

5.1

The entry fee fixed for a pan India UAS Licence was fixed at ₹ 1658 crore and as explained in Chapter 3 this price was the same as that captured from the market for a Cellular Mobile Service licence in 2001. The decision of the DoT to adopt this price for UAS licences also was taken in 2003 with a view not to delay the implementation of UASL. The bidding pattern of 2001 would clearly indicate that the 2001 price was discovered in a nascent market and considering the revolutionary changes in the Indian telecom market since then, there is no doubt in concluding that the that the same 2001 price did not reflect the true economic value of a licence and the spectrum bundled with it in 2008. There are two main issues for consideration:

5.1.1 Whether the entry fee was expected to reflect the value of the spectrum at all?

The 2003 Cabinet decision intended to make the UAS licence only an instrument to enter the business of providing cellular and other telecom services irrespective of the technology used for the purpose. Different spectrum bands support different technology and are used for providing different types of services and thus 2003 UAS policy, in the second phase of UAS licences, was directed at dissociating Licence from the type of service that the service provider intends to provide. Once having obtained a licence or authorisation to provide telecom services, he could obtain spectrum of required type by paying its price through auction or any other arrangement decided by an independent regulator to be set up for spectrum pricing and management. Since the policy was not reviewed for next 4 years, the issue of de-linking the entry fee from the price for the use of spectrum remained unaddressed. TRAI in August 2007, while recommending that 2G spectrum should not be auctioned opined that “in today's dynamism and unprecedented growth of telecom sector, the entry fee determined in 2001 is also not the realistic price for obtaining a licence. Perhaps it needs to be reassessed through a market mechanism”. Since no price discovery of spectrum was attempted for 2G spectrum separately, the entry fee discovered in 2001 is mainly the price of spectrum that came with UAS licence

5.1.2 What could be the value of the spectrum which was allocated to 122 licensees in 2008 at the price discovered through bidding for licences way back in 2001?

Any loss ascertained while attempting to value the spectrum in hindsight can only be 'presumptive', given the fact that there are varied determinants like its scarcity value, the nature of competition, business plans envisaged, time of entry, purchasing power of the people, growth of economy etc., which, in a market condition, would throw up the actual price at a given time. It was seen that while

fixing the Reserve Price for 3G and BWA spectrum subsequently, the DoT had correctly observed that “the key determinants of spectrum value in a competitive auction (where demand is more than supply) are the level of competition in the auction and the attractiveness of the business plan for using the spectrum.” Instead of attempting to come to a specific value of 2G spectrum which could have been possible only through an efficient market drawn process for price discovery involving demand and supply position and attractiveness of business plan for using 2G spectrum in future, we have looked at the various indicators to assess a possible (presumptive) value, from the various records available to Audit rather than going for any mathematical/econometric models.

5.2 Underpricing of 2G and Consequent Loss

5.2.1 UASL applicant had offered higher price

On 5 November 2007 S TEL Limited, who had applied for UAS licence in September 2007, in its communication addressed to the Hon'ble Prime Minister voluntarily offered to pay additional revenue share of ₹ 6,000 crore to the DoT for a Pan-India licence over and above the spectrum charge/ revenue share payable as per existing policy. S TEL Limited in a further communication addressed to Hon'ble MoC&IT dated 27 December 2007 enhanced its earlier offer of ₹ 6000 crore to ₹ 13,752 crore over a period of ten years for allotment of 6.2 MHz GSM spectrum. The Company further agreed to increase the bid price in the event of any counter bid or auction of spectrum for GSM on a Pan-India basis.

5.2.2 If the price offered by S Tel Ltd which he proposed to revise upwards in case of any counter bids, is used as indicator of market valuation of 6.2 MHz of 2G spectrum at that time, value in respect of all 122 new licences and 35 licences under dual technology after discounting the receivables of the future years work out to ₹ 65,909 crore as against ₹ 12,386 crore collected by the DoT as in the table given below.

(₹ in crore)

Category of Licenses	No of license	Offer price of S Tel for a Pan India License	Discounted Price of S Tel for a Pan India License	Value as per discounted price of S Tel	Amount actually received	Potential loss to exchequer
New UAS Licenses	122	13752	8825	47964	9014	38950
Dual Technology	35	13752	8825	17945	3372	14573
Total				65909	12386	53523

This indicated that had an open process of bidding/auction been used for price discovery and hasty and abrupt changes in deadlines and dates not been made, it could have been possible for the Government to have received at least this amount.

5.2.3 The DoT replied (July 2010) and again reiterated in the meeting on 4 October 2010 that S Tel had attached conditions to their offer which were not acceptable to the Government. Moreover, the Company withdrew their offer in the Hon'ble Supreme Court and hence there was no loss to the Government. The contention of the DoT is not correct as the S Tel had withdrawn the offer in March 2010 i.e. after more than two years, when the ground realities in the telecom sector had changed viz the competitors had already got the UAS licences along with spectrum, established their infrastructure and started rolling out their services, stiffer competition due to 13/14 operators in certain areas etc.

5.2.4 Further, the offer made by S Tel is included in this report only as an indicator of the market perception of the value of the 2G spectrum which could have accrued to the Government if the DoT had resorted to a bidding/auction process for allocation of 2G spectrum in 2008.

5.3

Value based on prices discovered for 3G spectrum

Auction of 3G spectrum was recommended by TRAI in its Report submitted to Government in September 2006 in which they had recommended a Reserve Price for one block of 2x5 MHz 3G spectrum pan India at ₹ 1010 crore which was subsequently enhanced to ₹ 3500 crore by the EGoM constituted to consider the issues relating to auction of 3G spectrum. TRAI in its report of 2010 has observed that 2G services today are actually offering 2.75G services. Therefore ***“while comparing spectral efficiency and other factors, it is fair to compare existing 2.75G systems with 3G systems”***. The Authority recommended 3G prices to be adopted as the current price of spectrum in the 1800 Mhz band and intends to separately study the subject for apprising the Government of its findings. They have recommended even higher pricing at 1.5 times of 1800 Mhz band for the 2G spectrum in 800 and 900 Mhz band.

Besides, comparing the 2G and 3G on their varieties of features and the type of services they could support, scarcity factor and demand and supply position also play important role in determining market price. It was amply demonstrated between September 2007 and December 2008 that its demand in view of its scarcity was at its peak and thus would have fetched the market determined price at a much higher level than that of 2001 entry fee. If price is calculated at 3G rates which can also be taken as one of the indicators for assessing the value of 2G spectrum allocated to UAS licensees in 2008, the value works out to ₹ 1, 11,512 crore against ₹ 9014 crore realised by DoT. Similarly, for spectrum allotted under the dual technology as referred in Paragraph 4.8, the value would have been ₹ 40526 crore, as against ₹ 3,372 crore collected. The total difference in value worked out to ₹ 1,39,652 crore as in the table given below.

(₹ in crore)

Category of Licenses	No of license	3G rate for Pan India Licence	Value as per 3G rate	Amount actually received	Potential loss to exchequer
New UAS Licenses	122	16750	111512	9014	102498
Dual Technology	35	16750	40526	3372	37154
Total			152038	12386	139652

The DoT stated that it was incorrect to calculate the notional loss to the Government for allotment of initial spectrum to new operators for 2G services at 3G price which itself has been recommended by the TRAI beyond 6.2 MHz and which were presently under reconsideration of TRAI.

Audit reiterates that specific value of 2G spectrum could have been discovered only through an efficient market drawn process and in its absence, these are the indicators available which give the hints towards the loss Government could have suffered. The revenue realised through auction of 3G at the rate fetched through a market process is highlighted in this report to project the benefits of resorting to an open price discovery process and the value that spectrum could command without compromising with the policy of open competition. The fact also remains that the Government got ₹ 1.03 lakh crore from the auction of 3G and BWA spectrum against their own estimate of ₹ 35,000 crore.

5.4

Sale of equity by UAS licensee firms at higher value

As per the DoT guidelines on UASL, the total composite foreign direct investment i.e., FDI by an applicant company should not exceed 74 per cent. The 74 per cent foreign investment can be made directly or indirectly in the operating company or through a holding company and the remaining 26 per cent will be owned by resident Indian citizens or an Indian Company.

5.4.1 There were several UAS licensees including the new entrants, which have been able to attract significant foreign investments in the recent past. The DoT has given a list of operators who could attract foreign investments, consequent to the grant of UAS Licenses in January 2008 as in the Table on the next page:

Name of the Operator	Percentage of equity transferred	Value of equity transferred ₹ in crore	Name of the Company	
			Seller	Buyer
1. Swan Telecom (Now Etisalat DB Telecom)	5.27% (proposed)	380.50	Genex Exim	Etisalat Mauritius
2. Swan Telecom (Now Etisalat DB Telecom)	44.73%	3217	Swan Telecom	Etisalat International India Ltd.
3. S Tel	5.61% (proposed)	238.5 crore	Sky city Foundations (India) Telecom Investment (Foreign)	BMIC, Mauritius (Foreign)
4. Unitech	67.25%	6120 crore	Unitech Limited (Indian)	Telenor Asia (Foreign)
5. Tata Teleservices	27.31%	12924 crore	TTSL (Indian)	NTT Docomo (Foreign)
6. Tata teleservices (Maharashtra) (TTML)	20.25%	949 crore	TTML (Indian)	NTT Docomo (Foreign)
7. Sistema Shyam Teleservices Ltd. (SSTL)	63.71%	210.33 crore	Shyam Telelinks (Indian)	Sistema Joint Stock (Foreign)
	Fresh Issue	US\$ 678 million (3051 crore)	SSTL (JV with 74% FDI)	ROSIMUSHCHE STVO (Foreign)

Out of the above six, three companies viz. Swan Telecom, S Tel and Unitech were new entrants in the telecom sector. The fact that these operators could draw huge foreign investments, even before establishing a foothold in the Indian telecom market would suggest that acquiring UASL and with it, allotment of 4.4 MHz of GSM spectrum for roll out, was the main factor which attracted the foreign investment.

5.4.2 The Unitech Wireless Services, claimed in their letter to the DoT on 4 November 2008 that Telenor was partnering with them at a stage when about 6 months of effort and ₹ 2100 crore of expenses had already been put in and the entity's value was not only that of spectrum. However, considering that Telenor is an established international provider of a high quality telecommunications, data and media communication services and one of the Norway's largest companies owned 54% by the Norway Government, what they would have required to run their business in this country was, primarily access to the spectrum. Considering its trained manpower strength in 12 countries, its long standing technical expertise and international experience of dealing in telecom business, it can be convincingly concluded that, the high value paid by them was primarily for the spectrum and not for other inputs claimed to have been infused by Unitech. Such huge equity infusion by the investor company was a price that they paid for 2G spectrum which was allocated to Unitech, a Company with no experience in telecommunication sector, at a throw away price by the DoT. The value which should have accrued to the public exchequer went as a favour to the new licencees in the form of huge capital infusion for enriching their business.

5.4.3 Based on the above premise, a comparison of foreign equity attracted by the new entrants in the Indian telecom market would reveal that the cost of a pan India licence could be a value between ₹ 7758 crore to ₹ 9100 crore. However, the DoT issued pan India licences at ₹ 1658 crore. As a result 122 licenses and 35 dual technology approvals issued in 2008 could have earned the revenue ranging from ₹ 58,000 crore to ₹ 68,000 crore to the Government against the actual revenues of ₹ 12,386 crore earned by them.

Name of the Company	Value of equity sold	Value of cent percent equity	No. of service areas covered	Entry fee paid	Value for 22 service area	Potential revenue				Potential loss to exchequer
						122 licence	35 dual tech	Total	Amount actually received	
Unitech to (Now Brand Name Unior)	6120 (67.25%)	9100	22	1658	9100	49456	18504	67960	12386	55574
Swan Telecom Ltd. (Now Etisalat DB Telecom)	380.50 (5.27%)	7220	13	1537	7788	42244	15805	58049	12386	45663
Swan Telecom Ltd. (Now Etisalat DB Telecom)	3217 (44.73%)	7192	13	1537	7758					

5.4.4 The DoT responded to the audit attempts to project a probable value for spectrum by stating that the calculation by Audit was a hypothetical arithmetic exercise and not correct. The attempt by Audit is only to highlight that the price discovery of spectrum through a market mechanism would have fetched a much higher value and thus increased receipts for Government. Non discovery of Price of spectrum through competitive bids/auction in 2007-08 has resulted in huge undue advantage to some of the newly incorporated firms with little or no experience in the Telecom Sector. This is particularly so when the Government of India had followed the market mechanism to determine value of cellular mobile licenses since early 1990s.

5.5 Indicators of the value of 2G spectrum

Based on the values determined through various indicators, the loss to the Government on account of grant of new UAS licenses and 2G spectrum during the period 2007-2010 would appear to be in the following range:

Category	Criteria for working out potential loss to exchequer (value ₹ in crores)			
	S Tel rate	Rates on the basis of 3G auction	Sale of equity by the new licensees	
			Unitech	Swan
New Licences	38950	102498	40442	33230
Dual Technology	14573	37154	15132	12433
Beyond contracted quantity of 6.2 MHz	13841	36993	14052	12003
Total	67364	176645	69626	57666

In an open transparent system, there is a possibility that Government would have earned even more revenue than that these new entrants have been able to attract.