

Government of India
Ministry of Communications and Information Technology
Department of Telecommunications
Sanchar Bhawan, 20, Ashok Road, New Delhi
(AS-I Division)

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Subject: Guidelines for Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL) on compromises, arrangements and amalgamation of the companies.

1. National Telecom Policy -2012 envisages one of the strategy for the telecom sector to put in place simplified Merger & Acquisition regime in telecom service sector while ensuring adequate competition. This sector has been further liberalised by allowing 100% FDI. Further, it has been decided in-principle to allow trading of spectrum. The Companies Act of 1956 has also been amended by Companies Act of 2013 and the amendments have been made in reference to compromises/arrangements and amalgamations of companies. SEBI has also prescribed procedure for IPO.
2. The scheme of compromises, arrangements and amalgamation of companies is governed by the various provisions of the Companies Act, 2013 as amended from time to time. Such schemes is to be approved by National Company Law Tribunal to be constituted under the provisions of Companies Act, 2013. Consequently, the various licences granted under section 4 of Indian Telegraph Act, 1885 to such companies need to be transferred to the resultant entity (ies). It is also noted that such schemes may comprise of merger by formation or merger by absorption or arrangement or amalgamation etc. of company (ies) and thereafter merging/transferring such licences/authorisation subject to the condition that the resultant entity being eligible to acquire such licence/authorisation in terms of extant guidelines issued from time to time.
3. Earlier department has issued Guidelines for intra service area Merger of Cellular Mobile Telephone Service (CMTS)/ Unified Access Services (UAS)

Licences vide Office Memo No.20-232/2004-BS-III dated 22nd April 2008. Taking into consideration the above and taking into consideration the TRAI's Recommendations dated 11.05.2010 and 03.11.2011 and National Telecom Policy 2012, in supersession of these guidelines, it has been further decided that Transfer/ Merger of various categories of Telecom services licences/ authorisation under UL shall be permitted as per the guidelines mentioned below for proper conduct of Telegraphs and Telecommunication services, thereby serving the public interest in general and consumer interest in particular: -

- a) The licensor shall be notified for any proposal for compromise, arrangements and amalgamation of companies as filed before the Tribunal or the Company Judge. Further, representation/objection, if any, by the Licensor on such scheme has to be made and informed to all concerned within 30 days of receipt of such notice.
- b) A time period of one year will be allowed for transfer/merger of various licences in different service areas in such cases subsequent to the appropriate approval of such scheme by the Tribunal/Company Judge.
- c) If a licensee participates in an auction and is consequently subject to a lock-in condition, then if such a licensee propose to merge/compromise/arrange/amalgamate into another licensee as per the provisions of applicable Companies Act, the lock-in period would apply in respect of new shares which would be issued in respect of the resultant company (transferee company). The substantial Equity/ Cross Holding clause shall not be applicable during this period of one year unless extended otherwise. This period can be extended by the Licensor by recording reasons in writing.
- d) The merger of licenses/authorisation shall be for respective service category. As access service licence/authorisation allows provision of

internet services, the merger of ISP licence/authorisation with access services licence/authorisation shall also be permitted.

- e) Consequent to transfer of assets/ licences/authorisation held by transferor (acquired) company to the transferee (acquiring) company, the licences/authorisation of transferor (acquired) company will be subsumed in the resultant entity. Consequently, the date of validity of various licences/authorisation shall be as per licenses/authorisation and will be equal to the higher of the two periods on the date of merger subject to pro-rata payments, if any, for the extended period of the licence/authorisation for that service. However, the validity period of the spectrum shall remain unchanged subsequent to such transfer of asset/licences/authorisation held by the transferor (acquired) company.
- f) For any additional service or any licence area/service area, Unified Licence with respective authorisation is to be obtained.
- g) Taking into consideration the spectrum cap of 50% in a band for access services, transfer/merger of licences consequent to compromise, arrangements or amalgamation of companies shall be allowed where market share for access services in respective service area of the resultant entity is upto 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor.
- h) For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers. Exchange Data Records (EDR) shall be

used in the calculation of wireline subscribers and Visitor Location Register (VLR) data or equivalent, in the calculation of wireless subscribers for the purpose of computing market share based on subscriber base. The reference date for taking into account EDR/VLR data of equivalent shall be 31st December or 30th June of each year depending on the date of application. The duly audited AGR shall be the basis of computing revenue based market share for operators in the relevant market. The date for duly audited AGR would be 31st March of the preceding year.


- i) If a transferor (acquired) company holds a part of spectrum, which (4.4 MHz/2.5 MHz) has been assigned against the entry fee paid, the transferee (acquiring) company (i.e. resultant merged entity), at the time of merger, shall pay to the Government, the differential between the entry fee and the market determined price of spectrum from the date of approval of such arrangements by the National Company Law Tribunal/Company Judge on a pro-rata basis for the remaining period of validity of the license(s). No separate charge shall be levied for spectrum acquired through auctions conducted from year 2010 onwards. Since auction determined price of the spectrum is valid for a period of one year, thereafter, PLR at State Bank of India rates shall be added to the last auction determined price to arrive at market determined price after a period of one year. In the event of judicial intervention in respect of the demands raised for one time spectrum charges in respect of the spectrum holding beyond 4.4 MHz in GSM band/2.5 MHz in CDMA band before merger in respect of transferee (i.e. acquiring entity) company, a bank guarantee for an amount equal to the demand raised by the department for one time spectrum charge shall be submitted pending final outcome of the court case.
- j) The Spectrum Usage Charge (SUC) as prescribed by the Government from time to time, on the total spectrum holding of the resultant entity shall also be payable.

- k) Consequent upon the implementation of scheme of compromises, arrangements or amalgamation and merger of licenses in a service area thereupon, the total spectrum held by the Resultant entity shall not exceed 25% of the total spectrum assigned for access services and 50% of the spectrum assigned in a given band, by way of auction or otherwise, in the concerned service area. The bands will be as counted for such cap in respective NIAs for auction of spectrum. In respect of 800 MHz band, the ceiling will be 10 MHz. Moreover, the relevant conditions pertaining to auction of that spectrum shall apply. In case of future auctions, the relevant conditions prescribed for such auction shall be applicable. However, in case transferor and transferee company had been allocated one block of 3G spectrum through the auction conducted for 3G/BWA spectrum in 2010, the resultant entity shall also be allowed to retain two blocks of 3G spectrum in respective service areas as a result of compromises, arrangements and amalgamation of the companies and Transfer/Merger of various categories of Telecommunication service licences/authorisation under Unified Licence (UL), being within 50% of spectrum band cap.
- l) If, as a result of merger, the total spectrum held by the relevant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted. The applicable Spectrum Usage Charges on the total spectrum holding of the resultant entity shall be levied for such period. If the spectrum beyond prescribed limit is not surrendered by the merged entity within one year, then, separate action in such cases, under the respective licenses / statutory provisions, may be taken by the Government for non surrender of the excess spectrum. However no refund or set off of money paid and/or payable for excess spectrum will be made.
- m) All demands, if any, relating to the licences of merging entities, will have to be cleared by either of the two licensees before issue of the permission for merger/ transfer of licenses/authorisation. This shall be as per demand

raised by the Government/ licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand raised for pre-merger period of transferor or transferee company shall be paid. However, the demands except for one time spectrum charges of transferor and transferee company, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The one time spectrum charge shall be payable as per provisions in para 3(i) above of these guidelines.

- n) If consequent to transfer/merger of licenses in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. *SMP in respect of access services is as defined in TRAI's "The Telecommunications Interconnect (Reference Interconnect Offer) Regulations, 2002 (2 of 2002)" as amended from time to time.*

4. The dispute resolution shall lie with Telecom Dispute Settlement and Appellate Tribunal as per TRAI Act 1997 as amended from time to time.
5. LICENSOR reserves the right to modify these guidelines or incorporate new guidelines considered necessary in the interest of national security, public interest and for proper conduct of telegraphs.


20/12/17
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For and on behalf of the President of India
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