

BSNL lashes out at Trai; says regulator is biased

Joji Thomas Philip, ET Bureau

NEW DELHI: State-owned BSNL has accused telecom regulator Trai of conniving with private mobile firms, especially new operators that obtained licences in 2008, to destroy the company. These allegations mark BSNL's harshest-ever criticism of the country's telecom regulator.

This comes within days of large private operators—Bharti Airtel, Vodafone Essar and Idea Cellular—boycotting Trai's latest consultation process to fix the price of second-generation (2G) wireless spectrum, citing lack of transparency by the regulator. Earlier this month, Vittorio Colao, the global CEO of Vodafone, the world's largest private mobile operator, met Prime Minister Manmohan Singh to explain the company's concerns on India's degenerating telecom regulatory and investment climate.

In a strongly-worded communication to Trai, BSNL said the regulator used 'non-existent and incorrect information for giving completely impermissible, predetermined and biased recommendations against the PSU'. It further said this was done to 'favour private operators and cause financial losses to it as well as put it in a competitive disadvantage'.

The telco was referring to Trai's latest recommendations, where it had said BSNL held 12.4 MHz of airwaves in most service areas and was under-utilising the same. Trai had called for the withdrawal of 2.4 MHz of airwaves from BSNL in all service areas.

The telco said the maximum airwaves it held in any area was 7.6 MHz. Despite Trai being 'fully conscious and aware' that it did not have 12.4 MHz of airwaves in any area, it used incorrect information to support its recommendations, which called for withdrawing spectrum from the PSU, the telco alleged.

BSNL also alleged that Trai's motive was to take back spectrum from it and assign it to new private operators such as Unitech (Telenor), Swan (Etisalat), S Tel and Datacom (Videocon), among others, that were given mobile licences in 2008.

The country's largest telecom company pointed out that Trai had 'failed to use the same yardstick against private operators' and did not recommend withdrawal of any airwaves from them even as they (private players) held equal quantities or more spectrum than the PSU.

To support its arguments, BSNL has also provided Trai with a detailed list comparing the airwaves held by private operators such as Bharti, Vodafone, Idea and BPL (Loop). Trai chairman JS Sarma could not be reached for comments. Mr Sarma could

not be reached on his mobile and also did not respond to a text message from ET on this issue.

Going further, BSNL said Trai's last consultation process on policy changes for the telecom sector had made no mention of amending rollout obligations for existing players. But despite this 'the regulator went ahead and imposed a new set of rollout obligations for BSNL to harm its commercial interests, while removing the rollout obligations to new private operators, to offer them undue advantage', the PSU's communication added.

BSNL further alleged that Trai, in its latest recommendations on policy changes, had issued proposals for as many as eight parameters that were not part of the consultation process. "Trai is not permitted to choose its own method of consultation. Law allows Trai to offer recommendations only on such issues which are part of the consultation paper and not any additional issue which comes to its mind subsequently, and on which no consultations with stakeholders have been held," BSNL maintained in its communication to Trai.

Last week, Bharti Airtel, Vodafone Essar and Idea Cellular had all refused to take part in Trai's latest consultation process. Trai had said two of its key recommendations—linking the price of 2G wireless spectrum to 3G and plans to take back spectrum in the 900 MHz band and substitute it with the 1800 MHz band when licences are renewed—were only interim suggestions and had asked all telcos to send their views on these issues by June 15. These three phone firms have warned that asking them to pay a one-time fee for 2G spectrum over 6.2 MHz at rates determined during the 3G auction are discriminatory and could harm a sector that is in the middle of a bruising tariff war that is affecting profitability.

In addition, BSNL has shot off a second letter to Trai endorsing private operators' claims that they cannot be charged a one-time fee for all 2G spectrum over 6.2 MHz at rates determined during the 3G auction. The telco has pointed out that Trai in August 2007 had issued detailed recommendations on allotting up to 15 MHz of airwaves per circle to GSM operators subject to them meeting certain pre-defined subscriber numbers. It has also added that the government had allotted additional airwaves to all telcos based on these subscriber-linked norms announced by the regulator.

The state-owned telecom company warned that any move by the regulator to charge for 2G spectrum beyond 6.2 MHz would contradict and violate the terms and conditions of its licence and government policy during that relevant period.

"Further, Trai has recommended the withdrawal of 900 MHz spectrum, which is contradictory to licence conditions. All these recommendations by Trai, in addition to being without jurisdiction, are discriminatory to BSNL vis-à-vis private operators that have been given licences recently by the government, and also private operators that have been assigned spectrum for dual technology," BSNL's second communication to Trai added.

BSNL also said there is no correlation between 2G and 3G spectrum pricing. It has pointed out that price of broadband spectrum was initially set at 25% of the base price

of 3G spectrum, before it was revised to 50%. But, during the auctions, broadband spectrum was valued at 76% of the closing price of 3G spectrum while in some circles like Tamil Nadu and Punjab, it was valued more than 3G airwaves, BSNL said. This is an indicator that spectrum across different bands cannot be compared, the telco said, while adding Trai would violate existing laws by attempting to charge telcos retrospectively for these airwaves.

Other GSM-based operators have also been extremely critical of the telecom regulator's new policy proposals. Vodafone recently announced that it was writing down the value of its Indian business (Vodafone Essar) by over 25%, or £2.3 billion (nearly Rs 20,000 crore), because of latest regulatory developments and the ongoing price war. Bharti Airtel chairman Sunil Mittal and Idea Cellular promoter Kumar Mangalam Birla have all publicly complained against the prevailing regulatory environment in the telecom space.

These companies complain that the policy environment for telecom has been vitiated in recent years by making it harder for established players to operate and threatening the future of the industry. One issue that has particularly caused heartburn is the allocation of 2G licences by telecom minister A Raja to nine new companies in 2008, allegedly at throwaway prices. No new allocation of 2G spectrum has been made since March 2009 and the allotments made in 2008 are the subject of an investigation by the CBI.

On the other hand, phone companies operating on the CDMA platform and dual licence holders such as Reliance Communications and Tata Teleservices have urged the regulator to be more stringent when imposing the one-time fee. AUSPI, the grouping of such companies, has told Trai that the one-time fee for 'excess' 2G spectrum should be four times the cost of 3G airwaves because India is a market where voice and text messaging services that use 2G predominate, making the spectrum more valuable.