum
- Acquisition of telecom infrastructure and network
- Acquisition of customer base to achieve an economic base
- Acquisition of brand value
- Higher operating profit (EBITDA) margin
- Acquisition of Customer Base
Important mergers and acquisitions in the Indian telecommunication industry

The first merger and acquisition deal in the Indian telecom industry occurred in 1998 between Max Group of Delhi and Hutchison Group of Hong Kong. 41% of stakes of Orange services in Mumbai was acquired by Hutchison from Max for 560 million US Dollars. In the years that followed several other mergers and acquisitions took place in the telecommunications sector in India. Important ones among them include –

- Acquisition of Command Cellular Services in Kolkata by Hutchison from Usha Martin in 2000.
- Acquisition of 79.24% stakes of Aircel, Chennai by Sterling group from RPG group for Rs. 210 Crores in 2003.
- Acquisition of 48% stakes in Idea cellular by Aditya Birla group from the Tata group in 2005.
- Acquisition of Hutch services in India by Vodafone in 2006.

13 www.businessweek.com
### The Recent mergers and Acquisitions

- Idea Cellular takes over Spice Telecom
- Idea buys 40.8% stake at Rs.2,720 crores.
- Idea gains entry in the contiguous wireless markets of Punjab and Karnataka, which account for 11% of India’s total wireless subscribers.
- Idea gains all-India subscriber market share increasing from 9.5% to 11.1%.
- Idea’s operations in the 900 MHz GSM spectrum band will increase from the current 7 service areas to 9 service areas.
- TT DoCoMo paid 2.7 Billion USD for a 26% stake in Tata Teleservices. The deal values Tata Teleservices at $10 bn.

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14 [www.businessweek.com](http://www.businessweek.com)
Telecom Regulatory Bodies in India

✓ **Department of Telecommunication**

The DoT comes under the purview of Ministry of Communications and Information Technology. The Department of Telecom formulates developmental policies for the accelerated growth of the telecommunication services. The Department is responsible granting licenses for various telecom services like Unified Access Service Internet and VSAT services, managing radio frequency in close coordination with the international bodies and enforcing wireless regulatory measures by monitoring wireless transmission of all users in the country.

✓ **Telecom Commission**

The Telecom Commission was set up by the Government of India in 1989 with administrative and financial powers of the Government of India to deal with various aspects of Telecommunications. The Telecom Commission is responsible for policy formulation, licensing, wireless spectrum management, administrative monitoring of PSUs, research and development and standardization.

✓ **Telecom Regulatory Authority of India (TRAI)**

TRAI was set up in 1997 by the government of India as an independent regulator of the business of telecommunications in the country. TRAI is mandated to provide an effective regulatory framework and adequate safeguards to ensure fair competition and protection of consumer interests. The mission of TRAI is to create and nurture such conditions that encourage the growth of the telecommunications sector in India so that the country can play an important role in the world telecommunications society. The main objective of TRAI is to form a transparent and fair policy environment that encourages fair competition.

✓ **Telecom Disputes settlement & Appellate Tribunal (TDSAT)**

TDSAT was set up in May 2000 by the government of India to adjudicate over disputes that arise in the telecommunication sector. TDSAT was established with the view to protect the interest of the consumers and service providers of the telecommunication sector and also to encourage and ensure the growth of the telecommunication sector. The chairperson of TDSAT is appointed from the ranks of chief justice of a High Court or a Supreme Court judge and holds office for a period of 3 years. The TDSAT can adjudicate any disputes that arise between a group of consumers and service providers, a licensee and a licensor, and also between two or more than the service providers. The power and function of Telecom Disputes
Settlement & Appellate Tribunal includes that it can hear the appeal and also dispose appeals that are against any order, direction, or decision of the TRAI.

Certain regulatory and statutory norms pertaining to mergers and acquisitions in the Indian telecommunications sector are laid down by the Indian government and its authorized agencies.

**However, according to the NTP 2011,** merger and acquisition guidelines in the country’s crowded telecom sector need to be liberalised. **Under the current M&A rules, one company cannot hold more than 10 per cent stake in two competing firms in one telecom circle.** Also, new licensees are not allowed to sell out or exit before three years of operations. Further, when two operators merge their revenues or subscriber base, it should not exceed 40 per cent of the total revenue/subscribers in that circle. Not explaining how these regulations will be eased or changed to allow more consolidation, the minister has only said that the number of players in each telecom circle should not fall below six, including the state-run operators, to ensure sufficient competition in the sector. The current strengths of each circle in India is in the range of 9-14. We have one of the lowest ARPUs in the world and declining year-on-year. In the light of the above, a strong need is felt to liberalise the M&A guidelines. The liberalisation of M&A guidelines is expected to drive consolidation in the industry, which is facing intense pressure on margins due to tough competition and low tariffs.
In this context let’s try and analyse a hypothetical merger situation in which Airtel merges with Idea. Now, calculating the market share of the merged entity in Gujarat circle from the table below we have the following results:

In the Gujarat circle, the market share of the merged entity (Airtel and Idea) amounts to something around 1,33,66,355 which is equivalent to 28% (approx) of the total market share.

Now, we analyse the impacts of this merger both on the merging entities and economic welfare:

The merging entities can reap the benefit of telecom infrastructure and network. They would also acquire a large consumer base and can hence enjoy high operating profit margin. Although, Idea is not involved in the wireline market, Airtel has its hands in both wireless and wireline markets. Efficiency gain could be reaped by combination of complementary activities, in this case through mergers and acquisitions activity. The new conditions, based on technological and capacity combination will generate space for new ideas to fill existing market niches. Also, spectrum and license acquisition is another part of this happy story.

However, this happy story seems to look a lot different when analysed with respect to the impacts it will cast upon the telecom industry and thereby on consumers. First, since in our
hypothetical example, both Airtel and Idea are major players at present, the likelihood is that the merger would result in the removal of a vigorous and effective competitor. It might also effect the extent of R&D and innovations being carried out at present.

But looking at the DoT guidelines, it seems that the merger would be approved as the market share of the merged entity is less than 40% and it also complies by the other guidelines. However, under the Competition Act, the test for regulation of combination is “which cause or likely to cause an appreciable adverse effect on the competition within the relevant market in India”. The combination in this case may have an appreciable adverse effect within the relevant market as per section 6(1) of the competition Act 2002. Thus, there is a possibility of conflict between the merger guidelines issued by DoT and the provisions of competition Act.

Suggestions:

1) There are ‘other’ issues that indirectly impacts competition in a particular sector. Therefore, CCI should try widening its role such that it is possible for the commission to monitor those indirect actions. For example: CCI could play an aggressive role in facilitating competition in International calls which would lower down the prices and improve consumer welfare.

2) Correction Of legislative Ambiguities between CCI and TRAI: One fundamental flaw exists regarding predatory pricing, especially with respect to the ongoing tariff war between mobile operators. For a mobile operator to be guilty of predatory pricing, it must be in a “dominant position” as per section 4 of the Act. Since the Indian market is all about number (which is probably why our government feels that it can sustain competition even with 14 telecom operators), no new entrant can be said to be in a “dominant position” and, therefore, may never be guilty of predatory pricing, even though it may have deep pockets to withstand lower tariffs as compared to other operators and successfully eliminate any future competition from other new entrants. This can also have a negative impact on the older and established operators, who may be in a dominant position, but may not have a suitable business model to sustain lower tariffs for a very long period of time. Therefore, competition can be negatively impacted even though the operator accused of predatory pricing is not “dominant.”
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