



Mr. M. K. Shrivastava,
DGM (Regulation - I),
M/s Bharat Sanchar Nigam Limited,
Room No. 505, 5th Floor, Regulation Cell,
BSNL, Bharat Sanchar Bhawan,
H. C. Mathur Lane, New Delhi - 110001.

Informant

And

- 1) M/s Bharti Airtel Limited,
Bharti Crescent,
1 Nelson Mandela Road, Vasant Kunj,
Phase - II, New Delhi - 110070. Opposite Party No. 1
- 2) M/s Vodafone Mobile Services Limited,
C-48, Okhla Industrial Area, Phase - II
New Delhi - 110020. Opposite Party No. 2
- 3) M/s Idea Cellular Limited,
7th Floor, Konnectus Building,
Bhavbhuti Marg, Near Minto Bridge,
New Delhi - 110001. Opposite Party No. 3

CORAM:

Mr. Ashok Chawla
Chairperson

Dr. Geeta Gouri
Member

Mr. M. L. Tayal
Member

Mr. S. L. Bunker
Member

Present: Mr. Atul Y. Chitale, Mrs. Suchitra Chitale and Ms. Jayanti
Chitale, Advocates for the Informant.
Mr. J. V. Bappa Rao, AGM, BSNL.

Order under Section 26(2) of The Competition Act, 2002

1. The present information has been filed by Bharat Sanchar Nigam Limited, (the **Informant**) under section 19(1)(a) of the Competition Act, 2002



(the 'Act') alleging cartelization amongst M/s Bharti Airtel Limited (**Opposite Party 1**), M/s Vodafone Mobile Services Limited (**Opposite Party 2**) and M/s Idea Cellular Limited, (**Opposite Party 3**) in 3G spectrum auction held in 2010. It was also alleged that OPs had bid selectively and entered into illegal roaming arrangements amongst themselves to secure roaming rights over areas for which they had not bid.

2. The informant, incorporated under the provisions of the Companies Act, 1956, is a 100% government owned enterprise, with the object of providing telecom services, while the opposite parties are private telecom service providers in India.

3. Informant alleged that in November, 2003, Department of Telecommunication (**DoT**) announced policy of Unified Access Service License ('**UAS License**') which provided for issuing one license for providing several types of telecom services. On 25.02.2010, DoT issued a Notice Inviting Applications ('**NIA**') from eligible operators to bid for 3G spectrum services in 22 circles across India. As per clause 2.2 of NIA, though Informant was not a bidder but was required to match the winning bid in terms of price for 3G spectrum for 20 telecom circles and the Informant made a payment of Rs. 10,186.31 crores for this purpose. A multi-stage bidding process was followed and the OPs allegedly co-ordinated their bids in a manner to maximise their combined coverage without having to compete against one another and secure maximum circles at lowest prices. The changes in UAS license terms were made to ensure that OPs provide 3G services only in the circles in which they won the 3G spectrum bid.

4. The informant alleged in the information that the manner of bidding adopted by OPs was co-ordinated in such a way that rather than competing amongst themselves, OPs ensured that at least one of operators had a presence in every circle in India and entered into roaming arrangements amongst themselves to provide services in areas in which they had no license.



5. Informant also alleged that as per the intra-circle arrangements amongst OPs, subscribers of OPs mandatorily roam on network areas of other telecom service providers. Such arrangements/agreements caused a huge loss to the Public Exchequer in terms of spectrum charges as well radio spectrum charges which were paid annually at a fixed percentage of Annual Gross Revenue (AGR). Selective bidding by OPs by forming cartels had led them to enjoying licence rights over areas for which they had not bid or secured licences.

6. Informant has further stated that it addressed two letters to DoT and Telecom Regulatory Authority of India ('TRAI') on 17.08.2011 and 17.10.2011, about OP1 illegally providing 3G services in Madhya Pradesh and the details of other illegal roaming arrangements between and among the OPs. DoT issued a letter dated 23.12.2011, to the OPs instructing them to stop providing such illegal services. TDSAT, while hearing the petition filed by OPs challenging the instructions issued by DoT, restrained DoT from taking any action against the OPs. The judgement of TDSAT dated 03.07.2012, was a split judgement wherein one member held that OPs were not entitled to provide 3G services in circles for which they had not won the bid and also imposed a cost of Rs. 50,000 on each of the OPs. Chairperson of TDSAT allowed the petitions and set aside DoT instructions dated 23.12.2011, giving liberty to DoT to pass appropriate order after hearing the OPs. No appeal was preferred in Supreme Court against that order of TDSAT.

7. DoT after hearing the OPs in terms of order passed by TDSAT, imposed penalty for violation of conditions in UAS licence through its order dated 15.03.2013. OP1 obtained a stay against order of DoT from High Court of Delhi on 04.04.2013, which was vacated in appeal by Division Bench on 05.04.2013. OP1 since filed special leave petition in Supreme Court against vacation of stay.

8. The Commission has considered all the material on record and the arguments addressed by the Advocates for the Informant.



9. The allegations of the Informant are primarily of cartelization by the Opposite Parties during the bidding for 3G sale of spectrum and through inter and intra circle roaming arrangements between the opposite parties.

10. It is inferred from the available information that Airtel, Vodafone and Idea got 3G spectrums in 13, 11 and 9 service areas respectively out of total 22 circles after competing for more circles. Had the Opposite parties formed a cartel, the total number of licences obtained would have been 22 and not 33, as in this case. No other data has been furnished to show that the opposite parties formed a cartel amongst themselves although they competed with each other in the bidding process in several circles. It is but natural that most of the operators/service providers had wanted to bid for the high revenue circles like the metropolitan cities. An adverse inference cannot be drawn against bidder(s) for not bidding for all circles.

11. The agreements between the opposite parties relating to inter- and intra-circle arrangements are to be considered in the light of terms and conditions of licence granted to the parties. In case of a violation of terms and conditions of license, the remedy lies elsewhere. The violation of any term of UAS Licences or NTP or any guidelines of DoT by OPs also, the remedy does not lie before the Commission. The facts reveal that parties had already moved TDSAT, High Court and Supreme Court on the issues related to violation of terms of licence etc.

13. In view of the above discussion, there does not exist a *prima facie* case for causing an investigation to be made by the Director General under section 26(1) of the Act. It is a fit case for closure under section 26(2) of the Act and the same is hereby closed.

14. The Secretary is directed to inform the parties accordingly.

New Delhi
Date 16.01.2014

Sd/-
(Ashok Chawla)
Chairperson



Sd/-
(Dr. Geeta Gouri)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. L. Bunker)
Member