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11 FEB, 2012, 02:57AM IST, JOJI THOMAS PHILIP, ET BUREAU

Spectrum scam: SC judgement lands DoT in a tight spot

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NEW DELHI: The telecom department (DoT) will seek legal opinion on whether there is a need to refund the Rs 9,500-crore licence fees and additional bank guarantees collected from companies whose mobile permits were cancelled last week by the Supreme Court, said a senior official.

The department will also seek opinion on the ramifications of the [Supreme Court](#) order on the 73 licences issued to older telecom companies between 2001 and 2007, as well as the 37 dual-technology licences given in 2007-08, and if the government or these companies could be subjected to fresh litigation.

The DoT has identified as many as 24 issues that have arisen as a result of the judgement and plans to elicit the view of the government's law officers on many of them, said the official. The apex court has quashed 122 licences awarded in 2008 by then telecom minister [A Raja](#) and described the first-come, firstserved (FCFS) policy for granting spectrum that has been in place since 2001 as "fundamentally flawed".

The Big Questions

DoT has listed 24 issues to be addressed after SC cancelled 122 licences allotted in 2008. These include:



- 1 Fate of 73 licences given between 2001 and 2007
- 2 Ramifications on 37 dual-technology licences largely held by RCOM & Tatas
- 3 What happens to 3G spectrum held by Idea & S Tel in circles where their permits have been cancelled
- 4 Should bank guarantees of the 122 cancelled licences be encashed/returned
- 5 Should licence fee be returned
- 6 Can lenders/banks claim these licences as govt is signatory to loan agreements
- 7 Can pending court cases against these companies be pursued
- 8 What happens to pending M&A cases - Allianz-Etisalat, Idea-Spice & Unitech group companies
- 9 Can penalties be imposed for failure to roll out services on time
- 10 Can DoT give approvals for launch of new services, security, numbering codes & security clearances during the 4 months when these 122 licences remain operational

Telecom companies that have lost licences are exploring legal options and a few of them say they are weighing the possibility of claiming damages as well as refund of their licence fees from the government. The Supreme Court order is silent on what the government should do with the money that has been collected from these companies.

The department may also seek clarity on whether lenders and banks can lay claim on the licences that have been quashed as the government is a signatory to all loan agreements of mobile phone companies. It also has to decide if pending court cases against these companies should be pursued, and if it is possible to collect penalties imposed on them for failure to roll out services on time and other alleged violations now that their licences have been cancelled. The Supreme Court order has created a few peculiar problems for the telecom department.

For instance, Idea Cellular and S Tel hold both 2G and 3G spectrum in a few circles where their [2G permits](#) were cancelled. But as 2G and 3G licences are bundled together, the DoT has to decide how to separate them, and only terminate [2G licences](#).

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