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TRAI Consultation Paper on Regulatory Principles of Tariff Assessment

Response from Advisory@TVR

We welcome the Consultation Paper on various regulatory principles for the assessment of Tariffs and thank the Authority for giving us an opportunity to respond to the issues highlighted in the Consultation Paper.

Question 1: Do you think that the measures prescribed currently are adequate to ensure transparency in the tariff offers made by TSPs? If not, then, what additional measures should be prescribed by the TRAI in this regard? Kindly support your response with justification.

Response:

- a. We believe that the existing measures prescribed by the Authority are adequate to ensure transparency in the tariff offerings.

Transparency in Tariff has always been of prime concern for TRAI. It has issued several guidelines & directions in order to ensure transparency in tariff orders to protect interests of consumers of telecom services. Some of the important provisions in the Telecom Tariff Orders, Telecom Consumer Protection Regulations 2012, Directions & advisories to enhance transparency are :

-Cap on Tariff Plans on Offer: Number of tariff plans that can be offered by an Access service provider in each Licensed Service Area at any given point in time is subject to a cap of 25 plans (including both prepaid & postpaid tariff plans)by virtue of provisions of 21st amendment to TTO. Caps on number of tariff plans was prescribed on the premise that too many tariff plans on offer would tend to confuse the consumer and make it difficult for consumers to make an informed choice

-Protection to Consumers against hike in tariffs

The 43rd Amendment to TTO seeks to prevent too frequent changes in tariff plans and assures tariff stability for a minimum period of 6 months after enrolment into a tariff plan

Additional Transparency measures taken by the Authority include:

TRAI Directions dated 1st September 2008 & 48th Amendment to TTO notified on the same date mandate several transparency measures viz.

-Tariff information to be provided in vernacular languages also

-Black out days (customary/festival days on which free concessional calls /SMS are not available) are restricted to a maximum of 5 days per calendar year. Such days are to pre-specified and no subsequent alteration/additions are permitted

-Straight tariff reductions to be passed on to customer without any pre-conditions

-Service Providers shall not insist on recharge between periods less than 6 months in lifetime plans for remaining connected during promised lifetime validity period



Hello!

To further enhance transparency in provision of service for prepaid services, the Authority issued TCPR (Telecom Consumer Protection Regulations) on 06/01/2012 with a view to streamline tariff orders. Some of the salient features of this regulation include:

- Categorisation of Vouchers
- Direction of publication of tariff plans
- Direction on prevention of misleading advertisements

Question 2: Whether current definition relating to “non-discrimination” is adequate? If no, then please suggest additional measures/features to ensure “non-discrimination”.

Response:

- a. The Clause 2(k) of the TTO (1999) defines non-discrimination as, “k .‘Non-discrimination’ means that service providers shall not, in thematter of application of tariffs, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary”.
- b. We believe that the current definition of “non-discrimination” is adequate to ensure that the TSPs tariff offering does not discriminate amongst the same class of consumers hence, no additional regulation is required for the same. In our opinion, no discriminatory practices are being adopted by service providers and in all the tariff plans being offered to all consumers in the market, the terms are well defined and are non-arbitrary.
- c. The incidence related to offering of certain Tariff plans to only new subscribers does not qualify as the reason for declaring these practices as discriminatory, as terms under such arrangements are applicable to all who come under the category/classification of “new consumer “.

Question 3: Which tariff offers should qualify as promotional offers? What should be the features of a promotional offer? Is there a need to restrict the number of promotional offers that can be launched by a TSP, in a calendar year one after another and/or concurrently?

Response:

Apart from regular tariff orders, promotional offers are given to customers to, incentivize them and increase the subscriber base. These are different from tariff offers as they are in the form of benefits available to consumers for a limited time period only.

Concept of Promotional Offer as defined by TRAI through an advisory dated 19th June, 2002 wherein it advised service providers to restrict validity of promotional packages and benefits offered to customers under such packages for a maximum period of 90 days from date of launch

To specific cases of service providers offering promotional packages ranging from 15 days upto 11 months, the Authority considered the implications of offering such concessions to customers and was of the view that too long a promotional period dilutes the promotional character of the tariff plan , thereby making a regular plan



Following are the kind of promotional plans being offered by operators viz.

- Rebate in rental
- Reduced STD/ISD charges
- Free SMS
- Free Pulse/ Talk time
- Free Data/Internet Access
- Free Gifts
- Eligibility to win prizes either in the form of additional benefits in terms of talk time or prizes from other industries

TRAI issued directions to all Access Service providers regarding transparency of tariff offers dated 1st September, 2008. In Part II of that Direction, it directed that while publishing their promotional offers to the public, the service providers should specify

a. *the eligibility criteria for such promotional offer;*

b. *the opening and closing dates of such promotional offer (within the existing limit of ninety days);....."*

- a. In addition to the 3 basic principles of telecom tariffs, viz, IUC compliant, non-discriminatory and non-predatory, an additional condition could be included wherein **there should be a specified gap of say 30 days between any two promotional offers.**
- b. However, the **TSPs should be allowed to offer simultaneous promotional offers for different category of services** i.e. voice, messaging and data.

Question 4: What should be the different relevant markets – relevant product market & relevant geographic market – in telecom services? Please support your answer with justification.

Response:

a. Relevant Product Market

- i. As per the Competition Act, 2002, the Relevant Product Market means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;"

Competition Act lists out various criteria that should be considered for arriving at relevant product market definition. These include physical characteristics or end use. Of goods and services , customer preferences, exclusion of in house production, existence of 'specialized producers and classification of industrial products. Some other factors viz. customer preferences, end-of-use services capture demand side substitutability of a given service while factors viz. existence of specialized producers capture supply side substitutability.

European Commission has identified the following three main services/competitive constraints that need to be considered while arriving at a definition for relevant ;product market viz



- A) Demand Side Substitutability which is a measure of whether customers for the said product can switch readily to a similar product in response to a small but permanent increase in price of a particular product. If in response to such a price increase, demand for product A decreases in favour of near commensurate increase in demand for product B, then products A & B are considered substitutable from a demand side perspective. Accordingly Products A & B are considered to be part of same relevant market.
- B) Supply-Side Substitutability refers to the ability of other firms to switch production to relevant products and market them in the short term. Similar to demand side substitutability, supply side substitution seeks to identify possibility of customer to switch to alternate suppliers, who might not be producing a direct substitute at the time. Hence it needs to be determined whether firms would start producing the given product, if there is a permanent price increase of 5-10% and whether the suppliers are able and willing to switch their production without incurring significant additional costs /risks in a short time period.
- C) Potential Competition which indicates threat of entry of new player in the long run or involves substantial sunk costs. It is an indirect constraint that is typically deferred to assessment of market power or competition effect assessment, since unlike supply side substitution (which occurs in the short term), potential competition has a longer time horizon.

We fully subscribe to the views of the Competition Act. Accordingly Wireline and Wireless services are two distinct relevant markets for the purpose of assessing dominance. Further within wireless services, the markets could be segregated further from the perspective of Voice & Data services that can be delivered. Data services could be further segmented on the basis of data speed, irrespective of mode of transmission-either wireline or wireless. The markets could therefore be further segmented into Voice, Narrow-band and Broad-band Internet services.

Certain data intensive apps are designed to be used only on Broadband networks viz. video-on-demand, video streaming, etc. Also cost of usage of broadband networks are higher than that of narrow band networks. Thirdly trend of data consumption on broadband networks are significantly higher as compared to narrow band networks. These differences therefore lead to a case for possible delineation of narrowband networks and broadband networks delivered through wireless/mobile/cellular networks as distinct relevant markets.

From supply side perspective, it can be clearly argued that 4G Broadband enabled services constitute a separate market. Market definition can also be supported by existence of asymmetric or one way substitution. While increase in prices of 2G/3G services might prompt user to switch to 4G/LTE based services whereas a commensurate increase in prices for 4G LTE based services might not lead to similar migration towards 2G/3G.

In view of the above, we are of the view that 4G LTE Wireless services clearly constitute a different market in alignment to the position of the US Administration led by FCC, FTC (,Federal Trade Commission) and US department of Justice as well as by the Australian administration as distinct from the market definition by the European Commission.

b. Relevant Geographic Market

- i. Relevant Geographic Market means "a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services

are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas”

- ii. The relevant geographic market for the telecom sector should be defined as the LSA itself. This is because operators are authorized to provide telecom services in the Licensed Service Area only.

Question 5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.

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Question 6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?

Response:

As mentioned above in response to Q4, relevant market position in telecom services is dictated by Demand & Supply. Review of precedents reveal that market definitions in telecom context may vary significantly depending upon premise & objectives. Market definition is merely an enabling framework for analysis and not an end in itself. Perhaps TRAI may follow an evidence based approach towards assessing demand & supply side substitution and delineate appropriate relevant markets for the purpose of analyzing effects of pricing practices of the operators. As mentioned above we are of the view that 4G LTE Wireless services constitute a distinctly separate market than that of 3G/2G based narrow band services.

- a. As per Para 4 of the Competition Act, 2002, „Dominant Position means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to:
 - i. operate independently of competitive forces prevailing in the relevant market; or
 - ii. affect its competitors or consumers or the relevant market in its favour.
- b. Factors considered under Section 19(4) of the Competition Act which govern determination of dominant position of an enterprise :
 - i. Market Share.
 - ii. The size and resources of the company.
 - iii. Size and importance of the competitors.
 - iv. Economic power of the company.
 - v. Vertical integration of the company or sale or service network of the company
 - vi. Dependence of the consumers on the company.
 - vii. Monopoly or dominant position whether acquired as a result of any statutory provision or by virtue of being a Government entity or a PSU.
 - viii. Extent of entry and exit barriers in the market, countervailing buying power.
 - ix. Market structure and size of the market.
- c. Both SMP and (or) Dominant Position are complementary to each other and attainment of one can lead to achievement of the other. It is suggested that the assessment of SMP and (or)

Dominant Position status of a TSP should be done based on both the criteria of relevant geographic market and relevant product market as well as the nine criteria listed by the CCI.

Question 7: What methods/processes should be applied by the Regulator to assess predatory pricing by a service provider in their relevant market?

Response:

- a. As per Explanation (b) Section 4 of the Competition Act, 2002, Predatory Pricing has been defined as “the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors.”

Methods/Processes that should be followed in assessment of predatory pricing are:

1. Delineation of relevant market
2. Assessment of dominant position of Significant Market Power (SMP) in relevant market
3. Evaluation of whether dominant company is resorting to pricing below Average Variable Cost (AVC) with the intention of driving out its competitors from the market.

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