

CHAPTER – IV

Revenue Shared by Vodafone India Limited

4.1 Brief Profile of M/s Vodafone India Ltd

Brand Vodafone was launched in India in 2007 when Vodafone Plc, the British multinational communications company, acquired majority stake in M/s Hutchinson Essar which was providing GSM based cellular mobile services in sixteen¹ licenced service areas in the country. The decision of the Government of India in 2005 to raise the Foreign Direct Investment (FDI) in telecom sector to 74 *per cent* helped the British company to make major foray into the Indian telecom space. By 2007-08, the operator was allotted seven² more licences and had established pan India presence with operations in all existing twenty three Licensed Service Areas (LSA) in the country. Vodafone India provides wireless mobile telephone services which include voice/data and total high-quality, innovative communication solutions.

4.1.1 Licences held by Vodafone Group

In addition to access service licence in 23 service areas, Vodafone Group has carriage licences i.e. National Long Distance (NLD) as well as International Long Distance (ILD) and Internet Service Provider (ISP) licence.

The LSA/Circle wise service provision and related accounting activities are performed under the aegis of the Corporate Head Office of Vodafone India Limited (erstwhile Vodafone Essar Ltd) at Mumbai and its seven subsidiary Companies.³

4.1.2 Radio frequency spectrum held by Vodafone

All Vodafone group companies are GSM operators. LSA-wise quantum of spectrum allotted to them as on 31 March 2010 were as follows-

Table 4.1

Sl.No	Spectrum (in MHz)	Names of LSA
1	2 × 10	Delhi, Mumbai
2	2 × 9.8	Gujarat, Kolkata
3	2 × 8.2	UP(E)
4	2 × 8.0	Chennai, Karnataka
5	2 × 7.2	Tamil Nadu
6	2 × 6.2	Andhra Pradesh, Haryana, Kerala, Maharashtra, Punjab, Rajasthan, UP(W), West Bengal
7	2 × 4.4	Assam; Bihar, Himachal Pradesh, Jammu & Kashmir, Madhya Pradesh, North East, Odisha

1 Mumbai ,Delhi, Kolkata, Gujarat ,Karnataka, Andhra Pradesh, Chennai ,Rajasthan, UP(E), Haryana, Punjab, UP(W), West Bengal, Tamil Nadu, Kerala, Maharashtra

2 Orissa, Bihar ,NE, Assam, J&K, Himachal Pradesh, Madhya Pradesh

3 Vodafone Essar Cellular Ltd, Vodafone Essar Digilink Ltd, Vodafone Essar Gujarat Ltd, Vodafone Essar Ltd, Vodafone Essar Mobile Service Ltd, Vodafone Essar South Ltd, Vodafone Essar Spacetel Lt/d.

4.1.3 Subscriber base growth - 2006-07 to 2009-10

As on March 2007, with a subscriber base of 2.64 crore, Vodafone occupied third place behind Bharti Airtel and the combined strength of the PSUs (BSNL and MTNL). By 2007-08, the Company established its foot print in all 23 LSAs and consolidated its position to become the second largest GSM based cellular mobile service provider in the country. By March 2010, the subscriber base grew to 10.09 crore with market share of 16 *per cent* registering a growth of 281 *per cent* from 2006-07.

4.1.4 Financial data on GR/Deductions/AGR and revenue share paid by Vodafone India Limited

Telecom Service Providers (TSPs) are required to pay LF and SUC at a percentage of AGR on quarterly basis on self-assessment basis. The combined GR reported and revenue share paid by Vodafone India Limited (VIL) for the four years from 2006-07 to 2009-10 is as shown below:

Table 4.2

(₹ in crore)

Year	GR	Deductions	AGR	Percentage of AGR to GR	Revenue share
					(LF+SUC)
2006-07	10399	1853	8545	82.17	1153
2007-08	16063	3713	12350	76.88	1606
2008-09	22217	5897	16320	73.46	2221
2009-10	25289	6695	18594	73.53	2399
Total	73968	18158	55809	75.45	7379

(Source: DoT records)

4.2 Audit verification of accounting and reporting of GR by Vodafone

As mentioned in para 1.4 (a), the GR shall be inclusive of all types of revenue stated therein without any set-off for related item of expense, etc.

Further as mentioned in Annexure III of UASL agreements, service revenue (amount billable) shall be shown gross and details of discount/rebate indicated separately.

Audit examination of the records alongwith the books of accounts of Vodafone revealed incidences of non-compliance with the conditions of the licence agreement in recording and reporting revenue. The occurrence was not universal throughout the different LSAs as there was no uniform procedure for accounting revenue for the purpose of revenue share payment. The nature of non-compliances were-

- Setting-off related expenditures from revenue.
- Non-inclusion of revenue earned from all categories in GR.

Audit findings on GR computation by Vodafone for the period from 2006-07 to 2009-10 are discussed below. As no separate GLs were maintained for pre-paid and post-paid services, no segregation of service wise understatement of revenue and revenue share impact was done.

4.2.1 Commission/discounts to dealers netted off from pre-paid and post-paid revenue

Vodafone provides prepaid and post-paid services in their licenced network using Subscriber Identification Module (SIMs). The sale of SIMs, Prepaid recharge vouchers (ECV), e-top ups, etc. are through retailers/agents (dealers, franchisees, distributors) who are allowed discounts by the Company. As per the licence conditions, GR has to include revenue from sale of SIM/ECV, etc. without set-off.

Verification of General Ledgers (GL) of LSA-wise accounts revealed debits under certain revenue account heads on account of expenses described as payment of 'commission, discount, additional margin to retailers, franchisees/dealers/agents/distributors', 'trade margin', etc., related to the sale of SIM/RCV (recharge vouchers)/Top up cards, etc. All debits with the above descriptions under various revenue GLs were identified for all the four years to ascertain the total amount netted off from revenue and it was seen that a total amount of ₹ 1352.75 crore was debited from revenue during the period from 2006-07 to 2009-10 (**Annexure- 4.01**). It is important to mention here that details of cases where revenue was captured in the Company's financial system after net offs could not be identified and hence audit had quantified only those transactions where the LSAs had recorded them manually in the books of accounts with clear narratives on the nature of the debits. Though the Company was required to report the amount netted off to DoT along with the AGR statement it was seen that none of the LSAs except VCL⁴ in 2006-07 had disclosed the amount netted off as discounts.

Management stated (May/August 2015) that the Company appoints distributors/dealers/franchisees depending on the business needs and the arrangement with them is on Principal-to-Principal basis from January 2007. Discounts given to them at the time of primary billing were debited to revenue. As per the accounting policy followed, the actual inflow to the Company i.e. the amount paid by the distributor only is carried to the Profit and Loss Account (P & L account) and not the Maximum Retail Price of the product sold through the distributor/franchisee/dealer. It was also explained that the sale of products to the franchisee was on agreed price and that price is reflected in the P & L account and there is no netting off of any expense and TDSAT also in their judgment of April 2015 had held that there was no netting off in cases where revenue is recorded on the agreed price. It was further informed that appeals have been filed in the Hon'ble Supreme Court, both by the Operators and DoT, against the TDSAT judgment and hence the above positions of the Company were subject to the final ruling by the highest Court.

⁴ Maharashtra & Goa, Tamil Nadu and Kerala LSAs

Audit view on the reply of the management is as explained in para 3.2.1 (A). The amount brought out in Audit is only a portion of the actual amount paid by the Company as discount/commission to franchisees/dealers, etc. Reply confirming the LSA wise facts and figures brought out by Audit and details on total value of upfront discounts/free air time allowed from revenue on the discount/commission paid for the four years was awaited from the Management (December 2015). While the matter is *sub-judice* at the Hon'ble Supreme Court, Audit is of the view that netting of commission/discounts given to dealers from revenue was a deviation from the UASL agreement and has resulted in understatement of revenue by ₹ 1352.75 crore for the period 2006-07 to 2009-10 leading to short payment of LF & SUC amounting to ₹ 119.59 crore and ₹ 53.30 crore respectively (**Annexure - 4.01**).

4.2.2 Airtime Discounts to customers

From the audit scrutiny of Trial Balances, furnished to audit by Vodafone, it was noticed that the airtime discount offered to post paid subscribers as well as promo talk time given to pre-paid subscribers were debited to a revenue heads. These heads would invariably reflect a debit balance at the end of the year. Debit balances under a revenue GL head thus would have the effect of a set-off from the total revenue. The total amount of set-off on account of this accounting treatment worked out to ₹ 444 crore for the four years from 2006-07 to 2009-10.

The Company intimated that discounts in post-paid airtime were nothing but the amount of usage by the customer against post-paid rental. As an illustration it was stated that if a subscriber opts for a rental plan of ₹ 100 and the Company offers free talk time ₹ 100, the Company would book ₹ 100 as rental revenue, ₹ 100 as usage revenue and ₹ 100 as Airtime discount and there was no debit in revenue.

Free airtime given to post-paid subscriber against the rental as per tariff plans submitted to TRAI as illustrated above was justified. Debit to revenue heads for the amount of promo talk time given to prepaid subscribers not covered under tariff plans submitted to TRAI was not consistent with the provisions of the licence agreement as explained in para 3.2.1 (B). However, amount of promo talk time given to prepaid subscribers and free airtime given to post paid subscribers could not be segregated easily as the Company had accounted it in one GL code only.

4.2.3. Roaming revenue understated due to netting of Inter Operator traffic (IOT) Discounts paid/credited to other Operators

Revenue earned by the different LSAs of Vodafone from roaming services was disclosed under item no. 3 of the AGR statement. On a review of the revenue accounted under various heads operated to account roaming revenue, debits on account of 'discounts were seen effected. These discounts were ultimately credited under provision for contingencies (roaming), which was further set-off with roaming commission receivable from other

operators. During the four years, 2006-07 to 2009-10, ₹ 242.69 crore, as confirmed by the Management, was debited from revenue (**Annexure - 4.02**).

On being pointed out, the Company, replied that the revenue recognition on account of roaming discount was as per AS-9 where Revenue was defined as “*Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends. Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use of resources by them...*” Accordingly, the Company did not include discount allowed on International roaming charges to international operators in the GR as such discounts were not in the nature of revenue but were discounts on volume of international roaming traffic as agreed with the roaming partners. Revenue from both in-roaming and out-roaming calls are recorded net off discounts offered/received. It was also informed that TDSAT in its judgment of April 2015 had held that discounts are to be added to the revenue and the Company has preferred an appeal against it in the Hon’ble Supreme Court of India.

Audit view on the reply of the Management is as explained in para 3.2.3 of this Report. Further, regarding revenue recognition as per AS-9 stated by Management, Audit was not challenging the accounting methodology adopted by the Company but for the purpose of Licence fee, the revenue is to be recognised “Gross” without set-off of related expenses as mandated under licence agreement. While the issue is *sub-judice* at the Hon’ble Supreme Court, Audit view is that setting off discounts paid to international roaming partners from roaming revenue was in violation of the licence conditions.

Taking into account the amount accepted by the Management as roaming discounts the LF and SUC short paid worked out to ₹ 23.07 crore and ₹ 10.23 crore respectively (**Annexure - 4.02**).

4.2.4 Understatement of GR due to Service Tax being set-off from revenue on schemes like ‘Full Pe Full’, ‘Full Talk Time’ etc.

When the validity on the prepaid card was extended through recharge, additional talk time through schemes like ‘Full Pe Full’/ ‘Full Talk Time’ etc., was allowed to the subscribers as an incentive to retain the potentially floating subscriber base. As per the revenue recognition policy of the Company, revenue from sale of recharge coupons, was recognized exclusive of service tax and if free air time was given to customers as part of any scheme, the Service Tax component was borne by the Company. For example, in a recharge of ₹ 120 customer would be getting talk time of ₹ 120 where as in other normal plans the Service Tax (ST) component would be deducted from the recharge value. So apparently, even though talk time was allowed in full, the liability of Service Tax was being borne by the Company.

It was seen that the revenue from schemes (Full Pe Full, Full Talk Time etc.), where FAT was given to users, the liability of Service Tax (ST) was being deducted from outgoing call/access revenue and revenue on account of FAT was not being recognised in GR. This was not consistent with clause 19.1 of the UAS licence agreement. ST being allowed to be deducted from revenue when its receipt in full for services rendered was not accounted in GR was equivalent to revenue being understated to the extent ST paid and resulted in Government dues being short paid.

Vodafone Management responding to the audit observation stated that the Company offers full talk time schemes to selected customers as per various marketing schemes and these schemes were generally informed to TRAI. In cases where full talk time was offered customer got talk time for the full value of the recharge and revenue recorded is after providing for service tax from the value of recharge. Talk time offered to the subscriber was not relevant in such cases as the receipt of the amount from customer was recorded in books as such and included in revenue and service tax paid on it.

The reply was not tenable as Audit opines that the value of the talk time availed by the user was to be reckoned as call revenue and the admission that revenue component was recognised after providing for service tax substantiated the fact that expenditure towards service tax was set-off from the revenue received for the services provided by the Company. Thus the Service Tax absorbed by the Company was the revenue foregone since it would have been recovered from the end-users. Audit could identify the amount of service tax paid by debiting revenue in 12 LSAs during the four years covered and this worked out to ₹ 222.54 crore resulting in short collection of LF and SUC amounting to ₹ 18.45 crore and ₹ 9.27 crore respectively (Annexure - 4.03).

Management (December 2015) confirmed the amount of understatement worked out in audit.

4.2.5 Understatement of GR due to non-inclusion of revenue from Infrastructure sharing in full

As mentioned in para 1.4 (a), the GR shall be inclusive of revenue from permissible sharing of infrastructure and any other miscellaneous revenue without any set-off for related item of expense, etc.

Audit noticed that during the four years from 2006-07 to 2009-10, Vodafone had invoiced ₹ 807 crore towards Cell sites sharing revenue but the amount included in the AGR statements for these years was only ₹ 253 crore leading to understatement of GR by ₹ 554 crore. Audit quantified infrastructure revenue only in LSAs where invoice details were clearly available in the accounting system. Those accounts had shown income from renting/leasing infrastructure net of amounts received towards OPEX.

Vodafone Management responded (September 2015) stating that the Company had entered into arrangements with other telecom operators for sharing of infrastructural facilities and the operational expenditure for running and maintaining such facilities were shared between Vodafone and other operators. The arrangement was meant to defray the cost incurred for operating the infrastructural facilities and hence the amount received from the other operators was in the nature of their contribution towards operational expenditure and hence do not qualify as revenue. Amount received on account of CAPEX was being included in the GR. It was also stated that the TDSAT in its ruling of April 2015 had held that reimbursements were not to be included in the revenue. The issue is *sub-judice* as appeals have been filed in the Hon'ble Supreme Court of India on the TDSAT judgment.

Reply of the Management was not tenable in view of the following:

- In terms of licence agreement, GR specifically includes revenue from permissible sharing of infrastructure without any set-off for related item of expense and licence agreements do not distinguish infrastructure sharing revenue between CAPEX and OPEX. Hence, set-off of revenue from infrastructure sharing against the expenses is not allowed. Revenue towards diesel expenses, security expenses, repair & maintenance expenses and electricity charges did not constitute reimbursement since they had to be incurred irrespective of whether the towers were shared or not. In fact, by sharing the expenditure the company benefited through additional income.
- Further, it was noted that DoT had filed an appeal before Hon'ble Supreme Court against the TDSAT Judgment dated 23 April 2015 as referred in the reply. While the matter is *sub-judice* at the Apex Court, Audit view is that as UASL does not provide for any deductions from revenue other than those permitted under Clause 19.2 deducting OPEX from infrastructure sharing revenue was not in conformity with the UASL agreement.

The Management informed (December 2015) that the OPEX reimbursement was ₹ 514.49 crore in respect of cases pointed out by Audit and the reason for mismatch between the amount worked out by Audit and validated by the Management was on account of inclusion of service tax element also by Audit. While the fact of inclusion of service tax was accepted, on an analysis of the reply it was seen that the amount confirmed by the Management was short by ₹ 21.78 crore as information on one LSA (UP-W) was not included. Thus, the total amount of OPEX not included in GR worked out to ₹ 536.27 crore leading to short payment of LF and SUC of ₹ 46.90 crore and ₹ 21.02 crore respectively (**Annexure - 4.04**).

4.2.6 Under reporting of revenue from forex gains for GR/AGR

Audit noted that the Company accounted its gain/loss under five account heads (in four revenue heads and one expenditure head). Audit scrutiny of the Trial Balances, Audited

AGR statements Auditors Report, Notes on Accounts/Statements and Revenue Reconciliation Statements etc. revealed that different LSAs of the Company followed different methods in recording their Forex transactions as detailed below:

- Amounts net of gain or loss were shown in the Revenue Reconciliation Statements only
- Net forex loss was debited in the AGR under different types of income viz., miscellaneous income, any other income etc.
- A net amount was shown in their AGR in which case it had a direct impact on the revenue share paid.

Foreign exchange gain realised by the various LSAs during 2006-07 to 2009-10 was ₹ 155.44 crore but these gains were not offered for revenue share in these years. Audit could not arrive at the actual value of items accounted under realised gain every year for want of original value of each item as brought out in para 3.2.5. Further, Audit has considered the net gain, head of account-wise and LSA-wise, as it was not possible for Audit to segregate/collect the figures of gains only from the data made available. Interim gains if any, was not considered. Vodafone Management replied (September 2015) that-

- The income from fluctuations in foreign exchange(s) was notional in nature and not revenue. The accounting standards require this notional gain or loss on forex fluctuations to be accounted at the end of the year so that the profit/loss of the company was fairly stated as on the balance sheet date. It is reiterated that in respect of cost or purchase items like operating expense on account of consultancy, purchase of equipment or loan taken in foreign currency, the fluctuations due to foreign currency do not form part of revenue as such fluctuations ultimately result in increase or reduction in cost or purchase price and have no linkage with the revenues.
- TDSAT (April 2015) had ruled that Forex gains are not to be included in the AGR.

Contention of the Management was not acceptable. Audit view on the treatment of forex gains for revenue share has been explained under Para 3.2.5 of this Report. Audit noted that DoT had gone on appeal against the TDSAT judgement of April 2015. While the matter is *sub-judice* at the Hon'ble Supreme Court, Audit view is that forex gains should be a part of the GR computed for payment of revenue share since it falls within the broad definition of GR given in the UASL agreement.

Short payment of LF and SUC on account of the deviation from licence conditions worked out to ₹ 14.19 crore and ₹ 6.12 crore respectively (**Annexure - 4.05**).

4.2.7 Debits from revenue as Waiver- Goodwill waiver, rebates etc.

Review of revenue of Vodafone revealed debits on account of 'waiver' from revenue captured under 'Access Fee'; 'Itemized Billing Rental'; 'Caller Tune Rental' etc. leading to understatement of revenue. During the four years under audit coverage, an amount of ₹ 105 crore was seen set-off from revenue in eleven LSAs⁵.

Waiver was an inducement or supplemental reward given by the Management of a Company/ service provider- to a client/subscriber which serves as a motivational device for a desired action or behaviour. This could be in the form of concession in rates, waiver of a percentage of the dues etc. Deducting the revenue foregone in this process from GR was a deviation from the conditions of licence agreement. Management (December 2015) confirmed that only ₹ 7.87 crore was set-off towards Waiver but year wise/LSA wise details of the amount was not provided to audit. It was also informed that waivers as pointed in audit pertained to billing disputes and the same were not added to revenue. TDSAT also had ruled that in case a subscriber was billed wrongly, discounts given for such wrong billing was a revision of bill and hence cannot be a part of GR.

The justification that all the waivers were on account of wrong billing is not accepted by audit as in no cases the descriptions of the transactions as appeared in the documents/ records made available to Audit mentioned billing errors. Waivers on other accounts should not be deducted from revenue as explained under para 3.2.2 of this Report. The setting off of waivers from different GL codes led to short payment of ₹ 0.63 crore towards LF and ₹ 0.31 crore towards SUC (**Annexure - 4.06**). In the absence of year wise/LSA wise details, Audit computed the LF and SUC impact by apportioning the amount confirmed by the Management amongst the LSAs where the set-off was noticed proportionate to their GR for the relevant years. DoT may get the details from the PSP for the balance amount of ₹ 97.13 crore as seen in audit and ensure that there was no short payment of revenue share.

4.3 Other Income not included in Gross Revenue

Review of the reconciliation statements with the trial balances, audited AGR statements and notes on accounts prepared by the Statutory Auditors submitted along with Auditors' Report and comparing them with primary accounting records of all the LSAs for the years 2006-07 to 2009-10 showed that income under some categories appearing in the company's accounts were not considered for computation of GR/AGR and payment of revenue share. These revenues, though should have been a part of GR for revenue share payment was included separately in reconciliation statements thereby avoiding payment of revenue share on them. Income thus excluded are discussed below:

⁵ GL codes in LSAs with clear mention as 'waiver' only has been included. Hence the amount set-off cannot be taken as absolute

4.3.1 Interest Income

Vodafone had accounted Interest income under different account heads. Audit noticed that Vodafone had included interest Income in full in the GR/AGR in the year 2006-07 but during the years 2007-08 and 2008-09 the income was only partially captured in the GR. In the year 2009-10, income on this account was not at all included for payment of LF/SUC. The extent of interest income not included in the GR/AGR during the four years from 2006-07 to 2009-10 worked out to ₹ 2741.37 crore.

Vodafone management replied that the company was of the view that interest on inter-corporate loans and interest from banks on short term deposits cannot be treated as revenue generated from service. The matter was *sub-judice* (September 2015) as the Company had filed an appeal in the Hon'ble Supreme Court of India against the TDSAT ruling (April 2015) which held that interest income was to be added to revenue.

Vodafone management (December 2015) accepted that interest income of ₹ 2738 crore was not offered for revenue share against the figure of ₹ 2741.37 crore as pointed out by audit. However, the Management did not provide details of the difference in figures as pointed out in audit and confirmed by it. In the view of Audit, licence agreement expressly provides for inclusion of interest income for GR/AGR for computation of revenue share. LF impact due to the non-inclusion of interest income of ₹ 2741.37 crore worked out to ₹ 250.73 crore and the impact on SUC worked out to ₹ 105.30 crore (**Annexure - 4.07**).

While the matter is *sub-judice* at the Hon'ble Supreme Court, Audit view is that interest income should be part of the GR of the Company as per the conditions of UASL.

4.3.2 Income received on profit of Sale of fixed assets not included in GR

Audit observed from the LSA-wise books of accounts⁶ that 'profit on sale of fixed assets' by Vodafone during the years 2006-07 to 2008-09, was not considered for computation of GR/AGR in the respective years and was reported only in the 'Revenue Reconciliation Statement'. Further, as income was taken net of loss from sale under the category, in cases where loss exceeded gains in any year, the gains were not included in the GR. Total "profit on sale of fixed assets" received during the years 2006-07 to 2008-09 but not considered for payment of revenue share worked out to ₹ 200.81 crore.

Vodafone management stated that in the financials, the net profit or loss on sale of capital assets during a year was shown as one net item and profits if any, were in the nature of capital assets. It was also stated that TDSAT had upheld the views of the Company in its ruling of April 2015. The management confirmed (December 2015) that an amount of ₹ 200.76 crore was not considered while computing GR for revenue share payment against

⁶ Company Trial Balance, Audited AGR statements, Auditors Report, Notes on Accounts / Statements and Revenue Reconciliation Statements etc.

₹ 200.81 crore as pointed out by audit. However management did not provide details of the difference in figures.

The opinion of the company was not acceptable as:

- The source from which an asset was purchased has no relevance in the context of the conditions in the licence agreement.
- Definition of GR in licence agreements expressly provides for inclusion of miscellaneous income in GR/AGR for computation of revenue share.
- Regarding TDSAT judgment of 23 April 2015, audit noted that an appeal was filed by DoT before Hon'ble SC against the judgment.

While the matter is *sub-judice* at the Hon'ble Supreme Court, Audit view is that profit from sale of fixed assets should be a part of the GR of the Company as per the conditions of UAS licence.

Non-consideration of profit from sale of fixed assets in the GR had led to short payment of ₹ 19.45 crore towards LF and ₹ 8.72 crore towards SUC (**Annexure - 4.08**).

4.4 Bad debts deducted from GR

On a review of the AGR statements submitted by Vodafone during 2007-08 to 2009-10, it was noticed that deduction on account of bad debts were being claimed and revenue share was being paid only on the AGR arrived at after such deduction.

Total amount of bad debts deducted from revenue came to ₹ 311.91 crore which had an adverse impact of ₹ 29.55 crore on LF and ₹ 13.02 crore on SUC paid for the three years (**Annexure - 4.09**).

Definition of GR/AGR does not permit for deduction of expenses on account of bad debts written off.

The Management, in response, stated that:

- Under the licence agreement, bad debts are not required to be added to AGR. Bad debts represent income that has not been received and is notional in nature and hence cannot be considered as revenue.
- TDSAT had held (April 2015) that bad debts are to be added to revenue and the Company had filed appeal in the Supreme Court against the TDSAT ruling.

The contention of the Management was not tenable, as:-

- The licence agreement does not provide deduction of bad debt from GR to arrive at AGR.

- Though the Company has filed an appeal against the TDSAT judgment and the matter is *subjudice* at the Hon'ble Supreme Court, Audit is of the view that since the licence agreement permits only three deductions from the GR, deducting bad debts from the AGR was not in conformity with the licence conditions.

4.5 Transfer of assets to subsidiary Company

Vodafone Essar Infrastructure Limited (VEIL) was incorporated in 2007 as a fully owned subsidiary of Vodafone India Limited. The main objective VEIL was to provide infrastructure service to telecommunication operators, including construction, leasing and maintenance of passive infrastructure assets. As per the Scheme of Arrangements approved by the various jurisdictional High Courts, Vodafone East Limited (VEL) (20 October 2009) and Vodafone Cellular Limited (VCL) (17 November 2009), the passive infrastructure assets of these two companies were to be transferred to VEIL without any consideration.

The appointed date of the Scheme was from April 2009. Though the effective date for the transfer of assets for the two companies was November 2009, the financial impact of the transfer of passive infrastructure was not reflected in their 2009-10 annual accounts as per the Annual Reports of VCL, VEL and VEIL.

Further, the assets transferred to VEIL were yet to be revalued as of 31 March 2010 as seen from the Annual Report of VEIL. Due to non-revaluation of the assets transferred as of 31 March 2010, the difference between the fair value (after revaluation) and book value could not be ascertained as in case of BAL (Para No. 3.5). In the absence of the same, profit foregone on transfer of assets that would have accrued to VEL and VCL could not be ascertained. Further, transfer of assets at NIL consideration was not an arm's length transaction.

Audit could not ascertain the impact of the transfer of assets at NIL consideration on computation of LF and SUC for want of details.

4.6. Interest on revenue share short paid

On issues raised above (from paras 4.2 to 4.5) short/non-payment of LF and SUC worked out to ₹ 522.56 crore and ₹ 227.29 crore respectively. The interest on this short/non-payment of LF and SUC was ₹ 915.54 crore (**Annexure-4.10**). The calculation of interest was based on the rate prescribed in the Licence agreement i.e. 2 per cent above the Prime Lending Rate of State Bank of India existing as on the beginning of the financial year and the period considered for the calculation was from the end of the concerned financial year up to March 2015. The interest has been compounded monthly as prescribed in the licence conditions.

4.7. DoT's response to the audit observations

Audit observations on the revenue shared by Vodafone India were communicated to DoT in August 2015. DoT in reply (January 2016) informed that demands for understatement of GR as pointed out in paras pertaining to Commissions/discounts to dealers netted off from revenue (4.2.1); understatement of GR on airtime discount to subscribers (4.2.2); roaming revenue understated due to netting of inter-operator traffic discounts paid to other operators (4.2.3); understatement of GR due to non-inclusion of revenue from Infrastructure sharing in full (4.2.5); under reporting of revenue due to non-inclusion of revenue/income in GR/AGR from forex gain (4.2.6) and Interest Income (4.3.1) were raised on the PSP in 2012 for the years 2006-07 and 2007-08, based on the report of the Special Audit conducted in 2009. But the demands have been challenged by the operator in TDSAT in 2012. The matter was *sub-judice*. It was also informed that action will be taken as and when the final court judgment is pronounced.

Thus, DoT agreed to the issues raised by Audit. However, it pleaded helplessness in realising the revenue from Vodafone India on account of these issues being *sub-judice*. Considering that a substantial amount of government revenue is blocked for many years on account of litigation, DoT should play a proactive role in getting these legal issues settled at the earliest.

DoT also pointed out to the variation in the amounts quantified by CAG and the demands raised by DoT as a consequence of the Special Audit in its reply. These variations could be on account of the differences in methodology adopted in quantifying the understatement of revenue. Audit has determined the understated amounts on the basis of actual entries identified through clear descriptions in the books of accounts of Vodafone India for 2006-07 to 2009-10. However, details of working papers of Special Auditors were not seen by CAG audit.

In respect of paras 4.2.4 and 4.2.7 of this Report, pertaining to understatement of GR due to service tax being set-off from revenue on schemes like 'Full Pe Full', 'Full Talk Time' etc. and debits from revenue as Waiver - goodwill waiver, rebates etc. respectively, DoT stated that it has sought the response of the Company on the audit observations and action would be taken after examining them.

On the audit observation mentioned under Para 4.3.2 on Income received on profit of sale of fixed assets not included in GR, it was informed that demands in respect of seven LSAs have been prepared and are in the process of issue to the Operator and demands for the remaining circles would be issued soon.

For Para 4.4 on bad debts deducted from GR, DoT stated that "as correctly pointed out in CAG report the deductions on account of bad debts is not permitted in the revenue and

licence fee statement..... DoT does not permit such deductions at the time of verification and the amounts so claimed are being added back to GR/AGR at the time of assessment”.

In respect of para relating to transfer of passive infrastructure (4.5), reply from DoT was awaited.

DoT also stated that the basic definition of GR and AGR was challenged by the TSP's in 2002-03. Since then, there has been protracted litigation and is continuing till date. Also, some of the licensees have filed (in 2012) writ petitions before various High Courts invoking the writ jurisdiction under Article 226 of the Constitution challenging the Section-4 of Indian Telegraph Act, 1885, as violative of the Article 14 and 19 (1) (g) of the Constitution of India. The process of deduction verification by the CCA offices and the LF assessment work by the DoT Headquarters was adversely impacted due to this. DoT admitted that the numerous disputes are causing delays in assessment of the revenue share due from the operator.

The response of DoT prove that though the revenue share regime was introduced as part of NTP 1999, the Department has not been able to realise its due revenue share as envisaged in the licence agreement even after more than 16 years of its implementation.