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BHARTI-MTN DEAL: A MISSED CALL*

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On the night of September 30, 2009, Bharti Airtel's CMD and Chairman Sunil Mittal, lay restless in his bed. Sleep was miles away from his eyes. He had gone through perhaps the worst day of his life, which saw his dream of turning Airtel into a global telecom giant being shattered a second time in just over a year. He had known from the very beginning of the negotiations with South Africa's MTN that the acquisition of the company was not going to be a cake-walk for him, but he had hopes that he would be able to clear the last hurdle to the achievement of his objective. The proposed Bharti-MTN merger had been almost under his belt. He had staked a lot and conceded just about everything his potential partner wanted in order to bring the deal to a successful conclusion. Yet he lost the bid. He knew that it would take some time for him to put the experience behind.

Company profiles:

Bharti Airtel, established in 1995 and growing rapidly by seizing the opportunities in India's deregulated telecom sector over the years, was one of the leading telecom service providers in Asia and the number one telecom player in India. The company had crossed the subscriber base of 100mn in May 2009. It provided GSM-based mobile services but soon it was going to launch third generation (3G) services as well. The company provided landline, mobile, broadband internet, enterprise data, digital TV and international long distance services. Bharti Airtel was well known for its low cost model by having pioneered the outsourcing model in telecom operations. All of its information-technology (IT) operations were outsourced to IBM, the running of its mobile network was handled by Ericsson and

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The case was prepared as a basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

Some fictionalization has been used in narration of individual roles and experiences.

Nokia Siemens Networks (NSN), and customer care was outsourced to IBM and a group of Indian firms. By following such a model, it actually passed much of the risk of coping with a rapidly growing subscriber base to other parties and left itself to concentrate on marketing, brand building and strategy. Kunal Bajaj, a telecom consultant at BDA, had observed:

"When moving into a new area. Bharti requests a certain amount of calling capacity and pays for it three months later at an agreed price per unit of capacity. That leaves it up to the vendor to handle the business of designing networks, putting up base stations and so on, giving it an incentive to build the network as frugally as possible."

The other company involved in this deal was MTN. MTN was a South African (SA) multinational telecom provider which was established in 1994 and has been providing mobile services and business solutions. The company had its core operations in 21 countries in Africa and the Middle East and recently it had also crossed the 100 mn subscriber base. MTN was South Africa's second-biggest mobile operator with a dominant share in most of its markets and the only one still owned by South Africans. MTN was also SA's largest black-owned group company. SA government had contributed to its robust growth through various favourable policies. MTN was exploring options to outsource part of its back-end operations; therefore, a merger with Bharti could enable it to outsource part of the functionalities like internal IT services and call centers to India.

History of large M&As in South Africa:

South African government had always been hesitant about selling its key companies to foreign corporations from developing nations. On the other hand it had shown less resistance in instances where the acquiring companies belonged to developed nations or were well known in global business. For example, in 2005, London-based Barclays Plc was allowed to acquire controlling stake in South Africa's biggest retail bank, Absa group. In another example, it allowed Vodafone to acquire controlling stake in one of its key assets, Vodacom. The deal saw many hiccups due to protests from the labor union, COSATU, and regulators, ICASA, but due to strong government support, a successful completion was eventually reached. On the other hand, companies from developing countries like China Mobile and Reliance were not able to take control of MTN, apparently encountering some wariness at the official level.

MTN as an ideal target for acquisition:

Bharti Airtel and MTN first made contact with each other early in 2008 to initiate talks on a merger deal between the two companies. MTN was operational across 21 markets and had over 68 million subscribers. Its market capitalisation was \$37 billion, against Bharti's \$42 billion. Bharti had a subscriber base of 62 million. For a long time, Sunil Mittal was eyeing for a potential target to help Bharti go global. In particular, he was keen on securing a foot hold in the African market. The company had earlier tried to acquire a stake in Gabon's national operator. Bharti also bid for licences in some other African countries, which had relaxed their rules related to foreign investments. Mittal spelt out his vision:

"We need to expand our horizons and go out of India. That is what we have been trying over the last couple of years... The focus has to be on Africa, the Middle East and some other developing markets"

MTN was an ideal target for Mittal in pursuit of his ambitions for the company, so he did not leave any stone unturned. Not only did he get round to negotiating with MTN, but he also involved in the act influential shareholders of both the companies like M1 group and Singtel. Support from the Mikati family which held 9.28% stake in MTN was overwhelming. Azim Mikati, Najeeb's son, told Dow Jones Newswire on May 10, 2008:

"I don't see the Bharti transaction as a sale. It is really combining two great assets in what could become a really unique player in the emerging market of the mobile industry."

Singapore-based SingTel, which directly and indirectly held a 30.5-per cent in Bharti Airtel, also appeared willing to play a prominent role in the acquisition.

There were media reports to the effect that SingTel was likely to raise as much as $8 billion of the estimated $20 billion deal value by buying shares in the South African firm.

After the initial rounds of talks, the deal as of the middle of May 2008 seemed to be moving to the final stages of forming a new corporate entity through acquisition. Sunil Mittal and his group CFO, Akhil Gupta, were seen holding the final rounds of negotiations with MTN's global president and CEO, Phuthuma Nhelko and CFO Rob Nisbet. The principal issue to be resolved was the management structure for the new entity. All seemed to be going well for the Bharti-MTN tie-up.

First disappointment:

During the final round of negotiations in London, both the companies agreed to a Bharti-controlled structure for the new entity resulting from the aquisition. Bharti was also ready with the required funding as it had "confident letters of funding" of over $60 billion from more than a dozen bankers from the United States and Europe. But, at this point MTN took a U-turn and proposed a different corporate arrangement, in which Bharti would become a subsidiary of MTN rather than a strategic ally through acquisition of a stake. Bharti was obviously not happy with this new development. An impasse was reported on May 25, 2008 as the two companies failed to reach an agreement on the corporate structure of the combined entity.

In a candid statement made on May 28, 2008, Bharti said:

"This convoluted way of getting an indirect control of the combined entity would have compromised the minority shareholders of Bharti Airtel and also would not capture the synergies of a combined entity. More importantly, Bharti's vision of transforming itself from a homegrown Indian company to a true Indian multinational telecom giant, symbolizing the pride of India, would have been severely compromised. This situation is completely unacceptable."

Return to the pursuit:

Even after this setback, Mittal did not lose heart. He persevered in efforts to find an area of agreement with MTN and exactly a year later, on May 25, 2009, Bharti and MTN returned to talks again. It now looked a giant tie-up effort, which, if materialized, would be India's biggest cross-border deal ever and the world's biggest non-pharmaceutical deal of the year. For conditions were different this time and so were the rules of the game. No longer did Bharti have a smaller customer base than MTN. Both the companies now had almost the same customer base of approximately 100 mn. The proposed merger of the two iconic companies of India and South Africa bid fair to give rise to the third largest global telecom player with revenues of $20 billion and over 200 million subscribers. The companies said in separate statements:

"The broader strategic objective would be to achieve a full merger of MTN and Bharti as soon as is practicable to create a leading emerging market telecom operator, which would have a combined revenue of over $20 billion and a customer base of over 200 million".

Though Bharti had failed earlier to strike the deal, it was still optimistic of reaching a consensus with MTN. As one of the senior managers recalled:

"We decided to let bygones be bygones. We were hopeful that the past would not have an impact on the second round of talks."

Bharti was determined to bring off an agreement this time. Sunil Mittal's high stakes were the main driving force. Bharti Enterprise's Vice Chairman and Managing Director Rajan Bharti Mittal went on record in May 2009:

"The talks are on. This time we intend to close the deal."

The bankers assisting Bharti in the negotiation were Barclays and Citibank while MTN sought advice from Bank of America, Merrill Lynch and Deutsche bank.

The New Proposition:

However the structuring of the transaction this time was different from that of the earlier attempt. Unlike the merger attempt in 2008, when Bharti would have assumed full control over the MTN group, this time the arrangement envisaged was such that both firms would pay cash and equity for stakes in each other. The deal structure envisaged the following steps:

- By paying 86 Rand and 0.5 newly-issued Bharti shares in the form of Global Depository Receipts (GDRs) for every MTN share, Bharti would acquire 36% stake in MTN. These GDRs would be listed on Johannesburg Stock Exchange (JSE), South Africa. Bharti would issue 731.3 mn new shares, leading to a 17% dilution in equity of Bharti.
- Bharti would receive further MTN shares equal to 25% of the current share capital of MTN. MTN would acquire around 36% post-transaction economic interest in Bharti, out of which 25% will be held directly by MTN and the rest 11% by its shareholders. Bharti's total stake in MTN would amount to around 49% post transaction.

Bharti was expected to pay around \$13.1 billion for the 49% stake, with \$7 billion in cash and \$6.1 billion in equity. On the other hand, MTN was expected to pay around \$9.6 billion, out of which \$2.9 billion was to be in cash. So, the net cash outflow for Bharti was roughly \$4.1 billion.

This structure was hailed by most of the telecom analysts and experts. For example, Sanjay Chawla, a telecom analyst at Anand Rathi Securities, said:

"Compared to last year, the deal structure looks reasonable and, to that effect, the completion risk is low. Plus (MTN) is a free cash-flow positive, dividend-paying firm. Therefore, it's a cheaper asset and looks to be a pretty good deal for Bharti".

Exchange Rate Effect:

Like in all mega deals, exchange rate fluctuation was a major concern for Bharti as it had to pay a huge sum of money in cash. It was firm on not increasing the price per share, other than the rise caused by the South African currency's appreciation against the dollar. The company had planned to pay the larger shareholders of MTN in dollars and the smaller shareholders in South African currency, Rand. Bharti and MTN held talks with the South African Reserve Bank (SARB) on this issue. By paying institutional shareholders of MTN in dollars, Bharti was seeking to avoid the negative effects of currency fluctuations.

Incentives for Bharti:

Apart from Sunil Mittal's ambition to see Bharti as a global telecom company, Bharti Airtel also had other reasons to feel happy about the new proposition. A few important considerations, which made the revised deal tempting, were as follows:

Attractive African Market:

With the Indian market getting increasingly mature and perpetual price wars reducing revenue per user, Bharti was on the lookout for markets which were still in the growth phase and holding large potential. ARPU (Average Revenue per User) in the Indian telecom market, which was $11 in 2004, had come down to $7 in 2007 and further slipped to $6 in 2009 while in the African telecom market, it had prospects of a value close to $12. So for Bharti, the African telecom market was an attractive target as the world's fastest growing telecommunication industry. According to an Ernst and Young report released in February 2009, the African telecom market grew by 49.3% between 2002 and 2007 as compared to the Asian market (27.4%) and Brazil (28%). With expectations of the African telecom market growing at the rate of 40% and with less than 45% penetration, it definitely offered a lot of opportunities. For Bharti significant economies of scale through this deal were an important consideration.

Network Sharing:

Valuable synergies were also expected through procurement of telecom equipment and international network sharing, which could result in lowered costs for the companies. A Bharti spokesperson referred to this possibility:

"The precise quantum of synergies has not yet been finalised although potential synergies are expected to be meaningful and achievable. Synergies would be sought from a number of areas including procurement, operational best practice, R&D, and international network sharing."

Strong Position of MTN:

The deal was said to be more favorable to Bharti than MTN. Many of the performance parameters of MTN were better than those of Bharti's. MTN's revenue growth rate was 40%, while Bharati's revenues were growing only at the rate of 28%. Similarly, EBITDA margins and ARPU were also higher for MTN. Bharti was acquiring its stake in MTN of a valuation of about 5.5 times EV/EBITDA, which was quite favourable. Also, MTN had a strong balance sheet with low debt. The consolidated balance sheet of the combined entity was reckoned to have a moderate debt burden, offering fairly substantial borrowing options for Bharti.

The deal wasn't sweet enough:

In the initial days after the announcement of the reopening of talks, things were not quite easy for Mittal. Big MTN shareholders found the deal attractive in the long term, but seemed to have the feeling that the price offered by Bharti was not up to the mark. Most of them showed their dissatisfaction and stressed the fact that Bharti must sweeten the deal. In response, Bharti offered 13% premium but MTN's shareholders stuck up for more. Four of MTN's top 25 shareholders said that they would reject the plan as outlined, while other big investors assumed postures to indicate that they were not sure.

Reviewing the overall reactions on the South African side, Gavin Joubert, portfolio manager at Coronation Fund Managers, which owned 0.44 per cent of MTN shares and was one of the 15 largest shareholders, observed:

"The feeling within the market is that the deal in its current form won't get MTN shareholder approval. One of the issues is that the relative valuation of MTN is significantly cheaper than Bharti Airtel."

For his part, Hlelo Giyose, portfolio manager at Stanlib Asset Management, one of the 25 largest shareholders with 6.5 million shares, was more candid:

"The pricing of it is horrible. The kind of premium they are giving us is not worth it ... We need close to 40 per cent."

Bharti, however, was in no hurry to sweeten the deal. It did not make any official announcement, but a banker involved in the matter, who did not want to be named, told the media:

"These are the broad outlines. Things can change closer to a final agreement. At this juncture, I don't see any need to sweeten it. Let's wait for the big (MTN) shareholders to come through, then Bharti can think of any change, if at all."

A Ray of Hope:

The end of May brought some promising news for Mittal. That was from the Mikati family which said on May 29 that it would back a $23-billion cash and share swap deal with Bharti. Being the first major MTN shareholder to publicly support the deal, Mikati offered Bharti the kind of boost that it badly needed at this juncture. Azmi Mikati, CEO of the M1 group told Reuters in a telephone interview on May 29:

"We are fully supportive of the transaction. It will add value for both Bharti Airtel and MTN shareholders. We will vote in favor of it. We don't look at any transaction with a short-term view, but through a long-term view."

Another piece of good news from Bharti's point of view was COSATU's (Congress of South African Trade Unions) announcement that it was not inclined to block the possible multi-billion dollar merger. The statement was highly significant as COSATU, the powerful trade union movement, had been opposed to the Vodacom-Vodafone deal in 2008 and had done everything to stop that deal, though not succeeding. COSATU spokesperson Patrick Craven said:

"MTN deal is different from the recent deal involving state telecoms operator Telkom which handed control of South African mobile provider Vodacom to Britain's Vodafone. Telkom has always been 50 per cent owned by the public and the move was part of our policy agenda against privatisation. MTN has always been a private company."

Conditional Support:

MTN's biggest shareholder, the state-owned pension fund Public Investment Corporation, finally broke its silence on its own stand on the proposed merger deal. It supported revived merger talks with Bharti Airtel in principle but insisted that there was "room for improvement" on the price. It appreciated MTN's attempt to diversify its revenue but said that the details still had to be hammered out. Brian Molefe, chief executive of PIC, summed up the company's view by saying:

"Because of the strategic imperative, yes we will support the deal, but it depends on how they are going to negotiate, how the final details are going to look. I would say there is room for improvement on the price."

Financing of the deal:

On the one hand, Mittal was pushing hard to remove all the obstacles; on the other he was well aware of the huge funding requirements. In the complex merger deal that he had put together, the expected cash outflow for Bharti was approximately $4 bn. There was a fair amount of speculation in the market as to how Bharti was arranging cash of such a large order to fund the deal, while

Bharti itself gave no indication of its plans on the financial aspects of the proposed acquisition.

Initially, it was said that Standard Chartered, which was advising Bharti on the transaction, had agreed to underwrite $1 billion of the deal. Unidentified sources as quoted in media reports said that StanChart offered to underwrite the full amount of the financing for the proposed merger, or as much as $5 billion. If the deal materialized, Standard Chartered was expected to syndicate the loan.

State Bank of India also offered a loan of upto $1 billion to Bharti Airtel to partly fund the acquisition, according to the same media reports. India's largest public sector bank was reported likely to join a group of foreign lenders interested in funding the deal. Punjab National Bank and Kotak Mahindra Bank also reportedly showed their interest in financing a part of the deal.

In other reports, Bharti received bids from at least a dozen foreign banks, including Citigroup Inc. and JPMorgan Chase and Co., to fund its purchase of MTN shares. It was mentioned that 13 banks from the US, Europe and Asia had put in their offers, each for $500 million (Rs2,435 crore). The foreign banks included Barclays Plc., Bank of Tokyo-Mitsubishi, Calyon and Sumitomo Mitsui Banking Corp.

SingTel joined the Party:

In another favorable development for Bharti Airtel, SingTel announced its commitment to keeping a majority stake in the company. Under the proposed deal structure it had been feared that SingTel's 30.5 per cent (effective) stake in Bharti would get diluted to 19.4 per cent, resulting in its holding a small stake in the new entity. But in the event SingTel emerged as a strong supporter of the deal with a slated investment of around $2.8 billion in the deal, which would help it maintain its current stake. Due to its high stakes in Bharti, the company was in no mood to take any chances. Goldman Sachs was reportedly advising SingTel on its position on the deal. The Singapore based company was apparently willing to offer cash to the smaller shareholders of MTN in exchange of their stake.

A statement made by SingTel's spokesperson in an e-mail interview reflected the company's intentions with regard to the deal. He told the Financial Chronicle:

"We along with Bharti, are exploring this potential transaction (with MTN) as it represents a natural extension of both SingTel and Bharti's footprints into Africa and West Asia."

First extension of dead line:

Mittal was well aware of the concerns of some key MTN shareholders and for him to accommodate their demands he needed some time. Earlier both the companies had decided on the deadline of July 31, but subsequently they agreed to extend the talks by one month to August 31. Meanwhile there were reports that the market price could increase and the deal might undergo some changes.

Deadline extended again:

Despite extensive efforts made by Bharti, the complex structure of the deal now seemed to be weighing on the parties involved. The deadline was extended again on August 20, this time to September 30. The market appeared skeptical about the outlook for the deal, even though, in separate statements, Bharti and MTN had repeatedly shown satisfaction on the progress of the negotiations. Analysts were speculating on the likelihood of changes on pricing and management representation and of Bharti GDRs not being acceptable to MTN shareholders. For another, investors showed signs of frustration over the continuing delay in wrapping up the deal.

Zwelakhe Mnguni, a portfolio manager at South Africa's Stanlib Asset Management, which owned shares in MTN, said:

"We do think it's unacceptable that it's been going on for so long. If it's such a complicated deal, why do they even go for it?"

Market sentiments were evidently getting negative and as a result, shares in Bharti, valued at about $32 billion, dropped by 1.2 percent after the statement. This was not a good sign for Sunil Mittal and he had to take a few quick decisions to clear the uncertainty, especially about the sweetening of the deal.

Mittal's Tough Stand:

After the second extension of the deadline, when the whole market was expecting the announcement of a sweetener or a changed deal structure from Bharti, Mittal caused a major surprise by saying that Bharti Airtel was not really looking to sweeten the MTN bid. He insisted that there was no disagreement over the structure of the deal and that the problems to be solved were only those related to regulatory hurdles. He was quite hopeful about closing the deal but at the same time he pointed out uncertainities in cross-border deals of this nature and size.

In an interview on August 21, Mittal said:

"We are not really looking at sweetening the deal. There are no contentious issues over the deal structure. We are looking at administrative issues, the process of seeking permissions and working towards a scheme of arrangement that is acceptable to all... In all cross-border transactions of this nature, it takes time to complete documentation and due diligence...... I am very hopeful of a deal before that (30 September). But it's never done till it's done. In deals of this nature and size, there is never complete certainty"

South-South cooperation a boost for Mittal:

The month of September started on a promising note for Mittal. The South African government backed the proposed merger deal and showed its unconditional support for South-South cooperation reflected in the development. It was some relief for Sunil Mittal.

Tiyani Rikhotso, a spokesman for the communications department, said:

"It appears to be a good proposal especially given (that) it (is) within the framework of south-south cooperation. If all the prerequisites of mergers and

acquisitions (rules) are met, I don't see any reason why anybody will want to stand in the way of what will benefit the people of the two countries."

Sweetener at last:

Mittal, however, found himself under tremendous pressure not only from big, but also from small shareholders of MTN, on improving his offer. It was extremely important to satisfy them since shareholders holding a combined 75 percent stake in MTN would have to approve the deal. So, Bharti finally came up with the 'sweetener' under which it increased the cash component of its offer for a 49% stake in MTN to $10 billion from a proposed $7.6 billion. On top of that, Bharti also offered to pay $4 billion in stock for a total package of $14 billion, 7% more than the earlier $13 billion proposed deal. It was a smart move by Mittal as there was only a marginal increase in the overall payout.

According to one source, quoted in media reports:

"Management of both companies has been working hard and I'm optimistic we'll get an agreed offer to put to shareholders before the end of the month. I don't believe Bharti will have to sweeten its offer any further."

Dual listing problems for Mittal:

Since the beginning of the talks, SA authorities were insistent that MTN should remain a domestic company. They were apparently ready for the merger with cross acquisition of shares by both the companies but not at the cost of MTN becoming a subsidiary of Bharti. South African Communications Minister Siphiwe Nyanda voiced this thought when he told the press:

"What I am saying is all we are interested in is what kind of management agreement outcome results out of this and all we want is that this remains a South African company. That is all"

For obvious reasons, SA government wanted to play it safe. After Vodafone's acquisition of Vodacom in 2008, MTN was the only state-owned telecom company left in South Africa. In the event of Bharti taking over MTN, all three SA cell-phone companies would become foreign-owned, the top five companies on the JSE would be headquartered outside South Africa and the lead exponent of SA's corporate African expansion would have exited from the domestic corporate scene.

With this as background, the South African government officially communicated with the Indian government in August on the dual listing issue to state that its policy did not allow companies incorporated in South Africa to be reincorporated offshore or de-listed from the Johannesburg Securities Exchange with a possible subsequent listing offshore in the name of the same company or as part of a new entity. This would be the case if MTN and Bharti were to merge.

Now dual-listed company or DLC is a corporate structure in which two corporations function as a single operating business, but retain separate legal identities and stock exchange listings. It requires both the companies to be managed by a common governance structure, with the Board of Directors jointly appointed by the two sets of shareholders. Virtually all DLCs are cross-border. In a conventional merger or acquisition, the merging companies become a single legal entity, with one business buying (for cash or stock) the outstanding shares of the other. However, when a DLC is created, the two companies continue to exist and to have separate bodies of shareholders, but they agree to share the risks and rewards of the ownership of all their operating businesses in a fixed proportion as laid out in a contract called "equalization agreement." The purpose of such an agreement was to ensure equal treatment of both companies' shareholders in voting and cash flow rights i.e. identical economic benefits including dividend and capital distribution on liquidation.

The South African government also showed its willingness to accept the DLC structure as "the best policy option" instead of the initial proposal which required primary listing of the merged entity, as well as that of MTN in South Africa.

Even South African president Jacob Zuma showed his concern over the contentious issue of dual listing. He was quoted as having observed that the Bharti-MTN deal was being held up by legal problems in India. He said:

"I am told there are hitches in terms of the law, particularly on the Indian side, because you are talking about companies that must come together."

On the Indian side, such dual listing posed major problems, firstly because it would involve a change in government policy and secondly, it required similar rules for stock exchanges of the two countries. There was also the issue of capital account convertibility which dual listing would raise for India. While Indian rupee is not convertible on capital account, a dual-listed Bharti would mean that the company shares could be sold by South African shareholders in their domestic bourse, which would amount to stake sales in a foreign currency and hence some relaxation of capital convertibility norms. But, Mittal did not lose heart over this problem. As the angle of 'national pride' appeared to become an issue in South Africa, he increased the frequency of his visits to New Delhi. He met Prime Minister Manmohan Singh at least thrice and the Finance Minister several times during this period to seek support of the Indian government for his venture.

On September 10, Finance Minister Pranab Mukherjee wrote to his South African counterpart Pravin J Gordhan saying that the Indian government was searching for options to accommodate dual-listed companies. He told press reporters in New Delhi:

"Our position on this is very clear. In the first week of September, I had met the South African finance minister on the sidelines of the G-20 finance ministers' summit in London, and told him that we are in favour of the deal. As far as dual listing is concerned, that is linked with full (capital account) convertibility. This has legal aspects, which we are looking into."

At the G20 conference in September 2009, Prime Minister Manmohan Singh had a meeting with the South African President, Jacob Zuma, and it was reported that the matter of the Bharti-MTN deal figured in the talks. At a press conference after the conclusion of the meet, Dr. Singh told the media:

"As far as the MTN issue is concerned, I did mention to President Zuma that I sincerely hope that the deal will go through and that Indian companies will not be subjected to discriminatory practices. It has been agreed that this matter can be further discussed with the government of South Africa."

Even though the government was supportive of the deal, there were indications that India was still not ready for full capital account convertibility of the rupee. On September 24, 2009 Industry and Commerce minister of India, Mr. Anand Sharma reflected this view:

"At this stage nobody is in a position to talk about the policy change on convertibility. However, the government will always be supportive of the initiative by an Indian company for an overseas transaction and acquisition".

National Security Advisor, M. K. Narayanan for his part was quite forthright on the issue of Indian laws:

"I don't think we can change Indian laws every time a multinational goes out canvassing. As I said, we don't want to cross any red lines. We will not interfere with contracts. We will not put pressure on foreign governments. But if a foreign government wishes to have certain comfort from the fact that the Indian government is supportive, then that will be forthcoming."

There were other complications in the dual listing that now figured in informed public discourse apart from its involving the full convertibility of the rupee. Indian and South African exchanges operate in different time zones which would have made the equity trading of the combined entity difficult. Other major areas of concern were fundamental issues of corporate, tax, securities and bankruptcy laws. Significant amendments were also required in the Companies Act and the listing agreement for Indian stock exchanges so that shareholders of another company, which is a wholly different legal entity, connected only by a contract and not even listed in India, could exercise their rights as laid out in an equalization agreement. According to the prevailing laws, financial disclosures were required only of the companies listed in India. In the given scenario, MTN was not legally obliged to have disclosures of financial details of the same standard as that of Bharti, though its performance would have been incidental to the performance of the latter. Far-reaching problems were also expected with various tax laws particularly the income tax, as different laws would apply to the dividend distribution and to remittance of income instead of dividend. Also, the Indian bankruptcy laws would not have allowed transfer of capital distribution on liquidation. Due to these problems, major amendments were required to some of the important existing corporate laws in the country; for instance, the existing Companies Act and Foreign Exchange Management Act (FEMA), to facilitate dual listing. Apart from all these predicaments, the Reserve Bank of India's permission would have been necessitated for the domestic trading in shares that are denominated in a foreign currency.

ANC's point of view:

Though ANC (African National Congress) never made its position on the issue public, its statements often reflected a nationalistic stance. Presumably, it was not easy for the ANC to head off pressure exerted by COSATU which was now reported have veered round to opposition to the Bharti-MTN deal. On September 28, two days before the final deadline, ANC treasurer Mathews Phosa cautiously told the reporters:

"The ANC is willing to listen. South Africa has lost many of its crown jewels to foreigners but it will be premature to assume that the door has been shut on the deal."

COSATU's changed stance and SEBI's new rules:

As the extended deadline was getting closer and the merger deal was being played out increasingly in the open, problems for Mittal were increasing rather than abating. COSATU was now reportedly objecting to the deal as it feared that Bharti-MTN deal would result in job losses in South Africa. COSATU was said to have chosen to play safe on its shift from the earlier stand of support to the Bharti-MTN merger through discreet moves to pressurize the government to reject the deal. A source close to the MTN-Bharti deal told Reuters:

"COSATU is quietly putting pressure on government not to allow this transaction. They don't want to repeat the bitter pill that happened with the Vodacom and Vodafone deal."

When asked about COSATU's stand on Bharti-MTN merger deal, COSATU spokesman Patrick Craven said that the federation would examine the deal to ensure that workers' interests were protected. Some sources revealed that the deal was on the agenda for the national congress of COSATU, scheduled for September.

When the talks were in the final stages, another problem surfaced. The Indian capital market regulator 'Securities and Exchange Board of India' (SEBI) amended the takeover regulations on September 22, 2009. According to the new rules, GDRs/ADRs with voting rights would be treated as regular domestic equity share and hence any company acquiring a 15% stake in a listed Indian company had to make an open offer to acquire a minimum of 20 percent of such listed company's shares from the public shareholders. Now this was just the opposite of what SEBI had said in July 2009. SEBI had said at that time that the open offer would not come into the picture till the GDRs, issued to MTN and its shareholders by Bharti, were converted into local shares with voting rights. These new norms posed new worries for Sunil Mittal as under the proposed deal structure, MTN would have to make an open offer.

Still, Mittal was confident that he would find some solution to the problem. Bharti Airtel said in a statement after Sunil Mittal's meeting with the Prime minister:

"We can confirm that the structure under discussion with MTN will be fully compliant with the laws in both the countries. All relevant approvals, including exemption from open offer from Sebi (if required), would be sought at an appropriate time."

South Africa – The regulatory gauntlet:

Compliance with South Africa's Black Economic Empowerment (BEE) policies was another major concern for Bharti. All the private companies had to comply with these policies if they were interested in doing business with any government enterprise or organ of state. According to these policies, companies had to follow BEE guidelines for allocating shares to all racial groups. SA telecom regulatory body, ICASA, announced that the deal would be subjected to an approval process from a shareholder analysis perspective apart from the regular Competition Commission review and approval process. In that case, the deal was bound to be subjected to extensive scrutiny in terms of sensitive national policy related considerations.

BEE norms in South Africa stipulated that a minimum of 20% of a merged entity's shareholding should be with black investors. Therefore, even if Bharti were to raise the cash component significantly, it ran the risk that the shareholdings of the black investors might drop below the statutory requirements.

But Bharti expressed its commitment to fully comply with all the regulatory requirements in South Africa. A company spokesperson reflected its view in an emailed reply to the Wall Street Journal:

"Bharti Airtel and MTN will be actively engaging with the appropriate regulatory bodies to ensure that the necessary approvals are obtained."

Last Minute Efforts:

Mittal was hopeful of success but in the context of reports that MTN was losing interest in the deal, a senior executive of the company, who did not want to be named, was candid and was quoted as saying:

"MTN was very keen (on the deal) initially but the start of September changed all that. It seemed as if they were looking for reasons to somehow reject the offer."

Mittal had made several concessions to MTN in a last-minute effort to sew up the deal. In order to pacify the South African government on the issue of MTN's national character, Bharti Airtel had agreed that MTN chairman Cyril Ramaphosa, CEO Phuthuma Nhleko and incoming CFO Nazir Patel could retain their posts for at least three years. Bharti further offered not to tamper with its 49% stake in MTN for a minimum period of five years. It also sweetened the deal by offering MTN a 27% stake in Bharti Airtel as compared with the earlier offer of 25%.

Also as part of the series of concessions, Mittal offered MTN's minority shareholders the option to take $13 billion in cash instead of part payment in cash and the rest in the form of Bharti Airtel shares as Bharti had proposed earlier.

In a desperate attempt to close the deal, the company even went to the extent of saying that any business by Bharti in the African continent would be done only through MTN.

End of the road:

From Bharti's point of view, it could not have gone any further in modifying its package of offers to the shareholders and stakeholders of MTN. On the part of MTN also there was acknowledgement of the attractive features of the package. And Mittal himself, while keeping his fingers crossed had reasons to feel optimistic as to the final outcome.

But the nub of the problem remained as the South African Finance Ministry could not find its way round the requirement of dual listing. So in the impasse resulting from the Indian government's inability to change the rules and the South African side's unwillingness to consider compromise measures like Indian Depository Receipts (IDR) which were apparently suggested by Indian officials to their South African counterparts who visited India in the third week of September. Like GDRs or ADRs, IDRs represented underlying shares issued by foreign companies in India- so MTN shares listed in India in the form of IDRs would be fairly close to capital account convertibility as the sale proceeds were freely repatriable. Its statement on the end of the road for the Bharti-MTN dialogue simply said:

"MTN advised Minister of Finance Pravin Gordhan that the two companies have mutually decided to terminate further discussions on the proposed merger."

It was a great disappointment for Sunil Mittal. He had played fair and had overcome several obstacles that would have daunted a lesser spirit, but success eluded his grasp at the final stage. He had to figure out what went wrong. But that was after tonight which was definitely going to be a long one for him.

Exibit 1: Bharati Airtel and MTN group – A comparative analysis

US $ mn	MTN	Bharti Airtel
Revenues (FY2009/CY2008)	12,062	7.781
Revenue CAGR (2-year %)	40.9	41.3
EBITDA (FY2009/CY2008)	5,078	3,193
EBITDA margins (FY2009/CY2008), %	42.1	41.0
Net Profit (FY2009/CY2008)	1,802	1,783
Mobile Subscriber Base (in mn)	98.2	93.9
ARPU (US$/Month)	13.2	6.8
Enterprise value	27,887	33,894
Market Capitalization	26.166	32,426
Net debt – Equity ratio (FY2009/CY2008, x)	0.2	0.2
Net debt – EBITDA (FY2009/CY2008, x)	0.3	0.5
EV/EBITDA (FY2011E/CY2010E, x)	4.2	6.9
EV/Subscriber (FY2011E/CY2010E, US$)	207.8	144.9
P/E ratio (FY2011E/CY2010E, x)	10.0	12.6

Exhibit 2: Bharti + MTN - The combined entity

Particulars	FY2010E	FY2011E
Mobile Subscriber Base (Mn)	237.6	286.6
Revenues (US$ mn)	13,011	19,415
Revenues (Rs mn)	631,024	931,924
EBITDA (US $mn)	5,202	7,733
EBITDA (Rs mn)	252,318	371,176
EBITDA Margins (%)	40.0	39.8
Net Profit (US $mn)	2,693	3,723
Net Profit (Rs mn)	130,625	178,688
Existing EPS (Rs)	55.6	64.3
New EPS (Rs)	44.0	60.2
% change	(20.8)	(6.2)

Exibit 3: MTN subscriber base break-up (March 2009)

Country	Subscriber Base (Mn)
South Africa	17.4
Uganda	4.0
Mascom – Botswana	1.0
Rwanda	1.3
Swaziland	0.5
Zambia	0.8
Nigeria	25.9
Ghana	6.8
Cameroon	3.8
Ivory Coast	3.8
Benin	1.1
Congo – Brazzaville	0.9
Conakry	1.0
Liberia	0.5
Bissau	0.4
Syria	3.4
Iran	18.3
Yemen	2.0
Sudan	2.7
Afghanistan	2.4
Cyprus	0.2
Total Subscriber Base	98.2

Exhibit4: Bharti Airtel's Balance Sheet(Rs. Crore)

	Mar ' 09	Mar ' 08	Mar ' 07	Mar ' 06	Mar ' 05
Sources of funds					
Owner's fund					
Equity share capital	1,898.24	1,897.91	1,895.93	1,893.88	1,853.37
Share application money	116.22	57.63	30.00	12.13	2.72
Preference share capital	-	-	-	-	-
Reserves & surplus	25,627.38	18,283.82	9,515.21	5,437.42	2,675.38
Loan funds					
Secured loans	51.73	52.42	266.45	2,863.37	3,959.88
Unsecured loans	7,661.92	6,517.92	5,044.36	1,932.92	1,034.41
Total	35,355.48	26,809.71	16,751.95	12,139.72	9,525.76
Uses of funds					
Fixed assets					
Gross block	37,266.70	28,115.65	26,509.93	17,951.74	13,240.63
Less : revaluation reserve	2.13	2.13	2.13	2.13	2.13
Less : accumulated depreciation	12,253.34	9,085.00	7,204.30	4,944.86	3,475.64
Net block	25,011.23	19,028.52	19,303.51	13,004.75	9,762.86
Capital work-in-progress	2,566.67	2,751.08	2,375.82	2,341.25	994.46
Investments	11,777.76	10,952.85	705.82	719.70	931.90
Net current assets					
Current assets, loans & advances	10,466.63	8,439.38	5,406.81	3,338.88	2,486.31
Less : current liabilities & provisions	14,466.89	14,362.33	11,042.67	7,272.80	4,708.12
Total net current assets	-4,000.26	-5,922.95	-5,635.86	-3,933.92	-2,221.80
Miscellaneous expenses not written	0.09	0.20	2.66	7.94	58.35
Total	35,355.48	26,809.71	16,751.95	12,139.72	9,525.76
Notes:					
Book value of unquoted investments	9,898.56	9,379.62	580.43	476.52	460.83
Market value of quoted investments	1,887.76	1,574.29	125.85	243.99	472.71
Contingent liabilities	4,104.25	7,140.59	7,615.04	4,740.34	3,017.26
Number of equity sharesoutstanding (Lacs)	18982.40	18979.07	18959.34	18938.79	18533.67

USD INR Exchange Rate = 47.635 (as on 10/03/2009)

Exhibit5: MTN's Balance Sheet

	At	At	
	31-Dec	31-Dec	
	2008	2007	
	Audited	Audited	Change
	Rm	Rm	%
ASSETS			
Non-current assets	**115 319**	82 085	40,5
Property, plant and equipment	**64 193**	39 463	62,7
Goodwill and other intangible assets	**45 786**	38 797	18,0
Investments in associates	**60**	60	-
Loans and other non-current assets	**4 623**	2 433	90,0
Deferred tax assets	**657**	1 332	(50,7)
Current assets	**54 787**	33 501	63,5
Cash and cash equivalents	**26 961**	16 868	59,8
Restricted cash	**1 778**	739	140,6
Other current assets	**26 048**	15 894	63,9
Total assets	**170 106**	115 586	47,2
EQUITY AND LIABILITIES			
Shareholders' equity	**80 542**	51 502	56,4
Share capital and reserves	**76 386**	47 315	61,4
Minority interest	**4 156**	4 187	(0,7)
Non-current liabilities	**34 973**	29 114	20,1
Borrowings	**29 100**	23 007	26,5
Deferred tax liabilities	**4 989**	2 676	86,4
Put option	—	2 556	-
Other non-current liabilities	**884**	875	1,0
Current liabilities	**54 591**	34 970	56,1
Put option	**3 341**	-	-
Non interest-bearing liabilities	**38 760**	24 320	59,4
Interest-bearing liabilities	**12 490**	10 650	17,3
Total equity and liabilities	**170 106**	115 586	47,2

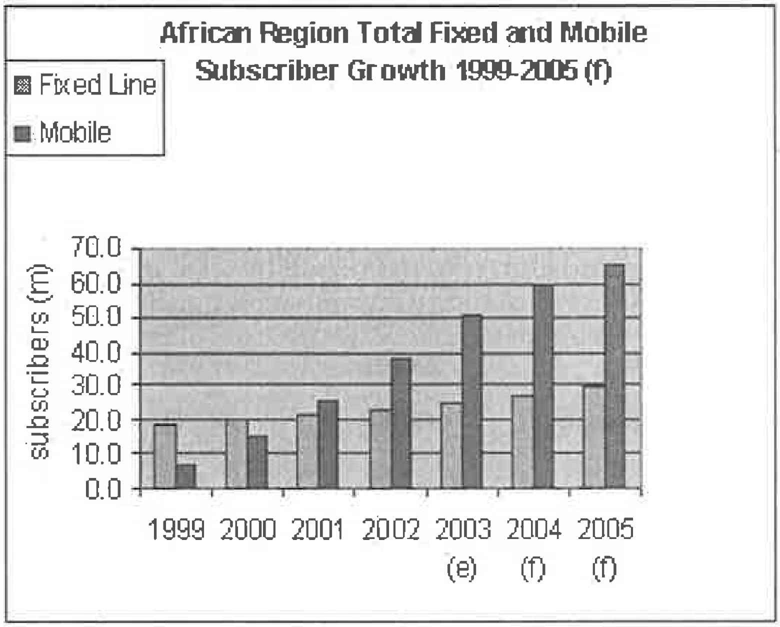

Exhibit6: African Region Total Fixed and Mobile Subscriber Growth (1999-2005)

Exhibit7: Exchange Rate Fluctuation of the Rand

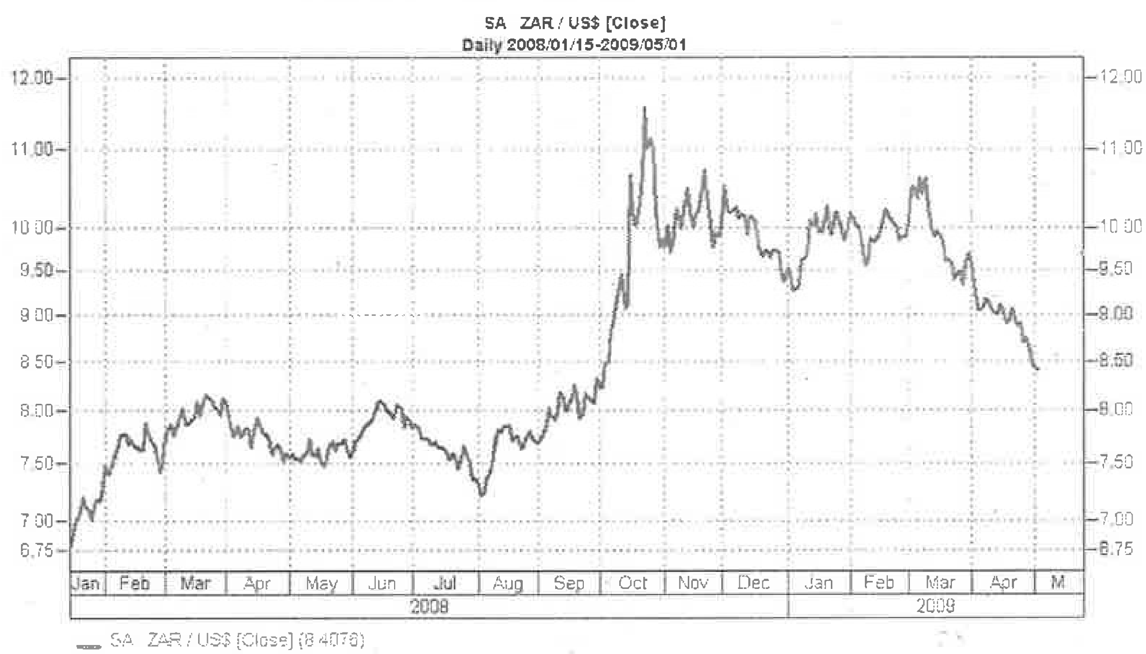

Exhibit8: Declining ARPU in Indian Telecom Market

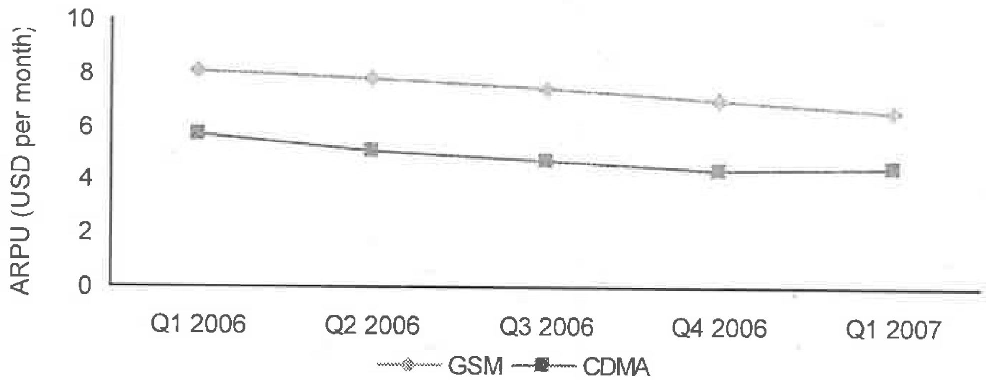

Exhibit 9: Region wise Mobile Penetration, GDP/ Per Capita and ARPU in African Market

Operating Nations	Mobile Penetration	GDP/Per Capita (USD)	ARPU (USD)
	West & Central Africa		
Nigeria	28%	1451	13
Ghana	33%	716	8
Cameroon	25%	1199	9
Cote d'Iviore	33%	1132	9
Congo B	35%	184	12
Benin	23%	856	13
Bissau	21%	264	10
Guinea Conarky	15%	442	8
Liberia	17%	212	12
	South & East Africa		
South Africa	86%	5693	R139
Uganda	15%	453	7
Botswana	80%	7554	10
Zambia	13%	1150	6
Swaziland	40%	2781	11
Rwanda	7%	465	7
	Middle East & North Africa		
Sudan	21%	1519	6
Iran	37%	4732	8
Afghanistan	15%	429	5
Cyprus	82%	32772	36
Syria	35%	2757	17
Yemen	17%	1182	7

Source: Company Reports
GDP/Per Capita: IMF Report 2008