

TELECOMMUNICATION INDUSTRY IN INDIA

A summary guide on the Telecommunication Industry in India.

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OVERVIEW

India's telecommunication network is the second largest in the world by number of telephone users (both fixed and mobile phone) with 1.053 billion subscribers as on 31 August 2021. It has one of the lowest call tariffs in the world enabled by mega telecom operators and hyper-competition among them.

India has the world's second-largest Internet user-base, with the industry growing over twenty times in just ten years, Telecommunication has supported the socioeconomic development of India and has played a significant role to narrow down the rural-urban digital divide to some extent.

The rapid strides in the telecom sector have been facilitated by liberal policies of the government that provides easy market access for telecom equipment and a fair regulatory framework for offering telecom services to the Indian consumers at affordable prices.

The exponential growth witnessed by the telecom sector in the past decade has led to the development of the telecom equipment industries. The Indian equipment manufacturing sector has developed over the years, from being an import-centric industry, to becoming a global telecom equipment manufacturing hub.

The Indian mobile economy is growing rapidly and will contribute substantially to India's Gross Domestic Product ("GDP") according to a report prepared by Global System for Mobile communications Association ("GSMA") in collaboration with Boston Consulting Group ("BCG").

The liberal and reformist policies of the government of India have been instrumental along with strong consumer demand, in the rapid growth of the Indian telecom sector. The deregulation of Foreign Direct Investment ("FDI") norms have made the sector one of the top five employment opportunity generators in the country.





MARKET STRUCTURE

The Telecommunications industry is divided into infrastructure, equipment, Mobile Virtual Network Operators ("MNVO"), white space spectrum, 5G, telephone service providers, and broadband.

As per GSMA, India is on its way to becoming the second-largest smartphone market globally by 2025 .

It is also estimated that 5G technology will contribute approximately \$450 billion to the Indian economy in the period of 2023-2040.

Some of the amendments are instrumental in furthering the government's intention of boosting the manufacturing of various equipment/products in the 5G ecosystem.

Some of the highlights of union budget 2022 regarding the Telecom industry are as follows:

- Spectrum auctions are to be conducted in 2022 for the rollout of 5G mobile services.
- Scheme for design-led manufacturing under PLI scheme to be launched to build a strong 5G ecosystem.
- Contracts for laying optical fibers in all villages are to be awarded under the Bharat Net project in Financial Year ("FY") 2022-2023.



FOREIGN DIRECT INVESTMENT

India's foreign investment regime is governed by the FDI policy. The Telecom sector is the 3rd largest sector in terms of FDI inflows, contributing 6.43% of total FDI inflow, and contributes directly to 2.2 million employment and indirectly to 1.8 million jobs. As per the FDI policy, there are certain sectors wherein 100% FDI is allowed such as telecom.

Furthermore, some investments can be made under the automatic route (i.e. without any government approval) whilst others require prior approval of the government. The Department of Industrial Policy & Promotion ("DIPP") is the regulating authority.

FDI in the telecom sector is subjected to the observance of licensing and security conditions by the licensee as well as investors as notified by the Department of Telecommunications ("DoT") from time to time. India is currently the world's 2nd largest telecommunications market with a subscriber base of 1.2 billion and has registered strong growth in the past decade and a half.

The industry has witnessed exponential growth over the last few years primarily driven by affordable tariffs, wider availability, roll out of Mobile Number Portability (MNP), evolving consumption patterns of subscribers and a conducive regulatory environment.

LEGAL REGULATIONS

The Indian Wireless Telegraphy Act, 1933

This act is one of the oldest legislations still in effect in India and is an act to amend the law relating to telegraphs in India. Some of the salient features of this act are as follows:

It empowers the Government of India to take control of the existing telegraph lines and lay down the necessary infrastructure for further expansion of telecommunications in India;

It authorizes the Government of India to grant telecom licenses on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain, or work a telegraph within any part of India; and

It concerns any dispute related to a telegraphic appliance/ apparatus/ line between the telegraph authority and a licensee (for whose benefit the line, appliance, or apparatus is, or has been provided) This dispute shall be determined by the process of arbitration by an arbitrator appointed by the central government.

The Indian Wireless Telegraphy Act, 1933

This act was enacted to regulate the possession of wireless telegraphy apparatus. Some features of this act is as follows:

According to this act, the possession of wireless telegraphy apparatus by any person can only be allowed in accordance with a license issued by the telecom authority; and the act also levies penalties if any wireless telegraphy apparatus is held without a valid license.



The Telecom Regulatory Authority of India Act ("TRAI"), 1997

The Telecom Regulatory Authority of India was established under the Telecom Regulatory Authority of India Act, 1997. It empowered the TRAI, a quasi-judicial authority to adjudicate upon and settle telecom disputes.

The Information Technology Act, 2000

This act defines "communication device" as cell phones, personal digital assistance, or a combination of both or any other device used to communicate, send or transmit any text video, audio, or image. The 2008 amendment provided additional focus on information security as well as added several new sections on offenses including cyber terrorism and data protection.

Under Section 79 of the Information Technology Act, an intermediary is exempted from liability in relation to any third-party information or communication link, provided:

- the role of the intermediary is limited to providing access to a communication system over which third-party information is transmitted or temporarily stored; or
- the intermediary does not initiate, select the recipient of or select / modify the information in the transmission, and the intermediary observes due diligence.

Note: The Ministry of Communications released a draft of the Indian Telecommunication Bill, 2022. The draft Indian Telecommunication Bill is an attempt by the government to update the existing regulatory framework in keeping with the advancements and challenges in the sector. The Indian Telecommunication Bill will repeal the old legislation and "restructure the legal and regulatory framework" for the telecommunications sector.

INDIAN TELECOMMUNICATION AUTHORITIES

Telecom Commission- Telecom Commission is an inter-ministerial high-level government body. The essential functions of the telecom commission are as under:

- policy formulation, licensing, and coordination matters relating to telegraphs, telephones, data, facsimile services, and other similar forms of communications;
- international cooperation in matters connected with telecommunications;
- promotion of standardization, research, and development in telecommunications;
- promotion of private investment in telecommunications; and
- preparing the DoT budget and supervising its operations.

Department of Telecommunications (“DoT”) - As per the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933, the central government has the exclusive privilege of establishing, maintaining, and working telegraph and wireless telegraphy equipment and is the authority to grant licenses for such activities. The central government acts through the DoT. Important functions of the DoT are as follows:

- licensing and regulation;
- promotion of private investment in the Indian telecommunications sector; and
- promotion of standardization, research, and development in telecommunications.





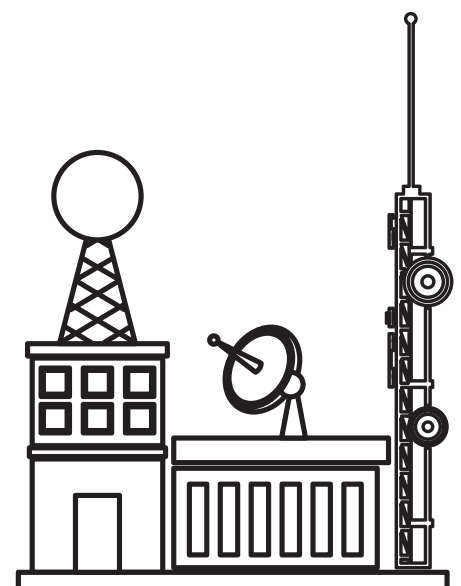
Telecom Regulatory Authority of India (“TRAI”) - TRAI acts as an independent regulator of the telecommunications industry in India. One of the main objectives of TRAI is to provide a fair and transparent policy environment. Important recommendatory powers of TRAI are as follows:

- recommendations regarding the need and timing for the introduction of new service providers;
- recommendations about the grant of telecom licenses including their terms and conditions; and
- recommend revocation of license for noncompliance with terms and conditions of license.

Telecom Disputes Settlement and Appellate Tribunal (“TDSAT”) - The TDSAT was established in 2000 under an amendment to the Telecom Regulatory Authority of India Act, 1997. The TDSAT has been vested with exclusive powers to adjudicate any dispute between:

- the licensor (DoT) and a licensee;
- service providers; and
- service providers and groups of customers.

Wireless Planning and Co-ordination Wing (“WPC”) - WPC is a wing of the DoT which is responsible for Frequency Spectrum Management("FSM"), including licensing of wireless stations and catering to the needs of all wireless users (government and private) in India.



LICENSING REQUIREMENTS

There are four types of telecom operator licenses in India: Basic Service License ("BSL"), Cellular Mobile Telephone Service License ("CMTSL"), Unified Access Service License ("UASL"), and Internet Service Provider License ("ISPL"). Each license has different eligibility requirements and allows the holder to provide different telecommunications services. The requirements are as follows:

- Basic Service Licenses are granted to companies that meet the criteria for providing fixed-line telephone services, including local and long-distance calling, voicemail, and caller ID;
- Cellular Mobile Telephone Service Licenses are granted to companies that meet the criteria for providing mobile phone services, including voice calls, text messaging, and data services;
- Unified Access Service Licenses are granted to companies that meet the criteria for providing both fixed-line and mobile phone services; and
- Internet Service Provider Licenses are granted to companies that meet the criteria for providing internet access, including broadband internet and Dial-up internet.

Each type of license has its own unique benefits and drawbacks, so it is important to choose the right license based on the telecommunications services that the service provider wishes to provide. Some other licenses are – Cellular Operator's License ("CO"), Microwave Access License ("MA"), Wi-Fi Service Provider ("WSP"), International Gateway License ("IG"), etc.



TAX FRAMEWORK


Direct Taxation

Last date for commencement of manufacturing/ production for availing concessional tax rate for new manufacturing companies, has been extended by one year i.e. from 31 March 2023 to 31 March 2024.

The taxpayer is allowed to file an updated income tax return within two years from the end of the relevant assessment year on payment of additional tax (25% or 50% as applicable) on tax and interest due on additional income. The updated Income Tax Return ("ITR") can also be filed even if the original ITR was not filed.

TDS at the rate of 10% applies on any benefit or perquisite provided to a resident, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident.

Withdrawal of concessional tax rate of 15% is applicable on dividend earned by an Indian company from a specified foreign company. Surcharge on tax on Long Term Capital Gains Tax ("LTCCG") is capped at 15%.



India's web of telecom industries is the world's second-largest wireless market, which includes over a billion active users. The scales show their efforts to become one of the biggest success stories in the country. Work done by these firms literally has revolutionized the lives of people in the country.

DISPUTE RESOLUTION

The Telecom Dispute Settlement and Appellate Tribunal ("TDSAT") was established under section 14 of the Act to adjudicate the disputes and dispose of the appeals in order to protect the welfare of the service providers and consumers.

Power:

The Tribunal has the power to exercise its jurisdiction over telecom, broadcasting, information technology and airport tariff matters under the Telecom Regulatory Authority Act, 1997, Information Technology Act, 2000 and the Airport Economic Regulatory Authority of India Act, 2008.

When there is a concern regarding cyber matters, the tribunal exercises only the appellate jurisdiction. However, the tribunal cannot try any matter which deals with anti-competitive trade practices or any other consumer complaint. Section 16 of the TRAI Act lays down the procedure and power of the Telecom Dispute Settlement and Appellate Tribunal.

In accordance with Section 18 of the TRAI Act, an appeal of the tribunal's final decision in a case may also be taken directly to the Supreme Court. However, if an order has been passed by the tribunal with the agreement of the parties to the conflict by mediation or general settlement, no appeal may be made to any court or tribunal.

Process for appeals

Section 14A of the TRAI Act specifies the tribunal's appeal process and grounds for appeal. Disputes between the licensor and licensee, two or more service providers, or a group of consumers may be brought before the tribunal by the central government, a state government, another local authority, or any other individual.

A person can approach the tribunal for appeal if he is aggrieved by the decision of the TRAI. This appeal has to be made within 30 days from the date when the aggrieved party received a copy of the decision or whenever the tribunal directs to do so. However, like any other court process, the tribunal can condone the delay if reasonable justification is provided by the aggrieved party for the delay.



Further, the Tribunal hears the parties and their contentions and passes the orders accordingly. After passing the order, the Tribunal must send a copy of the order to the TRAI. The Tribunal also must dispose of the appeal within 90 days of receiving the application of appeal.

Apart from this, the following are the matters on which the central government, state government, any other local authority, or any other person can approach the Tribunal for the adjudication of disputes between the licensor and licensee, two or more service providers, or between the service provider and group of consumers. These are as follows:

- need and timing of a new service provider;
- terms and conditions of the license as may be granted to the service provider;
- revocation of license for not following the term and conditions of the license;
- measures to enable competition in the market and encourage efficiency and growth in the telecom sector;
- category of instruments to be used by the service provider;
- technological improvements in the services;
- measure for the development of telecommunication technology; and
- spectrum management.

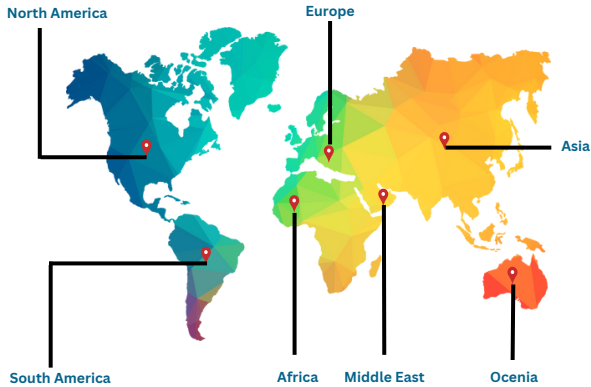
HOW WE CAN HELP?

At Chandrawat and Partners, we are efficient to provide the following services:

- Our team is widely regarded for its ability to evaluate new and complex technology business models to help our clients identify the most commercially viable ways to commercialize these models while still adhering to the legal and regulatory constraints in the sector.
- We assist in drafting and negotiating cutting-edge technology agreements on areas as diverse as co-location, online user arrangements, payment portals, platforms, and the shared economy model.
- We have closely participated, and represented clients, in legal proceedings involving the Indian telecommunications regulator and appellate body namely the Information and Broadcasting ministry as well as the various state High courts, and the Supreme Court of India on various telecom policy matters.
- We are preferred advisors for most large international telecom companies operating in India and regularly assist clients with government policy and regulatory issues, and frequently represented clients before the Department of Telecommunications and the Telecom Regulatory Authority of India.



SERVING CLIENTS WORLDWIDE



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