

III. Big Capital Allowed to Default on State Dues and Regulations

The telecom industry, as we learnt from the discussion so far, was handed over to private capital, and over three decades came to be controlled by two or three operators. Meanwhile, it is repeatedly asserted that the role of the State is essentially to set up the policy framework and regulate the operators, as well as collect taxes based on that. From the discussion in the previous section, we already have an inkling of what happened with regard to policy and regulation over time under the emerging State-corporate combine. We will now specifically examine this issue through a few much talked-of cases.

1. The Never-Ending Saga of AGR Dues

The ongoing tussle on Adjusted Gross Revenues (AGR) is a striking example of State-monopoly capital relations in the telecom industry. Right after the initial ‘gold rush’ into telecom in the early 1990s, there were loud complaints that Government dues were unsustainable and unfair. This in spite of the fact that these dues were fixed with the licenses, and each of the operators had signed those conditions as part of its licensing agreements. As the initial mania subsided, the reality of the limitations of purchasing power in India and of the capital intensity of the telecom industry hit the operators, and some of them exited after making a quick packet by selling spectrum/licenses.

While these operators incessantly complained about the ‘unsustainable-unfair’ Government dues, they spent large sums on building/buying brands

and other marketing gimmicks. They hired film and cricket stars as their ‘ambassadors’, launched huge media campaigns and even invested in the Indian Premier League and sports teams.⁴⁶ It is apparent what is considered a ‘necessary’ expenditure by big business and what is not, and evidently paying Government dues comes last in the order of priority. Persistent nagging by the Government may yield some dues sometimes, but often business can get away without paying on time, or by pushing for policy ‘tweaks’. For the rest, it can launch lengthy litigations, as this section will amply bring out.

In 1999, amid all these controversies, Prime Minister Vajpayee himself took charge of the Ministry of Communications, and his Government came up with the new National Telecom Policy (NTP-99). One of the important components of the new policy was the move to a revenue-sharing regime, in place of fixed license fee commitments from the operators, as signed under the initial contracts. Under the new regime, service providers had to pay 15 per cent of their *adjusted* gross revenue (AGR).⁴⁷ Over the years, yielding to relentless operator complaints, the rate has been brought down to 8 per cent of AGR. For the purpose of Government licensing dues, the ‘Adjusted’ Gross Revenue was to be revenues from all the streams of the operators, including their interest income and other income. Conceivably, this was done to prevent operators from offsetting one sort of revenue with another by manipulating accounts, and thus not paying the Government its dues, as has happened in many other instances (more on this in the telecom industry will follow later in this part).

But even after agreeing to the new licensing regime based on AGR, the private corporate firms first went to the Telecom Disputes Settlement Tribunal, then to different high courts, and finally to the Supreme Court, over what constituted AGR. Meanwhile they neither paid the dues nor made any accounting provisions for this unpaid amount. While the original amount due was only Rs 23,000 crore, by the time of the 2019 Supreme Court judgment the due amount had become five times that because of interest charges and penalties on the unpaid amount. As no provisions were made

46 There are numerous media reports to this effect, which we are not citing here.

47 The circle operators also had to pay spectrum usage charge. The government not only allowed the circle operators to migrate to the revenue-sharing model but also extended the licence period from 10 to 20 years free of additional costs.

in their books for these disputed amounts, their accounts for successive years looked much healthier than what they ought to have been, making them more lucrative for a buyer or investor. It also artificially shored up their stock prices, making the promoters much wealthier, independent of the health of their respective companies. As Purkayastha concludes, “So a big part of their dazzling success story was built on deliberately withholding legitimate dues on account of license fees, and hiding these obligations from their shareholders.”⁴⁸ By 2021, as per Government calculations, the total AGR liabilities of some of the major defaulters were as follows: Bharti Airtel Rs 43,980 crore, Vodafone Idea Rs 58,254 crore, and the Tata group Rs 16,798 crore, though the latter had practically folded up their telecom operations many years earlier.

In these decades-long legal machinations, one question that never got asked was: *who was going to pay for the corporate entities which already had closed shop, with their promoters disappearing with the gains?* As we discussed in the previous part, many of the telecom operators have either folded up, or have lost their independent status (as they have been acquired by or merged with some other entity). The two largest such AGR dues are owed by RCom and Aircel, more than Rs 25,000 and Rs 12,000 crores respectively.⁴⁹ Now that they are in liquidation proceedings, no one wants to answer this uncomfortable question. All this while, the bulk of their respective spectrum has been passed on to the two largest operators in the country at present, RJio and Airtel, but of course neither of them has any interest in owning responsibility for these unpaid dues. Even more interestingly, while RCom and Aircel have cut deals with RJio and Airtel respectively for sharing their spectrum, they also claim that even though they have closed their operations, spectrum is their most valued ‘asset’ and hence should be allowed to do with it whatever they want. They seek this ‘right’ even as they have no money to pay the Government their dues of more than Rs 37,000 crores! In 2020, the question of responsibility for payment of the AGR dues was put up for the Supreme Court to answer,

48 Prabir Purkayastha, “Telecom: From License-Permit Raj to License-to-Loot Raj,” *Newslick*, December 6, 2019. <https://www.newslick.in/Telecom-From-License-Permit-Raj-License-to-Loot-Raj> accessed on 11/10/2022

49 Another Rs 2,000 crores were due from relatively smaller operators, such as Videocon and others.

but it refused to rule and passed the buck back to the insolvency bodies.⁵⁰ This is how accountability towards and by the State agencies works when it comes to monopoly capital.

The idea that operators may manipulate their books to understate Government dues was not mere speculation. In a 2017 audit, CAG found that at that time six leading private telecom players had understated their revenues by over Rs 61,000 crore, depriving the exchequer of Rs 7,697 crore; with added interest dues, the unpaid amount came to more than Rs 12,000 crores. This revenue loss was for the five-year period 2010-11 to 2014-15 from Bharti Airtel, Vodafone, Idea Cellular, Reliance Communication and Aircel, and from SSSL for the 2006-07 to 2014-15 period. According to the auditor (and the licensing agreement), the telecom players suppressed revenues through accounting adjustments for commissions or discounts paid to distributors, promotional schemes like free talk-time, as well as discounts for users of post-paid and roaming services. They also understated revenue by simply excluding foreign exchange gains, interest income, sale of investment, miscellaneous revenue and profit on sale of fixed assets and dividend income from their reported aggregated gross revenue. Interestingly, the statutory auditors had all the while certified that the accounts were prepared ‘in accordance with the guidelines/norms contained in the Licence Agreement’. One year earlier too, the CAG had indicated a loss of Rs 12,489 crore to the exchequer due to understatement of revenues by six telecom operators for the four-year period from 2006-07 to 2009-10. The CAG observed that even 17 years after the new regime was introduced, DoT failed to collect the licensing dues!⁵¹

One persistent complaint by the operators, which is prominently carried by the business press as well, is that the Government is trying to kill the golden goose by pricing spectrum unfairly high and squeezing the telecom industry. BK Syngal, a veteran in the sector, who first headed the public sector VSNL and then RCom, and is obviously an industry insider, has

50 Dues of Insolvent Telcos: Paranjay Guha Thakurta & Abir Dasgupta, “Is There a Loophole Favouring Jio and Airtel?,” *NewsClick*, October 24, 2020. <https://www.news-click.in/Dues-of-Insolvent-Telcos-Is-There-a-Loophole-Favouring-Jio-and-Airtel%3F> accessed on 11/10/2022.

51 Yuthika Bhargava, “Six telecom companies under-reported revenues by over Rs 61,000 crore, says CAG in report,” *The Hindu*, July 21, 2017. <https://www.thehindu.com/news/national/six-telcos-underreported-revenue-by-rs-610645-crore-cag/article19325507>.
ece accessed on 11/10/2022.

repeatedly challenged this assertion of the private telecom operators. For instance, based on his calculations for the 2014 spectrum auction for the three metro circles, he claimed that the cost of spectrum was *barely 13 per cent* of the gross revenues earned from the telecom services for the operators.⁵² To quote him, “What is the problem if companies spend Rs 4 crore on spectrum, when they earn Rs 30 crore per day(?)”

2. Rules Are Only for Breaking

This is not the only issue on which the *norm* is to allow monopoly capital to ‘break the rules’. Indeed, rather than private firms being hauled up for breaking the law, it is the rules and regulations which get changed to clear the violations.

Take the debate regarding FDI limits in the telecom sector. Initially the limit for FDI was 49 per cent, but almost immediately private investors began violating this through the holding company structure (as discussed in the second part) and other complex corporate structures. The arrangement helped both international players and Indian promoters flout tax and other regulatory requirements. The response of the Government was to raise the FDI limit to 74 per cent, thereby legitimising 49 per cent foreign holding in both the operating telecom company and the holding company (49 per cent of the remaining 51 per cent brings the holding of the international investor to 74 per cent in all). In fact, one of the key justifications for this change advanced by the then Finance Minister Chidambaram was that it was anyway the norm in practice, so he was only removing the fig leaf and making the illegal legal!⁵³ Similarly, much before the Modi government allowed 100 per cent FDI in 2014, the 74 per cent limits were crossed with impunity, including in the much-debated Vodafone takeover of Hutch Es-sar in 2007.⁵⁴

52 As all the operators have a portfolio of interests, the AGR will be higher than this for each of them. BK Syngal, “Telecom operators want everything free in the name of consumers, comments Syngal on spectrum auction,” *Telecom Tiger*, February 18, 2014. <http://www.telecomtiger.com/interviewDetail.aspx?id=69&statusId=3> accessed on 13/10/2022.

53 “Government hikes FDI in telecom to 74%”, *Economic Times*, February 3, 2005. <https://economictimes.indiatimes.com/news/economy/policy/government-hikes-fdi-in-telecom-to-74/articleshow/1009811.cms?from=mdr> accessed on 16/10/2022

54 V Sridhar, “Over the Cap,” *Frontline*, May 18, 2007. <https://frontline.thehindu.com/the-nation/article30191459.ece> accessed on 16/10/2022.

In any case, given the fact that corporate bodies can be bought and sold and can enter and exit the sector at their will, the dividing lines of spectrum limits, licensing for a particular service and/or technology in a particular circle as well FDI limits, etc. – all become practically meaningless. The situation is further exacerbated by the pathetically weak regulatory regime in India when it comes to the oversight of powerful business groups. As BK Syngal commented on the sale of Hutch-Essar to Vodafone:

It is no mere coincidence that every time the (FDI) cap has been pushed up, share holding has become regularised among these transnational interests and a select group of investors have cashed out... In the disputed transaction that happened outside Indian territory, Li Ka-Shing (of Hutch) took home a neat US\$ 11.076 billion, Essar... US\$ 5 billion and as a result of the recent FIPB approval we will now see US\$ 1.6 billion being shared by Analjit Singh and Piramal... *How much has come into India out of the much touted US\$ 18 billion...? Zilch* (emphasis added).⁵⁵

Another appalling case of regulatory violations is the case of the ‘Wireless in Local Loop’ license for the earlier-undivided Reliance.⁵⁶ In 2001 the Government created a new, special sort of license for basic telephony to reach areas that are otherwise difficult to access via cables. This license would allow operators to provide wireless access in the last mile, for instance, remote, hilly areas or densely populated areas such as Chandni Chowk in Delhi. This license was extended to the Tatas and Reliance, who had earlier bought licenses for basic telephony, but had not made any progress in their business plans. With a breath-taking reinterpretation of the license and a bit of reengineering of the receiving instrument, Reliance connected the whole nation through such ‘local’ loops and provided full-fledged wireless telecom services, like any other operator! The Monsoon Hungama discussed in the previous section followed shortly after.

55 BK Syngal, “Vodafone tax evasion case and its historical FDI pattern is a classical example of crony capitalism,” Telecom Tiger, 20/03/2014. <http://www.telecomtiger.com/interviewDetail.aspx?id=71&statusId=3> accessed on 16/10/2022.

56 For further details, see: Noah Arceneaux, “‘Monsoon Hungama’ and the 2G Scam: Public interest and mobile spectrum policy in India, 1999–2012,” *Global Media and Communication*, 2017, Vol. 13(1), pp. 3–19.

3. Accounting Manipulations

In such a scenario, there is neither competitive pressure nor adequate regulatory oversight in the telecom sector of India. Even company accounts are completely opaque (for the general public), since accounting firms are paid by the very corporate clients they are supposed to monitor. But occasional leaks (extremely rare, no doubt) reveal egregious practices. Reliance Jio started operations in late 2016, and well into mid-2017 it was continuing its ‘free’ subscription, as we have detailed above. But to everyone’s surprise, in February 2018, within months of initiating paid services, it reported profits, and made headlines in the business press.

Asset management firm Sanford Bernstein pointed out that Jio was significantly undercharging the rate of depreciation and amortisation, thereby overstating its profits drastically. Using a depreciation rate similar to its local rivals would have turned Jio’s reported profit into a loss of Rs. 2,410 crores.⁵⁷ Even by international standards, Bernstein emphasised that Jio was grossly underreporting its depreciation and amortisation costs. While global players were charging an average depreciation at more than 8.5 per cent of their total assets, Jio was charging *a mere 2 per cent*, obviously overstating its bottom-line drastically. In 2019 too, Bernstein estimated that Jio incurred a potential loss of Rs 15,000 crore, but disclosed positive returns based on ‘non-standard’ depreciation metrics as well as by shifting the huge subsidies on handsets to the books of its sister firm, Reliance Retail.⁵⁸

A particularly damning account of the accounting malpractices of the Indian corporate sector in general, and the telecom sector in particular, is the 2011 report of the Toronto-based equity research firm Veritas on RCom. The report, based on publicly available information, severely indicts the accounting and governance practices of RCom and even the undivided RIL, then the country’s largest business house.⁵⁹ Unsurprisingly,

57 Bhuma Shrivastava, “Why Jio’s first profit is ‘too good to believe’,” *Qrius*, February 9, 2018. <https://qrius.com/jios-first-profit-good-believe/> accessed on 16/10/2022.

58 “Jio Hiding Losses Through Subsidy From Retail Arm: Report,” *Newsclick*, February 27, 2019. <https://www.newsclick.in/jio-hiding-losses-through-subsidy-retail-arm-report> accessed on 16/10/2022.

59 Neeraj Monga & Varun Raj. “Brothers In Arms Misappropriating A Fortune - The Full Version,” Veritas Investment Research, Toronto, July 18, 2011. Emphasis added.

the business and mainstream press gave it sparse coverage.⁶⁰ It reveals that the promoters manipulated almost every possible accounting parameter to control the country's second largest telecom company on the basis of public money and public resources such as spectrum, with very little of their own money at stake: *“(RCom) is the poster child of everything that is wrong with corporate India, and irrespective of management's assertions about 'values' and 'integrity' in various annual reports, we find no credible evidence of either in its financial statements or those of its former parent, Reliance Industries Limited.”* To cite some of the key issues that have been flagged in the report:

- With little actual investment in the capital-intensive business, but with numerous financial and corporate manoeuvres, the Ambani family gained a substantial stake in RCom. According to the report, the family invested a mere 1.3 per cent of the capital required, and yet ended up gaining a 63 per cent stake in the final entity that was listed on the stock exchange in 2006. A significant stake in the telecom business in early years was routed through the undivided corporate entity, RIL; but with the family gaining control over the majority stake, the report estimates that RIL shareholders suffered an egregious loss of more than Rs 25,000 crores.
- The report also demonstrates that through various accounting manoeuvres, RCom inflated its books on a regular basis. It changed the accounting practices from one year to another to suit the outcome, filed expenses at varied places to dress the accounting expenses, understated cash interest expenses via intermingling non-cash foreign exchange gains and losses in some years and excluding those in others, and changing depreciation policies enabling a one-time boost to earnings, etc.
- The report estimates that on a cumulative basis from 2006-07 to 2009-10, the company inflated its normalised profit before tax in the core telecommunication business by close to Rs 11,000 crores, resulting in phenomenal addition to its accounting profits. The Veritas report computes the 2009-10 profits to have been 74 per cent less than what

60 This sparse coverage was accompanied by the usual disclaimers from the concerned firms -- that the report was a conspiracy against them, and that they are following the law of the land, etc.

was reported by RCom.

The important point to note is that the accounting bottom lines are extremely malleable and open to all sorts of manipulations, with little oversight either by the auditing firms or the Government. When the telecom firms want favours from Government bodies, they may make them appear to be in distress; when they want to attract money from investors, Indian or foreign, they may dress up their books and bottom-line accordingly. The latter is the case for Reliance in more than one instance; also, as we mentioned earlier, when firms failed to make provisions for their huge pending AGR dues.

However, these revelations did not result in any investigation of RCom or RIL by regulatory bodies. Rather, Veritas and the individual authors of this report (who had also authored some other Veritas reports on corporate houses in India) were hounded by corporate bodies and the media, and had to face legal cases on themselves.

If corporate firms are able to so completely suborn the regulatory machinery even in relation to shareholders (including institutional shareholders), who are in a much better position to contest their misdeeds than ordinary citizens, one can imagine the fate of the broader public interest.