Response to

TRAI Consultation Paper No 07- 2007 dt 12 June 2007.

Review of Terms & Conditions and capping of the Number of Access Providers.

The Authority has framed the following questions on the above issues. The comments of the Consultant are given after each Question.

CHAPTER - 2 MERGERS & ACQUISITIONS

2.67. **Issues for consultation**

Q1. How should the market in the access segment be defined (see (2.22)?

With the rapid convergence of telecom, broadcasting and computer based services, in the not-too-distant future Broadband Access will provide for the whole gamut of services like Voice, Images, Data, Video, Broadcast TV & Radio, Interactive Gaming etc. Hence there will be mainly 2 Access- BWLA (Broadband Wire Line Access) and BWA (Broadband Wireless Access). Hence there should be two categories only - 1) Wireline access and 2) Wireless access for the market segments.

Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?

Subscriber base should certainly be the criteria for computing the market share. However, the telecom service providers cater to other services like Enterprise Networks, Broadband Services, Leased Circuits (Data & Voice), PABXs, etc. and these also form separate business units of many telecom operators. The market share should also take into account these customers with appropriate weightages.

The mobile subscribers base should be based on HLR, as that constitutes the substantive base customers of the operator, and the VLR figures will include the customers of other operators also, who are roaming in the network.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what

should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

Based on worldwide practice, the merged entity shall not corner more than 50% of the market share to ensure level playing competitive environment.

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified? a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits? If no, give reasons in view of effective utilisation of scarce spectrum resource?

The fixing up of maximum spectrum limit, that too, prescribing different scenarios of technology mergers, appears to be a retrograde step. These issues can be separately addressed in the Spectrum Allocation Policy.

Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

Yes, it is preferable to prescribe the number of access providers in the service area and in the Indian environment, a figure of 4 operators appear to be reasonable to ensure that none of them corner a majority of over 50% market share.

Q6. What are the qualitative or quantitative conditions, in terms of view of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition the market?

Basic requirements are covered in the answers to the previous questions. In addition, the market share of different operators shall be monitored by the Authority using the HHI figures for each service area (as in the US model.)

Q7. As a regulatory philosophy, should the DoT and TRAI focus more ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

TRAI should follow a hybrid methodology prescribing ex-ante regulation as well as imposing ex-post regulations, if needed, by close monitoring of the market scenario for each service area (using HHI figures).

CHAPTER 3 - SUBSTANTIAL EQUITY

3.17 In this context, the issues that arise for consultation are given below

Q1. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

a. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

b. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

The Substantial Equity Clause should remain in the licence agreement. To ensure adequate inflow of funds into this priority sector, I feel that we should follow the "substantial interest" as defined in the Income Tax Act, Sec 2 (32), which prescribes it as "not less than 20% of the voting power".

Q2. Whether a promoter company/legal person should be permitted to have stakes directly or indirectly in more than one access License Company in the same service area?

This may not be permitted.

Q3. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

This requires to be defined and this should also include all the full-time executive directors of the company.

Q4. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons thereof.

Yes, as indicated in the last answer.

Q5. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

Yes, particularly with reference to PSUs.

CHAPTER 4 - MULTIPLE TECHNOLOGIES UNDER SAME LICENCE

The issues for consideration therefore are:

Q1. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

As all the licences are now UASL, and technology nuetral discrimination in additional frequency allocation based on technology does not appear reasonable.

Q2. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology;

The licence can be permitted with appropriate entry fee applicable for new licensees.

Q3. What should be the priority in allocation of spectrum among the three categories of licensees given in ¶4.16 of the chapter?

The inter-se priorities of the 3 categories, in my opinion, are:

1. New licensees waiting for roll-out
2. Existing licensees requiring justified additional allocation
3. Existing licensees requiring spectrum for alternate technology.

Q4. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

There need be no additional obligations. However, roll-out obligations regime if necessary should take into account, not only the geographical coverage but also the optimum utilisation of the allotted frequency spectrum band., to prevent hoarding.

Q5. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

The spectrum allocation should follow a uniform methodology applicable to each of the technologies, and the service provider need not be penalised for availing 2 different access technologies.

CHAPTER 5 - ROLL-OUT OBLIGATIONS

5.38 The review of roll out obligations would entail following key issues for consideration:

Q1. Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.

In the present telecom market condition, with intense competition, it is not relevant to impose roll-out obligations on the new players. Levying LD charges for delays, etc. when the delays can be atleast partly attributed to Government agencies and undertakings also displays a thoroughly bureaucratic approach.

Q2. Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations

As I do not subscribe to the penalty provisions, the PBG performance bank guarantee only can be retained to ensure that non-serious players do not enter the market.

Q3. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same.

As the experience of NLD licences brought out in the note indicate a dismal picture, in the interests of connecting small towns and rural areas to the national network, yearly targets can be prescribed. The enforcement of the same can be dictated by additional percentage of revenue sharing, which is linked to the percentage of non-achievement of the targets.

Q4. What additional roll out obligations be levied on ILD operators?

The obligations originally prescribed and later rescinded may be now reimposed.

Q5. What should be the method of verification of compliance to rollout obligations?

This compliance can be verified by an agency like TEC or Vigilance Monitoring Cells of DoT.

Q6. What indicators should be used to ensure quality of service?

The call success rate, quality as regards call drops, fade-outs, in-building and geographic coverage, registered complaints regarding service, billing, and time for their redressal etc. can be used as valuable parameters of quality of service.

Q7. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural roll out obligation ? If yes, what should be that. If no, whether the Universality objectives may be met through only USOF or any other suggestions.

With contribution to the USO fund, there need be no rural roll-out obligation imposed on the operators. The large amounts of money lying with the USOF should be innovatively used to build up the rural infrastructure. The USO fund can identify the rural areas that are required to be connected during the year and any two operators which establish the communication facilities can claim 50% of the capital expenditure (estimated by USOF in a standard method), after 3 months of sustained operations of the service.

Q8. In case of rural roll out obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?

As answered in Q7.

Q9. What should be the incentives and the penalties w.r.t. rural roll out obligations?

As at Q7.

CHAPTER 6 - CAP ON ACCESS PROVIDERS

6.51 The issue for consideration are as follows:

Q1. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

As the circle-wise scenario, compared to the world experience, points out, we already have too much of competition in the telecom field. With the acute spectrum crunch, it is necessary to limit the number of operators in each service area. We may decide not to issue any more licences, and allow for consolidation of the existing operators into 6 or 7 pan-India players. Further licensing may be restricted only to adherents of new technology and that too on a national scale.

Q2. Should the issue of deciding the number of operators in each service area be left to the market forces?

As already covered in the previous para.

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