

Implementation of Unified Licencing Regime

3.1 Gaps in implementation of UAS regime

In October 2003 TRAI submitted its recommendations on Unified Licensing regime which envisaged total elimination of service based licensing. Unified Licence was an approach towards convergence of access media. Full implementation of the new regime was to be completed in two phases. The Union Cabinet approved the TRAI report in October 2003. Phase I was the first step of migration of existing licensees to the Unified Access Licensing Regime. This was to be followed by a second phase of a fully Unified Licensing /Authorisation Regime having all telecom services under one licence. This was for grant of licences to new operators. However, the benefits of Phase I were extended to new operators. Ministry replied that TRAI had submitted two more recommendations one on Unified Licensing (January 2005) and another on Spectrum Related issues (May 2005). Though Unified licensing was the first step towards convergence, it was not implemented since the Convergence Bill lapsed in Parliament. Thus the ultimate objective of Unified Licensing did not materialise. DoT however, as explained earlier did not revisit the Unified licensing regime but implemented it for new licensees also.

- 3.1.1** TRAI, in its report on Unified Licensing accepted by Government in October 2003, had recommended that Unified Licence Regime should aim at automatic licensing/authorisation for telecom services subject to notification to Regulatory Authority and compliance with published guidelines by operator thereby removing all barriers for growth in the sector. The underlying principle was to allow licence at nominal entry fee and price the spectrum separately, it being a scarce public resource. TRAI had further observed that *“spectrum was to be distributed by a mechanism that it is allocated optimally to the most efficient user”*.
- 3.1.2** Unified Licensing/Authorisation being the main objective, TRAI had recommended a two-phase implementation. Recognizing that primary objective of growth in tele-density depended on securing access network at low cost, in the first phase, unification of access services at the Circle level was recommended whereby the service providers of new Unified Access Licensing Regime would be able to offer basic and/or cellular services using any technology (GSM or CDMA). The second phase was to be soon followed by defining the guidelines and rules for fully Unified Licence/Authorisation Regime.

3.1.3 Based on the recommendations of Group of Ministers which agreed with the principles laid down by TRAI in its Report, Cabinet (31 October 2003) approved the proposal for charting the course for Universal Licensing Regime in the following manner:-

- A two-stage process; the Unified Access Regime for basic and cellular operators allowing a migration path to existing BSPs and CMSPs in the first phase to be implemented immediately followed by a second phase of a fully Unified Licensing/Authorisation Regime within six months, bringing all telecom services under one licence, after a process of detailed consultation by TRAI;
- Fee paid by the fourth cellular operator to be used as benchmark for migration of BSOs to the new access regime and no fee to be paid by the existing CMSPs for migrating to new regime;
- The DoT to be authorised to finalise details of implementation of UAS and the fully Unified Licence Regime with the approval of the Hon'ble Minister of Communication & Information Technology (MoC&IT) based on the recommendations of TRAI.

In pursuance to the Cabinet's approval, the DoT issued the guidelines on UAS Licencing (11 November 2003), for moving towards UASL regime by giving the option to all existing BSOs and CMSPs to migrate to UASL regime. The guidelines also included a condition that "All applications for new Access Services Licence shall be in the category of Unified Access Services Licence." There was ambiguity regarding entry fee to be charged from the new licensees as TRAI had not given any recommendation regarding introduction of new operators in the first phase of UASL regime. Secretary, DoT, spoke to the Chairman, TRAI who clarified (14 November 2003) that entry fee of the new unified licensee would be the entry fee of 4th Cellular Operator and in service areas where there is no fourth operator, the entry fee of existing BSO fixed by the Government (based on TRAI recommendations). DoT decided to receive all applications under UAS without revision of the spectrum allocation procedures/revision of entry fee, which automatically lifted the restriction on the number of operators in the UAS regime.

3.1.4 TRAI's Recommendations of 2003 not followed in spirit

In its recommendation, TRAI had considered three alternatives for migration of existing operators in para 7.16 to 7.18 of their Report submitted to Government on 27 October 2003, including that of bidding by the existing and new prospective operators, but did not favour it on the grounds of likely delay in implementation of UAS regime. TRAI recommended a third option in para 7.18 of its Report which suggested migration of existing BSPs by charging entry fee determined through a bidding process in 2001 for the fourth cellular operator and no entry fee from the existing CMSPs. There was no mention regarding entry fee to be charged from the

new licensees under UAS, as entry of new operators had not been recommended by TRAI in the first phase of UAS which was intended only for migration of existing BSOs and CMSPs. Thus, the first phase of six months was meant for migration of existing operators. TRAI had recommended new operators only in the fully Unified Licensing Regime. TRAI had also suggested that ***“taking cognizance of spectrum availability, TRAI is in favour of introducing more competition. However, we feel that in lieu of more cellular operators it would be more appropriate to have competition in the Unified Licensing framework which will be initiated after 6 months”*** (Para 7.37). TRAI in their same Report submitted to Government had recorded in para 7.39 that ***“the induction of additional mobile service providers in various service areas can be considered if there is adequate availability of spectrum. As the existing players have to improve the efficiency of utilisation of spectrum and if Government ensures availability of additional spectrum then in the existing licensing regime, they may introduce additional players through a multi-stage bidding process as was followed for fourth cellular operator”***. TRAI also recommended that the guidelines for Unified licensing should include nominal entry fee, USO etc.

Thus, the stipulation of the DoT to benchmark entry fee in respect of new licenses also at the same level which was allowed for migration of existing BSOs was not consistent with the recommendations of TRAI (2003). This issue was neither deliberated by the TRAI in its recommendations (2003) nor at the Telecom Commission level nor by the GoM on Telecom matters constituted in September 2003. The Cabinet also did not give any directions on the issue.

- 3.1.5** One of the major objectives of movement towards Unified licensing regime, of which first step was migration of existing licensees, was to ultimately de-link spectrum from licence and encourage its efficient use by rational allocation procedure and pricing. Under the fully unified licensing regime it was envisaged that the licence fee would be nominal allowing the operator to provide different telecom services with a separate procedure /regulation for allotting spectrum for which TRAI had yet to give its recommendations. TRAI's recommendations in this regard have not yet been implemented by the DoT, which also meant that an important and crucial objective of 2003 policy remained unachieved.
- 3.1.6** The Ministry justified the non revision of entry fee on the ground that the entry fee recommended by TRAI in August 2003 was not only for migration of existing operators but also for new prospective UASL operators as well and the recommendations were approved by the Cabinet on 31.10.2003. Further, the Union Cabinet had authorised DoT to finalise the details of implementation with the approval of Hon'ble MoC&IT and hence the guidelines were issued in November 2003. The Ministry also stated that their action was also consistent with the clarification given by the then Chairman TRAI (November 2003). It was also stated that TRAI submitted two recommendations on fully Unified Licensing regime in 2005 but could not be implemented since the Convergence Bill lapsed in Parliament.

The contention is not correct as the issue of the non revision of entry fee for new prospective UASL operators had not even been raised in the note put up to the Cabinet. Even TRAI in their report (October 2003) had recommended for a two stage implementation of the UAS licensing regime in which the first phase was regarding migration of existing BSOs and CMSPs to the UAS and the second phase for the new UAS licences. The first phase was to be implemented immediately while the second phase was to commence only after the receipt of fresh recommendations of TRAI within six months (Para 7.1 of TRAI recommendations of October 2003). Therefore the issue of non revision of entry fee for new licensees/operators was not discussed in any forum- Telecom Commission, TRAI, GOM or Cabinet. If the DoT needed more clarity in implementing recommendations of the TRAI, it should have written for clarifications from the TRAI on the specific issues. Raising/discussing the issues on telephone and getting clarification even in a letter from the Chairman TRAI on the same day in his individual capacity on such a critical issue shows undue haste and an avoidance for following the normal official procedures by the DoT. Further, the Chairman, TRAI did not have the authority to issue a clarification on an issue which had not been discussed and deliberated upon in the Authority. The clarification was not in line with the recommendations of TRAI as para 7.39 of the Report read that “if Government ensures availability of additional spectrum then in the existing licensing regime, they may introduce additional players through a multi-stage bidding process as was followed for fourth cellular operator”. Any such clarification, which altered the TRAI's recommendations substantively, should have been taken to the GoM and Cabinet as their decision was based on the original TRAI's recommendations.

- 3.1.7** The DoT's action of applying the rates approved for the existing operators for migrating to UAS regime, to new applicants also by relying on the clarification of the Chairman TRAI in his individual capacity was inconsistent with the recommendations of the TRAI (2003) and went beyond the authority given by the Cabinet. It also violated all canons of financial propriety. The DoT had to resort to informal clarifications from TRAI before concluding that new applications would also be at the entry fee of price determined for 4th CMSP in 2001 as against TRAI's recommendation of introducing new operators in the existing regime through a multi-stage bidding process. Elimination of bidding process without delinking licensing from spectrum was not intended by TRAI.

The decision to continue to charge entry fee at 2001 level even from the new licensees under UAS regime in 2003, was thus not deliberated either in the TRAI or Telecom Commission or GoM or Cabinet.

The MoF, right from the year 2003, quoting international practises and scarcity factor had maintained that auction of spectrum and its trading under a regulatory frame-work could induce competition and transparency in the system and would result in most efficient utilisation of spectrum. TRAI in October 2003, while recommending Unified Services Licensing, had also proposed to submit a separate report regarding spectrum allocation and pricing. Based on these inputs, Cabinet, in its decision of 31 October 2003 while charting the course to the UAS and US licencing regime had also approved the following:

- adequate spectrum would be made available for unimpeded growth of Telecom services for which WPC wing of the DoT and Ministry of Defence(MoD) should coordinate;
- MoF will provide MoD adequate budget and;
- The DoT and the MoF would discuss and finalise pricing formula for spectrum including incentive for efficient use and disincentive for sub-optimal usages.

3.2.1 Thus, spectrum pricing issue was to be decided in consultation with the MoF. However, when a GoM was constituted in February 2006, its Terms of Reference (ToR) were modified at the instance of the DoT to keep the issue of spectrum pricing outside its purview. Though MoF insisted for its inclusion in the ToR for the GoM, DoT maintained that 'spectrum pricing was within the normal work carried out by them'. The MoF opined that spectrum pricing was an issue which has far reaching consequences for the economy and needed to be debated, but this was not considered at the highest level and the views of the DoT prevailed in finalisation of ToR. The GoM's role, in December 2006, at the instance of the DoT, was confined to issues concerning 'spectrum vacation'. Thus, without MoF getting a chance to contribute to the issue of pricing of spectrum, new licences continued to be issued along with the spectrum.

It was also noted that the DoT kept the applications for UAS licence pending since March 2006 on the grounds of non-availability of spectrum, though a decision to get the spectrum vacated from MoD was taken way back in 2003. DoT admitted that prior to April 2007, availability of spectrum was not quantified and GSM spectrum allotments to service providers/operators were made after due co-ordination with MoD on a case to case basis. Since the availability of spectrum had not been quantified till April 2007, the basis for keeping the applications pending and seeking TRAI recommendation (April 2007) on limiting the number of Access Service Providers on the grounds of non-availability of spectrum is inexplicable.

- 3.2.2** Again in August 2007, TRAI in its report observed that the entry fee as it existed in 2001 was not a realistic price for obtaining a licence in the changed situation considering the dynamism and growth of telecom sector and it needs to be reassessed through a market mechanism. It also observed that value of spectrum was not correctly reflected in the extant pricing model and recommended again for de-linking of spectrum from licence. Yet, TRAI did not favour any change in 2G spectrum pricing even for new entrants on the grounds that it would affect the principles for level playing field for the new operators. It is to be noted that the role of TRAI, as per the TRAI Act is primarily to foster competition and to ensure a level playing field in the sector. Generation of revenue for the Government is not within the scope of its mandate and hence not perhaps a basis for framing its recommendations. Thus, while accepting the recommendations of TRAI, protecting the financial interests of the Government should have been an important consideration for the DoT, more so, when it had left out MoF from the decision making process with regard to the pricing formula of spectrum.
- 3.2.3** The DoT in response to the audit observation, stated (July 2010) that in February 2006 the then Hon'ble MoC& IT had apprised the Hon'ble Prime Minister that one major bottleneck in the sustained growth of telecom sector was the availability of spectrum and not its allocation and thus ToR was revised with the approval of the Hon'ble Prime Minister.
- 3.2.4** While ensuring availability of spectrum which is also at a price, the DoT should not have lost sight of the need for a realistic price for 2G spectrum, especially in the light of the fact that the price being charged was discovered from a nascent telecom market in the year 2001 and was approved by the Government as benchmark only for the purpose of allowing migration of Basic Operators to UAS regime in 2003 for operating mobile services.
- 3.2.5** MoF while agreeing with the Audit view stated that the Ministry has at various points of time been advocating for a more rational mechanism for allocation and pricing of 2G spectrum. Right from August 2003 they have been recommending greater orientation in spectrum allocation, keeping efficiency and optimal utilisation considerations in mind, through auction to users, who are willing to pay the maximum fee. MoF concurred with Audit that the assumption of the DoT to the effect that spectrum pricing was within its normal work allocation was not tenable. The MoF observed that ***“in view the directions of the Union Cabinet (October 2003) and particularly in the absence of requisite clarity in the recommendations of TRAI and decision of the Union Cabinet, in regard to the fixation of entry fees for new licensees, prudent principles of governance would have required DoT to engage in further inter-ministerial discussions particularly with the MoF. The fact that this was not done despite repeated advices from MoF does give scope for creation of doubt, on the validity of the decision taken to fix the entry fee for new licenses at 2001 levels”.***

It is important for a growing economy that a policy decision is subject to review /is revisited constantly with adequate feed-back for application of collective wisdom of Government, particularly if it relates to a sector witnessing transition and operating within a dynamic environment, as was the case with the Telecom sector during 2003-2009. In this case, despite gaps in policy implementation as detailed above, there was no attempt on the part of the DoT to review the implementation processes holistically, which is one reason for the pricing issue remaining unaddressed.

When two-stage Unified Access Licensing policy could not be implemented fully as cleared by the Cabinet in October 2003, it was never again placed before the Cabinet for charting/approving the next /alternative course of action. The Cabinet did not get the chance to consider the changed scenario whereby Unified Services Licensing Regime introduced with the intention of de-linking spectrum allocation from licensing could not be fully achieved. An approved interim stage was thus treated as a final destination by the DoT.

3.3.1 DoT justified continuance of 2001 rates for issue of licenses to Audit stating that the Government treats telecom sector as an infrastructure sector and accordingly the Government's broad policy of taxes and regulation of the sector are promotional where revenue considerations play a secondary role. Also, the policy of grant of UAS licences was not changed since introduction because this has resulted in an unprecedented growth of telecom services. Change in policy is considered when the existing policies are not delivering desired results which were not the case in the telecom sector.

3.3.2 Policies are evolved through the initiatives of the concerned Ministries. The response of DoT suggested that it had not taken into account the unprecedented growth in the telecom sector, the scarcity of the resources and the increasing economic value of 2G spectrum, when it decided not to review the pricing of spectrum. This was despite TRAI's observation that value of spectrum needed to be reassessed through a market mechanism and MoF also was advising for rational pricing.

Thus, despite all agencies having full knowledge of scarcity and under pricing of spectrum, the entry fee for issue of licences continued to be pegged at 2001 rates even in 2007 without delinking and independently discovering the price of spectrum through a market mechanism. Meanwhile, the entire scenario in the telecom sector had transformed amidst unprecedented growth in the sector.