

LAW & POLICY UPDATE

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Telecom companies and the AGR dispute

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The country's telecom sector has witnessed severe headwinds over the past several years, led by intense competition and pricing pressure that have adversely impacted revenue and profitability. The telecom companies reported record losses after making provisions towards the Supreme Court's ruling on the definition of adjusted gross revenue (**AGR**) which requires private telecom service providers to pay out higher sums towards license fee and spectrum usage fee. Telecom companies not only owed the government the shortfall in AGR for the past 14 years but also an interest on the amount along with penalty and interest on penalty. The Department of Telecommunication (**DoT**) in March 2020 had moved the Supreme Court recommending payments over a period of 20 years as it is believed that the lumpsum payment could result in possible bankruptcy and could be the final straw for the already distressed sector.

While the definition of AGR has been under litigation for over 15 years now, it is commonly a fee-sharing mechanism between the Government of India (**GoI**) and the telecom companies which are required to pay a license fee and spectrum charges in the form of revenue share to the government. While the government stated that AGR includes all revenues from both telecom as well as non-telecom services such as deposit interests and sale of assets, the telecom operators suggested that it should include only the revenue from core services and that non-telecom services should not be included. On October 24, 2019, the Supreme Court widened the definition of AGR to favor the government's view and included all revenues, except for termination fee and roaming charges.

In a significant move, the Supreme Court of India on July 20, 2020 reserved its order on the government's petition to permit telecom companies such as Vodafone Idea, Bharti Airtel and others to make staggered payments of the AGR over a period of 20 years. The apex court stated that there is no going back on the DoT's demand on the AGR issues, and it will only consider the payment timeline. In the subsequent hearing held on August 10, 2020 the Court ordered the government to prepare a plan for recovering AGR-related dues from bankrupt telecom operators and adjourned the case to August 14, 2020

In its hearing on June 18, 2020 the apex court directed the telecom companies to make a minimum payment to show their bona-fide and provide accounts for the last decade for assessment in order to create a staggered payment plan, if allowed. The court remained unconvinced that the telecom companies had sufficiently justified the timeline requirement and stated that there was no guarantee of what could happen over 20 years.

On July 20, 2020, the Supreme Court also directed the DoT to submit insolvency details of bankrupt telecom companies – Reliance Communications (**Rcom**), Videocon, and Aircel - within seven days. The Court further observed that Rcom has massive unpaid AGR dues and will examine if the insolvency proceedings are bona-fide as it can be wrongfully used to clear all AGR related debt. The Court also noted that there can be no going back on AGR dues and that the computation given by the DoT is to be considered as final, further adding that there is no chance for any re-assessment of the said dues. On September 1, 2020, the Supreme Court has given the telecom companies 10 years to repay their AGR. The companies are to pay 10% of the payment by March 31, 2021 and the remaining through annual instalments, failing which their CEOs will be held liable.

The AGR issue casts a significant degree of uncertainty on the telecom sector and will have a long-term bearing on structure and recovery of the sector. While the government has been deprived of the extra revenue, the financial implications for telecom companies, who now must pay the overdue amounts piled up for years, is at a crucial juncture with profits under pressure and the falling average revenue per user. India being the second largest consumer of mobile data globally, the way forward would be to leverage the strengths of the sector while navigating the potholes of regulation, changing technology, consumer dynamics and pricing.

