

Telenor (India) response to the Consultation paper on “Regulatory Principles of Tariff Assessment”

Preamble

The telecom tariff order (TTO) along with the other regulations and various Directions and Advisories are collectively termed as ‘tariff regulation’.

This tariff regulation as such is a **live document**, as the telecom service providers (TSP) launch innovative products and offerings on an on-going basis. While the TSPs conduct a self-check for compliance and consistency under the existing regulations and file the tariff plan(s) with the TRAI. The Authority in turn conducts an ex-post assessment and analyses these tariff plan(s) on the defined regulatory principles. In case of any inconsistency, the Authority has been issuing appropriate advisory / Directions from time to time.

These tariff regulations have stood the test of time till the era of voice, SMS and mobile internet. However, once the mobile broadband or high volume of data was offered in the Indian market over the past few months, the same level of enforcement was missing. The Authority has noted that ‘promotional plan’ and the terms ‘non-predatory’ has not been specifically defined in the TTO.

The recent developments in the market place have influenced the entire tariff structure offered to the consumers, these are:-

- **Market consolidation** – The Indian telecom market is in gradual transition from an 8- 10 operator market to 4- 5 operator market. The resultant entities are vertically integrated and have enormous resources having potential to influence the market. Hence, strong anti-competition checks for these tariff plans have become the urgent need of the hour.
- **Growth of Data** – The traditional telecom tariff plans were centred on voice, SMS and roaming. Over the past year or so there has been an exponential growth of Data services and it is likely to outgrow the volumes of voice/ SMS in near future. Going forward voice is increasingly being delivered over IP networks as data. The cost of producing data is different from that of producing and delivering voice/ SMS. Hence, the pricing checks for IUC compliance alone are not sufficient as it covers only voice and SMS. The tariff plans should also be checked for below cost selling or predatory behaviour in the context of data.
- **Bundled pricing** – The evolution of core networks to NGN and deployment of more spectrum efficient techniques on radio access network has resulted in increased data throughput of the entire telecom networks. The current network also uses a combination of technologies (2G/ 3G/ 4G and Wifi) for delivery of services. This convergence of technologies at the network and delivery layer has resulted in converged triple play offerings. Coupled with the high usage of Data, service providers have been off late offering data services with complimentary / unlimited voice and SMS. Thus the tariff plans should be evaluated as a package for costs and consistency.

In the above context the present *tariff regulation* has failed to keep pace with the changing market conditions. This has resulted in loss of Government value add in terms of fall in revenue share in the past two quarters of FY 2016-17, due to sharp fall in revenues of the telecom sector.

Competition in the market place cannot be measured by the standalone yardstick of fall in retail tariff. Here it is pertinent to note that low tariff or free voice/ data, in itself is not a measure of consumer welfare. The Regulator should always evaluate the long term sustainability of these fall in tariff (or free voice/ data) and determine whether the consumers would continue to enjoy the benefits of low tariff in the long run. It is a prudent regulatory best practice to avoid an inverse parabolic swing of tariff.

Long term sustainability and overall health of the sector should be the guiding principle in so far as the economic impact analysis by the Regulator is concerned. Consumer benefits in the short term or freebies should not be the overriding factor in such analysis.

Telenor (India) recommends the following approach to *tariff regulation*:

- The various regulations governing retail tariff including the relevant Directions/ advisories should be collapsed into a single *tariff regulation*. This should be a **live document** and should have a horizon of the next five years.
- Industry consolidation leading to less number of players and emergence of Data/ internet which is a global economy should usher in a change in *tariff regulation* from the present prescriptive approach to a principle based approach.
- The *tariff regulation* should have two parts the consumer facing and regulatory principles for compliance by service providers. TSPs should self check for compliance to these regulatory principles (refer response to Q1) before launch of these tariff plans in the market and reporting to TRAI.
- The Authority should ex-post evaluate these tariff plans majorly on two factors (below) besides checking for anti-competition, non-predatory, non-discrimination, not below cost, transparency, consistency and non-misleading.
 - **long term sustainability of the tariffs offered** and
 - **long term effects on competition** in the sector.
- Economic analysis should take precedence in policy making with regards to tariffs.

Issue wise response:

Q1 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.

Telenor(India) Response:

The hallmark of Transparency in communication should be that users are aware of the characteristics of the services and the capacity they are buying. This has been achieved by the current regulations of TRAI.

However, as suggested in the Preamble the existing regulation should be collapsed into a single *tariff regulation* with majorly two (2) sections namely the consumer facing and the regulatory principles. We recommend the following key principles:-

Customer facing

1. **Transparency** – The tariff plan should be conveyed in easy and simple fashion to the consumers which is easily understandable, comparable and verifiable.
2. **Disclosure** – The tariffs as per the format prescribed by the Authority should be published on the TSPs website and apps. The requirement of advertisement in newspapers has lost relevance and it should be done away with. Such tariff plans should be available for the subscribers to view through all channels of communication i.e. website, app, points of sale, retail outlets and Customer Care Centers. In case of any change in tariff, same should be updated at all customer touch points (point of sale, retail outlets, website).
3. **Non-ambiguous** – The contours of the tariff plan including all applicable rates, start and end date, timing restriction, special conditions (if any) should be specified in the consumer communication. In short it should be simple pricing scheme.
4. **Non-misleading** – The customer communication should be clear and free of doubts. While promoting any of the tariff plans, TSP should never use terms / words which entice / mislead the customers.

Regulatory principles for self-check by TSP

5. **Non-discriminatory** – All tariff plans should be available to all the customers of the same class. This market segmentation should be clearly defined beforehand. There should be no restriction/ artificial entry barrier been put for any of these plans.
6. **Non-predatory** – Products and services should not be sold below cost. The tariff for voice and SMS can be checked for IUC compliance. The cost of data over licensed spectrum cannot be lower than that of providing data over de-licensed spectrum. This can act as a benchmark; other such methods can be deliberated and notified by TRAI.
Note: Authority has calculated the cost of providing data over Wi-Fi as Rs 20/ Gb, this can be a floor price for the cost of providing data using licensed access spectrum

7. **Non anti-competitive** – Economic analysis should be carried out by the Authority for long term effects of any tariff plan on the overall competitive landscape. This should be concluded well before the ill-effects of such tariff plan sets in.

Reporting requirements

8. TSPs should submit the tariff plan after self-check in the prescribed format. It should include all terms and conditions pertaining to that plan. The contours of the plan should be pre-defined and should not be allowed to change mid-way without explicit prior consent of the Regulator.
9. Tariff plan (Promotional) is also a type of tariff plan; it should be reported as a separate plan and accounted for in the total count of 25 plans.

Q2 Whether current definition relating to “non-discrimination” is adequate? If no, then please suggest additional measures/features to ensure “non-discrimination”.

Telenor(India) Response:

We consider that the TRAI guidelines with respect to non-discrimination are well understood and adhered to. The industry has completed one lifecycle (license term) and is mature enough to understand the requirements of the consumers and has worked in a way to put in front the interest of the customers in this intensively competitive market. Subscribers are always in a win-win situation.

Moreover, the TRAI regulations with respect to Quality of service and Metering & Billing ensure that the TSP offers tariffs not only in a transparent manner but also in a non-discriminatory manner. The Authority’s concern with regard to discrimination between the new and old subscribers or offers linked to specific handsets doesn’t hold good.

Q3 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?

Telenor(India) Response:

The shortcoming of the present regulation governing Promotional offers is described in the following paragraphs of the Consultation paper.

2.12 The concept of “promotional Offer” was first addressed by TRAI on 19th June 2002 through an advisory issued to all telecom service providers wherein TRAI advised service providers to restrict the validity of promotional packages and/or the benefits offered to customers under such packages on offer to a maximum of 90 days from the date of launch. This letter was issued in the context of TSPs offering promotional packages to their customers as a marketing strategy where the validity of such schemes ranged from 15 days to 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 and in fact makes it a regular plan. The letter, however, did not spell out the meaning of the term "promotional package".

2.19 From the above discussion, it can be deduced that though the concept of 'promotional offer' is in vogue since last 15 years, unlike regular tariff plans, **its features are not that well defined**. The prevalent guidelines on the promotional offers are limited to only the eligibility condition and the opening and closing dates of such offers. They are however, **silent on issues like: number of promotional offers that can run concurrently or that can be offered in a calendar year; repetition of offers; benefits that can be offered etc.** Some may argue that there is no rationale for special dispensation for promotional offers and it could be offered as standard discount rate on a regular plan without affecting the basic structure of their tariff plan. In view of the discussion, the following issues emerge for consultation:

The freebies, discounts, free or no-charge customer benefits under the promotional offer are same facet of the plan under different nomenclature. These should be categorised under Promotional offer. Such promotional offer is a type of tariff plan, for convenience it may be termed as Tariff Plan (Promotional).

The suggested principles governing Tariff Plan (Promotional) can be:

- All tariff plan (Promotional) should be filed as a separate tariff plan. This should be accounted for towards the total count of 25 plans.
- Even though such discounts / freebies are part of the base plan, it should also be filed with TRAI as a separate tariff plan under the Promotional category.
- The contours of the Tariff Plan (Promotional) including the start and end date, price to be paid, subscription charges, price of individual line items during the promotional period and after the end of promotional period should be clearly defined. The eligibility criteria and the exit condition should be mentioned.
- Any subsequent Promotional offers which is a subset of the earlier plan or minor modifications of the contours of the earlier Promotional offer should only be launched **after obtaining prior approval of Authority with proper justification**.
- No two (2) Tariff Plan (Promotional) can be offered to the same market segment/ class of customers simultaneously.
- In case Tariff Plan (Promotional) is offered to the entire subscriber base then it should not run concurrently, this includes non-overlap in the advertisement period also.
- The principle of 'break before make' should be followed for subscription to subsequent Tariff Plan (Promotional).
- Free offer of any kind should be limited to 30 days with no exceptions granted.

These promotional offers should be checked against the regulatory principles suggested in the response to Q1 above.

Q4 What should be the different relevant markets – relevant product market & relevant geographic market – in telecom services? Please support your answer with justification.

Telenor(India) Response:

- With respect to Indian telecom market, although our country has been divided in 22 licensed service areas (LSAs) and accordingly Government has given telecom licenses for these different LSAs to TSPs. However, present market dynamics defined relevant market as one nation with addressable population to provide communication services.
- The recent market trends blurred the LSA boundaries making it as one single national telecom market having different segments of consumer's defined basis their usage and requirements. Some of these trends are - consumer preference is moving from voice and SMS centric services to data centric content and applications, withdrawal of national roaming charges, voice traffic is shifting to IP from traditional networks etc.
- In India, the concept of relevant market is well established and has been described as follows:
 - **Demand Side Substitutability:** The products and services available in particular relevant market are interchangeable or substitutable by consumers due to having similar features / characteristics of the telecom services, competitive price and intended use. In case, if consumers are not satisfied with the services / price on which services are being offered by TSP, s/he can switch the service provider using MNP facility to avail similar services at more competitive price.
 - **Supply side substitutability:** The Indian telecom market being most competitive market globally, TSPs are vying to capture and retain as much market share by offering differentiated services. For instance, when a new entrant in the market has launched pan India 4G Network, other TSPs have followed and ensured launch of their 4G network in a short span of time due to competitive pressure despite the fact that they are having ample data capacity in their 3G networks. In order to outpace competition, TSPs have also acquired 4G spectrum through auction, spectrum trading and merger route to bridge the technology gap as early as possible.
 - **Potential Competition:** The entry of new entrant with pan India 4G network has made a significant impact on the overall financial health of the industry.
- The above explanation clearly depicts that the concept of relevant product market and relevant geographic market are well defined for telecom sector, thus there is no need for any additional measures to be taken in this regard.

Q5 How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.

Telenor (India) Response:

We suggest that a dominant player (whether existing player or new entrant) may be clearly defined as the one who distorts the market by acting independently of competitive forces and may provide services at such prices or below cost which is not viable for the competitors. At any point of time, be it new or existent operator, it should not be allowed to offer tariffs below cost.

Q6 How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?

Telenor (India) Response:

SMP Criteria is not relevant in today's market context and should be done away. All the players in the market should be treated at par as far as compliance to tariff framework is concerned. This will increase competitive effectiveness and ensure level playing field. We have following justification in support of our views:

- The Indian telecom market has seen entry of players at different times in different bands of spectrum using different technologies. The early entrants had an early mover advantage and they also hold positions in sub-GHz bands. There is no clear market leader with more than 30% activity, so we do not have a monopoly (or SMP) which is a characteristic of 3-4 player market.
- In contrast 3 incumbent players collectively hold >75% of the subscriber and revenue market share. The new entrant has also captured substantial market share in a short span of time. So here we have an **oligopoly situation** which is generally found in multi-operator scenario like India.
- Further, Indian telecom market is in consolidation phase, moving from 8-12 operators to 4-5 operators market.
- Thus, a SMP criterion is no more relevant to Indian telecom market and should be abolished.

Q7 What methods/processes should be applied by the Regulator to assess predatory pricing by a service provider in the relevant market?

Telenor (India) Response:

- The cost based IUC regime specified by TRAI from time to time reflects the underlying costs in providing the telecom service and any TSP offering the services below such cost shall fall in the ambit of predatory pricing.
- As highlighted in the preamble, products and services should never be allowed to be sold below cost. The tariff for voice and SMS can be checked for IUC compliance. The cost of data over licensed spectrum cannot be lower than that of providing data over de-licensed spectrum. This can act as a benchmark; other such methods can be deliberated and notified by TRAI. The Authority has calculated the cost of providing data over Wi-Fi as Rs 20/ Gb, this can be a floor price for the cost of providing data using licensed access spectrum
- This principal should not only apply to regular tariff plans but shall also equally be applicable to Promotional Offers. No Service Provider should be allowed to offer predatory priced offers in disguise of promotional offers. Such offers are distorting the competition and may lead to severe dent in the financial health of the sector ultimately impacting the GDP of the country. Therefore launch of such tariff offers should be intervened immediately by TRAI and necessary corrective actions should be taken at the earliest.
- Free is always below cost, hence **Free offer of any kind should be limited to 30 days** with no exceptions granted.

Q8: Any other issue relevant to the subject discussed in the Consultation Paper may be highlighted.

Telenor (India) Response: No comments
