



ANNEXURE

Detailed Responses to your Letter of 24.06.2011

1. Delay of almost five months in providing a response:

You have taken five months to write this brief response to my letter, to essentially refuse information that, under the Statute, should be in the public domain, i.e., letters from an independently appointed statutory regulator, who, under Section 11(4) of the TRAI Act, is required to enforce its functions and powers in a transparent manner. If this was your reply, it could have been sent the very next day.

2. You state that *"it is not appropriate for the Department of Telecommunications to make TRAI letters public"*, forgetting the fact that you have already made the letters public:

This response, citing appropriate conduct on behalf of the DoT, flies in the face of the fact that within days of my letter of 28th January 2011, this information was made public vide the Justice Patil One Man Committee (OMC) report dated 31st January 2011 – as part of its annexures (Annexure 40 and Annexure 41, Pages 604 – 607). It was you who took great pride in releasing the Shivraj Patil OMC report publicly, which was later handed over by the CBI. Your letter reflects complete ignorance and bad advice, and minimally, a serious and unforgivable memory lapse.

3. Your contention that the release of such letters would amount to interference with the function of the TRAI is weak, and in fact, yields the exact reverse results:

The release of the letters and other related correspondence would, contrary to your claims, strengthen the institution of the TRAI. It would have exhibited the manner in which the Department of Telecommunications dealt with crucial letters which were linked to decisions made by the internal Telecom Commission and the press release of 19th October 2007 – which was a stepping stone as the then MoCIT proceeded towards the 2G spectrum scam, placing documents between the independent regulator and the government in the public domain. If release of such letters, as you claim, leads to interference in the function of the TRAI, then you are to blame for the same error by releasing the Justice Shivraj Patil OMC report.



4. Your unsolicited advice to directly take up the matter with the TRAI is disingenuous, a failed attempt at distracting from your responsibilities, and a tad patronizing:

While I am well aware of my rights to seek such information from the TRAI, the purpose of my letter was for you to introspect your unsubstantiated comments about the DoT following the TRAI recommendations on the issue of auctions etc. Your request is not only misdirected vis-à-vis the context of my letter, but is also somewhat patronizing as it seems to question my wisdom regarding the source of the disclosure of such letters.

5. The TRAI letters dated 15th October 2007 and 19th October 2007 expose your misrepresentation, accusing the 'TRAI for not recommending auctions' thoroughly:

Contrary to your multiple claims and that of your colleague, Mr. Montek Singh Ahluwalia, the TRAI letters of 15th October 2007 and 19th October 2007 show that the TRAI was deeply uncomfortable with Mr. A. Raja's conduct, and in fact, chose to write the second letter within hours of his press release pretending to accept the TRAI recommendations on a host of issues, including 'no cap', M&A, rollout norms, spectrum charges and an executive decision announcing dual technology operators.

You have hidden the fact that the TRAI letter of 15th October 2007 cites multiple orders of the TDSAT and even the Supreme Court where it has argued at length about the need for the DoT to give due weightage to the statutory recommendations made by the TRAI, including the process of modification – which Mr. A. Raja did illegally and with impunity in direct contravention of the TRAI Act.

The second letter of 19th October 2007 is a worse still indictment of the government's conduct, where it said that *"the recommendations on licensing terms and conditions, cross technology, M&A, rollout obligations and capping have been made available in terms of Clause 11(1)(a) of the TRAI Act"*. It further stated that *"it must be appreciated that the recommendations are interrelated and have a bearing on the totality of the telecom sector.... It would be unfair and misleading if any decision and consequently action is initiated without identifying and implementing the linkages elsewhere in the recommendation. Therefore it is requested that the Authority should be formally consulted if there is any deviation from the totality of the recommendations"*. Even otherwise, the need to re-refer the matter back to the TRAI before modification is far from a nicety. It is a statutory requirement under the TRAI Act, Section 11(1)(a), Fifth Proviso, which contrary to your claims, Mr. A. Raja violated with regard to:

- i) Placing a cap of 121 UASL licenses while pretending to implement the 'no cap' decision (upheld by the Hon'ble Supreme Court on 12th March 2010).



- ii) Modifying the M&A norms to allow acquisitions and thus facilitating the illegal Swan, Unitech, S Tel and Tata-NTT Docomo deals (a source of revenue loss calculated by the CAG – which you have challenged).
- iii) Illegally changed spectrum charge/revenue share payable by dual technology operators by linking it to individual streams of GSM and CDMA spectrum rather than to a combined stream – as recommended by the TRAI in its recommendations of 28th August 2007.

You are obviously misinformed about the fact that the TRAI recommendations were made with the background of 53 applications pending on the date of the DoT reference dated 13th April 2007, but were implemented when 575 applications were pending on 1st October 2007 where demand far exceeded supply.

6. **If the TRAI had been formally consulted in response to its letter of 19th October 2007 and in pursuance of the Statute - Section 11(1)(a), Fifth Proviso - the 2G spectrum scam could have been avoided altogether:**

These letters that you choose to hide from me but have inadvertently made public as part of the Justice Shivraj Patil OMC report clearly indicate that if the statutory process and the request by the TRAI had been followed, there would have been no 2G spectrum scam whatsoever. Under no circumstances could the TRAI support any other process except auctions when the number of applications went up from 53 (at the time of the DoT reference) to 575, knowing full well that there was spectrum available for merely 150 odd UAS licenses. Your real reason for hiding this letter is because you stand to be exposed on your false claims about the TRAI not recommending auctions.

7. **The conclusions of the CAG are the reason why you refuse to release the TRAI letters:**

Your refusal to release the letters to me, but inadvertently releasing them via the Justice Shivraj Patil OMC report, show that you this is not because of some sense of hesitation to interfere with the TRAI, but in fact, because you stand thoroughly contradicted where the CAG has concluded in no uncertain terms in Section 3.2.2 that the TRAI did in fact seek a market-based mechanism for reassessing the entry fee. It further lays the blame entirely at the government's doorstep even if the TRAI recommendations were under any doubt. You know fully well (as you have while re-referring the TRAI recommendations back to the TRAI on cancellation of licenses due to violation of rollout obligations vide its letter dated 18th October 2010) that the government has every right under Section 11(1)(a), Fifth Proviso to re-refer such recommendations back to the TRAI before taking a final decision.



8. The conclusions of the Justice Shivraj Patil OMC is the reason why you refuse to release the TRAI letters:

Contrary to your claims about the TRAI's independent functioning, including in your press releases of January 2011, the Justice Shivraj Patil OMC (which you appointed) concludes in no uncertain terms in Section 2.19 – consistent with the TRAI's letters of 15th October 2007 and 19th October 2007 (which you intend to hide from me) – that *"the recommendations of the Authority are not binding upon the Central Government"*. You realize fully well that the TRAI letters of 15th October 2007 and 19th October 2007 made the exact same claim subject to any modification after a formal consultation – which your government failed to do in violation of the TRAI Act.

9. The conclusions and charges in the CBI charge sheet dated 2nd April 2011 with regard to the TRAI recommendations are the reason why you refuse to release the TRAI letters:

Notwithstanding your claim that 'the TRAI did not recommend auctions', the CBI has concluded the exact reverse in its charge sheet dated 2nd April 2011, Page 59, Section E (IX), which states that *"TRAI has also deliberated in Para 2.73 of its recommendations dated 28.08.2007 that in today's dynamism and unprecedented growth of telecom sector, the entry fee determined then is also not the realistic price of obtaining a license. Perhaps it needs to be reassessed through a market mechanism"*.

It cites this recommendation of the TRAI, inter alia, eight others, but refuses to take cognizance of your statement and that of your colleague, Mr. Montek Singh Ahluwalia, while concluding that *"investigations have disclosed that accused A. Raja, the then MoCIT is behind the above mentioned repeated suggestion from various corners of the Government for revision of entry fee to be charged to the new UAS licenses and dual technology applicants, deliberately and dishonestly did not consider auctions or revision of entry fee and gave away licenses at the same fee which was discovered in 2001, in a criminal conspiracy with"*. Incidentally, it also cites the Prime Minister's letter dated 2nd November 2007, the Finance Secretary's letter dated 22nd November 2007 and several others to conclude the exact reverse of your claims. This is in fact consistent with what the TRAI has said in its letters of 15th October 2007 and 19th October 2007 which you chose to hide from me under the pretence of avoiding *"interfering with an independent regulatory authority"*.



10. You chose to hide these letters from me because you realize that it will embarrass the Prime Minister, who probably do not have a detailed view of what went on as the illegal acts were committed by Mr. A. Raja , whom you have unsuccessfully chosen to defend before he was arrested in February 2011:

Not only have you hidden this information from me, but it is clear that the same ill-conceived briefing has been provided to the Hon'ble Prime Minister who, taking your and Mr. Montek Singh Ahluwalia's line, chose to repeat the position that 'TRAI did not recommend auctions' at the TV Editors' Meet on 16th February 2011. It was most disingenuous and dangerous of you to place the Hon'ble Prime Minister in this position. Sadly, he stands contradicted by the very CBI that not only reports to him but has now rejected any such suggestion – which places the blame on the TRAI by squarely blaming the then MoCIT, Mr. A. Raja.

In conclusion, your act of trying to suppress information from me while placing it inadvertently in the public domain in a move to attack political opponents is a sad commentary of the manner in which you hope to address this massive crisis that the telecom sector is faced with. Your futile attempts at hiding information will bear little or no results, except slowing down the investigation process.

I am determined to and will continue to fight to expose what happened during Mr. A. Raja's time and the complete lack of transparency that continues to exist in the DoT with regard to the processing of the show cause notices resulting from the CAG report (85 ineligible companies), the TRAI recommendations (69 licenses to be cancelled) and other fines and penalties that are being computed at will through the abuse of discretionary powers and in violation of due process.

Enclosures:

1. TRAI D.O. No. CB/TRAI/2007 dated 15th October 2007 (Annexure 40 of the OMC report released by you in February 2011, but which you refused to release to me).
2. TRAI D.O. No. CB/TRAI/2007 dated 19th October 2007 (Annexure 41 of the OMC report released by you in February 2011, but which you refused to release to me).
3. Relevant extracts from Section 3.2.2 of the CAG report dated 16th November 2010.
4. Relevant extracts from Section 2.19 of the Shivraj Patil OMC report dated 31st January 2011.
5. Relevant extracts from Section E, IX of the CBI charge sheet dated 2nd April 2011