



advisory@iCTrobot

360° advisory services
in Telecom-Media-
Technology Space

iCTrobot/TRAI/2017-18/02

1st May 2017

Shri Kaushal Kishore
Advisor(F&EA-II)
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg
New Delhi 110002

Subject: Counter Comments on TRAI's Consultation Paper on Regulatory Principles of Tariff Assessment.

Dear Sir,

It is with the reference to the aforesaid TRAI's Consultation Paper on Regulatory Principles of Tariff Assessment.

We would like to introduce "**advisory@iCTrobot**" as a consulting and market research entity in Telecom, Media and Technology space primarily focused on advising telecom and digital service providers and eco-partners on their techno-business needs, powered by tenets of innovation, creativity and transformation.

Please find enclosed the Counter Comments on the Consultation Paper on Regulatory Principles of Tariff Assessment.

Thanking You,

Yours Sincerely,

For **advisory@iCTrobot**

(S S Sirohi)
Founder & CEO

Encl: As above

**COUNTER COMMENTS OF “advisory@iCTrobot”
ON RESPONSES ON TRAI CONSULTATION PAPER No. 3/20017
DATED 17th FEBRUARY, 2017 ON
REGULATORY PRINCIPLES OF TARIFF ASSESSMENT**

We express our gratitude to TRAI for giving us an opportunity to offer our Counter Comments on the responses furnished by the stakeholders to the above mentioned Consultation Paper. Tariff for the desired telecom service is a weighing factor for a consumer to select a service provider and the offerings. Tariff is the subject matter of TRAI for regulation under the TRAI Act and the regulations/ tariff orders /directions /advisories that TRAI has issued during the last two decades since its inception have majorly contributed to the telecom reforms and the spectacular progress in the sector. In the telecom sector the technological changes are the fastest as compared to any other sector.

The Consultation Paper primarily addresses four major issues namely transparency, discrimination in tariff offerings by TSPs, promotional tariff offers and the anti-competitive conduct. As all these issues impact the consumer and overall progress of the telecom sector, the regulator is obligated to create a dynamic equilibrium amidst the interplay of these forces in order to ensure a healthy competitive environment with prime focus on protection of consumer interest along with sectoral growth. TRAI recommendations on these issues will go a long way not only in addressing some of the concerns of TSPs arising out of their dual interpretations/misinterpretations of the related extant provisions but also pave a simple, clear, forward- looking and progressive regulatory path for unfettered growth of telecom/digital infrastructure and innovative , reliable, high quality and affordable telecom/digital services across the country and act as crucial catalyst to spur expansion of digital economy and help realize goal of “Digital India” in the evolving times of mind boggling disruptive technological advances / changes.

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.

COUNTER COMMENT

Majority of respondent have indicated that existing telecom tariff orders, regulations and directions, orders adequately address transparency in the tariff offerings by TSPs.

Almost all the stakeholders agree to the fact that there is a large no of tariff offerings available in the market and it is a difficult task for an individual to select and decide best

For advisory@iCTrobot

 **S.S. Sirohi**

one for him. Stakeholders have also offered suggested measures for enhancing and making the transparency in tariff user friendly.

One of the stake holders has indicated that some TSPs are offering tariffs underhandedly to the consumers when a sub. proposes to change his service provider via MNP without listing those offered tariffs on their website and this constitutes non-transparency.

Another stakeholder has sought to create class of consumers based on territory /sectors within LSA as well and tariff offering to such classes of shorter durations (7 to 30 days) being kept out of purview of reporting requirements with compliance undertaking to tariff regulations.

One of the stakeholder referring to TTOs orders 43rd amendment which provides protection to consumers from any tariff up to six months, desires it to be brought down to three months equal to the mandatory requirement of residency in MNP.

The regulatory prescription in respect of Telecom Tariff has steadily grown in numbers, TTOs - 62 directions -21, TCPR and amendments- 11 as on date since last two decades when the TRAI was formed. This reflects the attainment of maturity and clarity on tariff, its transparency and associated consumer matters during this period on these issues. **We feel they are adequate enough to address all related issues.** With regards to availability of a large no of tariff plans in the market and its hassle-free selection by an individual, it is recommended that TRAI should publish all the tariff plans on its website. Secondly, the TSPs should be mandated to create self-care portals (which quite a few have already created) depicting tariff plans in a TRAI approved standard format. Self-care portals are proving to be quite helpful to subscribers in managing their services accounts efficiently. Thirdly, the TRAI may go in for accreditation of websites/portals from third party to help consumer compare tariff plans in a format easily understandable by him. These accredited websites /portals should have interactive web based calculators to perform calculations based on the inputs by the consumer like possible service consumption and rank the offerings for its selection and subscription.

With regard to any underhand/one to one tariff offering (including to those trying to change their TSP via MNP), we would recommend that transparent and non-discriminatory tariff should take precedence over any other consideration and any such tariff offering should be within the permitted tariff plans (25 nos) communicated to TRAI by the TSP. The underhand offering is a violation against the transparency, non-discrimination and should be viewed seriously.

The Tariff regulation permits creation of tariff classes following the principle of non-arbitrariness. Therefore, we are of the view that TSPs can create class of consumers based on territory /sectors within LSA as well and tariff offering to such classes of shorter durations (7 to 30 days) under promotional tariff keeping out of purview of reporting requirements.

For advisory@iCTrobot

 S.S. Sirohi

TTOs orders 43rd amendment provides protection to consumers from any tariff revision up to six months. **There is a suggestion to bring it down to three months** equal to and aligning it with the mandatory requirement of residency in MNP and match with the fast changing requirements of the sector. **We would like to submit that this suggestion should not be accepted because this TTO order protects the consumer for any upward revision for a min of 6 months though he is entitled to avail any reduction during this period. Acceptance of this suggestion will harm the consumer interest. Based on innumerable consumer grievances relating to the matter in the past, we would rather recommend that implementation of the TTO order 43rd Amendment should be regularly monitored and any violation by TSPs of the same be strictly viewed and punished accordingly.**

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

COUNTER COMMENT

Clause 2(k) of the TTO dated 09.03.1999 has defined the Non-discrimination in tariff. “Service providers shall not, in the matter of application of tariffs, discriminate between the subscribers of the same class, and that such classification of the subscribers shall not be arbitrary.” Further, TTO amendment no. 62 has prohibited discrimination in tariff for Data Services on the basis of content. **We are of the opinion that the nondiscrimination defined in the regulations is adequate to deal with all the situations. However, its enforcement may need strict monitoring by TRAI. Any violation to be seriously viewed.**

In the consultation paper-TRAI has asked whether any specific offer being made only to new subscribers should be treated as a valid classification or not since such offers are not applicable to the existing customers. (Q)

Incidentally, one of the stakeholders has also raised this issue mentioning that certain service providers are offering special tariff plans to selective customers on one to one basis and such offers are never filed with the authority and therefore such customer specific offers are clearly discriminatory. In their interpretation a tariff plan offered even to a single subscriber must be reported to the Authority and to all subscribers through the public disclosure methods and should be counted in the specified 25 numbers of tariff plans.

Going by the transparency and non-discrimination regulations for tariff, it is mandatory to follow the extant provisions on the subject. We are in agreement that the TSPs have legitimate right to attract more customers. However, different service industries are governed by their applicable rules. In telecom arbitrary classification for tariff is not permitted and a view is to be taken whether old customer vs new customer is a valid classification or not.

For advisory@iCTrobot

 **S.S. Sirohi**

The debate on old customer vs new customer can take a back seat and the rights of the existing customer need to be looked into. **By any principle of natural justice, the existing customer cannot be excluded for a benefit that he is entitled to it.** It is suggested that while defining class or classification by service provider for a particular tariff an equal opportunity should be provided to existing customers to opt for such category and TSP should not deny any existing customer to switch to such category, provided that customer fulfill the special criteria, if any. It should be further clarified that any benefits or facilities being offered to new customer in any special or promotional tariff plan should also be available for opting by existing customers. This could be informed to the existing subs through website /self-care portal or through SMS. However, the TSPs can offer from only those 25 tariffs which they are entitles to it and have informed to TRAI.

The answer to the question posed by TRAI in para 2 above is that though the classification may not be arbitrary but is certainly discriminatory since such specific offers are discriminatory and not applicable to the existing consumers.

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?

COUNTER COMMENT

We broadly agree with need and the definition of Promotional offers as given by the stakeholders, which are almost of similar in intent.

1. TRAI in the letter dated 19th June, 2002 and TRAI Direction No.301-31/2007-Eco dated 1st September, 2008 define the promotional offers as below:

(i) 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".

(ii) Direction No.301-31/2007-Eco dated 1st September, 2008:

"PART II: B. DIRECTIONS RELATING TO PROMOTIONAL OFFERS

(2) All access service providers shall, while publishing their promotional offers to public, specify therein-----

For advisory@iCTrobot

S.S. Sirohi

(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);”

Thus, the term promotional offerings of the TSPs had been in use for more than 15 years now, but the features of Promotional offers are not yet very defined. The Authority referred to this issue in its Consultation paper on limiting the number of tariff plans offered by the access providers (March 8, 2004) but did not clarify the meaning of the term promotional offers. However, it listed the following as ***examples of the kind of promotions being offered by operators - rebate in rental, reduced STD/ISD charges, free SMS, free pulses/talk time, free Internet access, free gifts, and eligibility to win prizes either in the form of additional benefits in terms of talk time or prizes from other industries.***

2. Promotional offers play an important role in promoting innovation and competition because they are an effective sales promotion technique, wherein a firm incentivizes consumers by offering an innovative scheme or lower prices than the prevailing tariffs in the market, for a limited and transparently communicated period of time. The purpose of a promotion can be wide ranging, including but not limited to introducing products or services or service plans, retain customer base, increase sales, creation of brand equity etc. The promotional offers may be allowed to be truly Promotional in spirit and regulatory norms, particularly in a situational when market is saturated and highly competitive.

3. Considering that promotional tariff schemes are in general beneficial to the consumers, no regulatory restrictions have been placed on them apart from those mentioned above. **We submit that there is no case for revision in the Authority's position on promotional offers.**

Other issues raised by stakeholder relating to promotional offers are broadly as below:

- a) It is necessary to allow new players to offer introductory prices so as to be able to attract consumers and compete effectively with the existing players having strong foothold in the market.
- b) Any prohibition/ restrictions on the introduction of promotional offers will have an adverse effect on new entrants in the telecom and any other markets.
- c) All the TSPs should religiously follow the cardinal principles of tariff setting as prescribed by the Authority i.e. IUC-Compliance, non-discrimination and non-predation. Some stakeholders have also suggested that for promotional offer, TRAI may clearly mandate that the duration should be limited to 90 days and benefits of such offers should also be limited to less than 90 days.
- d) On the issue of the number of promotional offers that can be offered by a TSP in a calendar year one after another and/or concurrently, the stakeholders have varying suggestions. While one stakeholder wants complete freedom in designing the features of promotional offer, another wants benefits to be restricted to 90 days but benefits under STVs even after 90 days, some

For advisory@iCTrobot

S.S. Sirohi

stakeholders desire a gap of 90 days or 30 days between two promotional offers while a foundation in its comment said that benefits of promotional offer be limited to a period of say 1 to 3 years.

Our counter response on above issues are as below:

- (a) New entrants face difficulties in consumer's acquisition which is compounded if the services being offered is in new technology such that the customers are ignorant of efficacy of the technology being introduced and before subscribing to the service, he has to acquire a new handset. The customers to be acquired do not have any hands on experience of new technology being introduced and the new TSP has to make lot of efforts to develop relevant eco-system including development of handsets with high investment and consumer education to be able to offer unbundled handsets to avail the service. Since the new customer has to make appreciable investment in purchasing handset of new technology to avail the service of new operators, he naturally deserves and expects to be suitably compensated by lucrative promotional offers so that he may not feel cheated. Thus, the new TSP, after having made huge investment, may not break even in any foreseeable future. This becomes more important as the new operator may face several entry barriers and resistance in providing adequate POIs to cater to growth. At the same time, the customers will be deprived of new and innovative services of better quality due to entry barrier in purchasing new handset and in absence of befitting promotional offers for free trial of services for some prolonged period. This will prevent customers from getting benefits of free and fair competition. A prohibition also would be contrary to the pro-competitive and pro-innovation approaches successfully achieved in many other cases.
- (b) The Authority may consider that TSPs have been continuing the practices of offering Promotional Tariffs which the existing TSPs had been offering from time to time for very long period in the past with sufficiently large validity including innovative methods such as offering free on net calls, free calls to a group of customers, family and friends, free SMSs, free data, free rentals, free gifts, free prizes to be won, etc. This led to restrictions of period for promotional offers to 90 days by the Authority, but without any restriction on number of promotional offer, one after another or concurrently.
- (c) It is true that promotional offer is life line of all businesses including Telecom services and such promotional offers be restricted to only 90 days as per the extant instructions of the Authority. The reporting requirement of promotional offers within 7 days to the Authority may continue.

Our respectful submissions to the Authority in the matter of promotional offer are as below:

1. **Promotional offers are particularly vital to expand market presence and increase volumes for the incumbent market players, but very crucial for gaining market access for their survival and take off in case of new entrants, more so when markets are nearing saturation.**

For advisory @iCTrobot

S.S. Sirohi

2. Promotional offers are observed to be fundamentally instrumental and necessary for introduction/expansion of new technology, innovative products and services in the established/mature market place.
3. Promotional offers promote healthy competition in the market place with aim to provide consumers the best quality products/services at affordable price. In a nutshell, promotional offer shall delight the customer.
4. Any restraints/restrictions on promotional offers directly deprives the consumer the benefits and gains of fair and free competition.
5. We suggest that free interplay of market forces should not be restricted in any manner even by restricting the number of promotional offer in a calendar year nor by restricting cascading or concurrence of multiple promotional offers. Any such restrictions of promotional offers will be anti-consumer, anti-competition and stifle innovation while shackling the growth of Telecom Markets.
6. Therefore, we recommend continuation of promotional offers as it is, considering its immense benefits to consumers and promotion of healthy competition in the market place without any restriction on their number and on cascading or concurrence of multiple promotional offers in a calendar year.
7. The tariff plans with following type of benefits to customers as offered by TSPs for a well-defined and transparently communicated period of time may be termed as Promotional Offers:
 - a. Rebate or waiver of rentals,
 - b. Monthly charges,
 - c. One-time charge,
 - d. Free Calls/ Free SMSs/ Free Data,
 - e. Reduced tariff for Voice/ Data/ SMSs,
 - f. Free or Reduced STD charges,
 - g. Any other benefits such as Free Gifts/Discount Coupons
 - h. Eligibility to win prizes either in the form of additional benefits in tariff or prizes from other industries etc.....

The promotional offers with definition and features in terms of position already taken by TRAI are adequate and should be continued. There is no case for its revision.

8. The promotional offers should be compliant with the cardinal principles of tariff setting as enunciated by the Authority. Thus, all the promotional tariff offerings by TSP should also be IUC compliant, non-discriminatory and non-predatory which are enough to ensure for achieving its objectives.

For advisory@iCTrobot

S.S. Sirohi

9. The validity period of promotional offers should be limited to 90 days with benefits extendable up to max six months and such promotional offers of 90 days validity may be launched by both incumbent as well as new TSPs.
10. In any case, the new TSPs may be permitted to extend the benefits beyond 90 days because of their specific requirement to prove their new technology and new service to the customers and customers are required to be compensated/incentivized for acquisition of new technology handsets, failing which there will be few takers for new technology services as well as devices.
11. The TSPs may be given complete freedom to design the structure of promotional offers and launch such promotional offers any number of times in a calendar year either concurrently or one after another as also indicated in para 6 above, with minimal regulatory interference.

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

COUNTER COMMENTS

We have seen the comment of stakeholders and feel that there is a complete lack of clarity, understanding and information on the issue amongst stakeholders and therefore, would like to clarify with the facts and the current position on the subject matter.

(i) In a competitive environment, anti –competitive behavior is not acceptable. The anti – competitive conduct by an enterprise is assessed by the abuse of its dominant position by the said enterprise. The Competition Commission of India, the national watch dog to enforce competitive practices in the country stipulates that no enterprise or group shall abuse its dominant position. The dominant position means a position of strength, enjoyed by an enterprise in the relevant market in India. The relevant market means the market which may be determined by the Commission with reference to the product market or the relevant geographical market or with reference to both the markets. The relevant product market means a market comprising all those product or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the product or services, their price and intended use. Whereas the relevant geographical 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 homogeneous and can be distinguished from the conditions prevailing in the neighboring areas.

(ii) To safeguard from abuse of dominant position by a TSP, Significant Market Power (SMP) was defined by the sector regulator TRAI. SMP finds its expression in the "The Telecommunication Interconnection (Reference Interconnect Offer)" Regulation, dated 12th July 2002":

For advisory@iCTrobot

 S.S. Sirohi

"3.3 A Service Provider shall be deemed to have significant market power if it holds a share of 30% of total activity in a licensed telecommunication service area. These Services are categorized as Basic Service, Cellular Mobile Service, National Long Distance Service and International Long Distance Service."

Wherein "Activity" would mean and include any one or more of (a)Subscriber base(b)Turnover(c)Switching Capacity(d)Volume of Traffic.

(iii) As per the above Regulations, relevant markets in the telecom sector were Basic Service, Cellular Mobile Service, National Long Distance Service, and international Long Distance Service. Later in 2003, the licensing framework which was earlier separate for Basic Service and Cellular Mobile Service, was unified and since then unified access service license(UASL) is required for both types of access services. i.e. basic and cellular services.

(iv) DoT sought recommendations from TRAI on 'Spectrum Management and Licensing Framework' and TRAI in its recommendations dated 11.5.2010 on 'Spectrum Management and Licensing Framework' recommended the following:

"4.24 Before reviewing the market share criteria, it is necessary to discuss the definition to the relevant market. In general, the relevant market comprises of all those products or services that are sufficiently interchangeable or substitutable not only in terms of consumer preference, usage and prices but also in terms of conditions of competition and/or the structure of supply and demand on the market in question.

*4.25 The Authority is of the opinion that in view of the exponential rise in the number of wireless subscribers and the fact that the growth in fixed line is negative, keeping fixed and mobile segment as separate relevant market is no longer necessary. Additionally, in view of the technological developments and imminent deployment of 3G and BWA technologies, measuring subscriber numbers based on different technologies will become increasingly difficult and cumbersome. **Therefore, the Authority recommends that the relevant market for determining the market share will no longer be classified separately as 'Wire line' and 'Wireless'. It will be defined in future as the entire access market.***

(v) The DoT referred back TRAI to furnish their reconsidered recommendation and wrote

*"As a broad guiding principle, it is viewed that the M&A policy of DoT should be simple and easy to implement with minimal conditions necessary to ensure a balance between facilitating consolidation, ensuring competition and protecting consumer interest. It is also felt that the M&A regulations should be in harmony with other relevant legal and regulatory provisions. **TRAI may review the recommendations on consolidation of spectrum with respect to conformity with the provisions of the Competition Act, especially those relating to the principles of market dominance.**"*

(vi) TRAI furnished its reconsidered recommendation Dated 3.11.2011, in the following manner on the issue of determination of relevant market

For advisory@iCTrobot

 S.S. Sirohi

Authority has also taken into consideration the prevailing practice in other countries as well as the provisions of the Competition Act....

and inter alia, recommended that:

"ii. The entire access market will be the relevant market for determining the market share, and will no longer be classified separately as 'Wire line' and 'Wireless'."

(vii) Considering these recommendations, DoT brought out "Guidelines for Transfer/Merger of various categories of Telecommunication service license/authorization under Unified License (UL) on compromises, arrangements and amalgamation of the companies" which includes the following:

-----"Taking into consideration the spectrum cap of 50% in a band for access services, transfer/merger of licenses consequent to compromise, arrangements or amalgamation of companies shall be allowed where **market share for access services** in respective service area of the resultant entity is up to 50%. In case the merger or acquisition or amalgamation proposals results in market share in any service area(s) exceeding 50%, the resultant entity should reduce its market share to the limit of 50% within a period of one year from the date of approval of merger or acquisition or amalgamation by the competent authority. If the resultant entity fails to reduce its market share to the limit of 50% within the specified period of one year, then suitable action shall be initiated by the licensor."

-----"For determining the aforesaid market share, market share of both subscriber base and Adjusted Gross Revenue (AGR) of licensee in the relevant market shall be considered. **The entire access market will be the relevant market for determining the market share which will include wireline as well as wireless subscribers.....**"

-----"If consequent to transfer/merger of licenses in a service area, the Resultant entity becomes a "Significant Market Power" (SMP), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity. SMP in respect of access services is as defined in TRAI's "The Telecommunications Interconnect (Reference Interconnect Offer) Regulations, 2002 (2 of 2002)" as amended from time to time."

(viii) The above stipulations very clearly establish that **the relevant product market in the telecom sector has already been defined to be Access Services which include wireline and wireless both**. The market delineation formally notified by DoT in the above terms after accepting the due recommendations of sector regulator TRAI on this issue is as detailed above in the preceding paras.

It is pertinent to note that TRAI had given its recommendation considering all existing and evolving technologies viz 2G/3G/4G, narrowband, broadband and services viz voice, video, data etc. **So there is no case for any review of definition relevant market what so ever, at present.**

For advisory@iCTrobot
 S.S. Sirohi

(A) In the present consultation paper TRAI has sought comments on possible delineation of Telecom markets into Wireless and wireline services, voice & data, narrowband & broadband and Telecom markets based on technologies.

(B) We would like to submit that as explained in the preceding paras, the telecom market has already been defined and there is finality on the issue. Therefore, the above mentioned question about possible market delineations in the Consultation Paper is totally out of place.

(C) **However, we will like to state that the classification as suggested in the consultation paper are not in line with, scheme of licensing in the country and the fast paced technological developments in telecom sector deploying all IP converged networks.**

(D) In India, we had electro mechanical exchanges which connected one person to another one for voice only. This continued for quite long and were replaced by electronic exchanges and separate networks where commissioned to deliver data known as data networks. Alongside video remained all together separate. The electronic exchanges started providing data to telephone voice subscriber also by interconnecting it with data networks. Parallely, in the mobile 2G Networks subscribers started getting low speed data along with voice on their mobile phones. With the march of the technology the data speed went on increasing and with 3G it reached to a level that its started giving good video experience. Now a day, new technology 4G which is all IP fundamentally, provides excellent HD quality voice, high speed broadband and a rewarding experience video to watch movies and enjoy gaming. Thus the convergence has happened in the underlying network as well in the services. Therefore, voice and data services cannot be separated for the delineation of market. mobile phone subscribers no longer opt only voice but take a tariff plan which includes data also in most of the cases. This all the more bring home the point that voice and data services are not separable for delineation of market.

Nowadays people are making extensive use of OTT services, to name a few - WhatsApp, Skype, Google talk. These services are applications overriding on internet data. To express in simple words, data and voice have become substitutable. In such circumstances voice and data cannot be separated to delineate voice and data market.

Narrowband and Broadband services are converged data services and technology neutral. The base line is data i.e. IP only. Any separation of market into narrow band or broadband does not even fit into the principles enunciated in CCI guidelines.

Markets cannot be delineated on the basis of technology in the current scenario of convergence where the converged networks like all IP LTE 4G can provide all the services for which the legacy networks were separate for separate services.

Any delineation of market not considering converged network all IP LTE networks would be out of sync with NTP 2012 which envisages the convergence as below:

3.1.1 Convergence of service i.e. convergence of voice, data, video, internet telephony (VoIP), value added services and broadcasting services.

For advisory@ICTrobot

 S.S. Sirohi

3.1.2 Convergence of networks i.e. convergence of access network, carriage network (NLD/ILD) and broadcast network.

3.1.3 Convergence of devices i.e. telephone, Personal Computer, Television, Radio, set top boxes and other connected devices.

Any option should be in line with the policies of the Govt. as enunciated in NTP 2012 including convergence of services.

(E) Based on above we strongly recommend keeping the delineation of relevant market same as decided earlier with their relevant geographies as following;

	Relevant Product Market	Relevant Geographical Market
1	Access services	All India/Telecom Circle/Metro
2	National Long Distance Service	All India
3	International Long Distance Service	All India

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

and

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

and

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

COUNTER COMMENT

Question 5, 6 and 7 are essentially the processes to address the dominance in telecom sector therefore, we have clubbed these questions for Counter Comments.

The stakeholders have given varied response on this issue. One stake holder has said that TRAI regulations sufficiently defines dominance criteria and therefore no need to redefine it, however there is urgent need to define and address abuse of joint dominance out of informal cartelization within the market to stifle competition. Two of the stakeholders who are TSPs, are of the opinion that the issue of dominance and significant market power is irrelevant when it comes to defining the regulatory principles of tariff assessment. One of them opines that there is a competition regulator to look at the issues arising out of competition in the telecom sector. One respondent has recommended that the issues are quite complex and examination of these issues cannot be limited to tariff only and a separate consultation paper on competition related issues with broader prospects such as completion, merger, acquisition, dominant market player including tariff issues may be brought out. Some have recommended the approach mentioned in the CCI Act along with TRAI and DoT stipulations on the related

For advisory@iCTrobot

S.S. Sirohi

issues. One of the stakeholder also mentioned that for all competitions issues, the competition act remains the guiding principal and TRAI can enforce competition issues in the same manner that CCI would also have done it.

We would like to mention that in addition to TRAI stipulations, DoTs orders on this issue are equally important to address the issue holistically.

In accordance with CCI Act 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 market; or
- (ii) Affect its competitors or consumers or the relevant market in its favor.

(i) The market shall be determined as outlined in our counter comment to the replies of Q. No. 4 and the dominance shall be determined in accordance with the stipulations of CCI Act 4(2), 19(4). In Telecom parlance, SMP status shall also be a key factor to determine the dominance. TRAI has already defined SMP.

(ii) The considerations to determine dominant position take cognizance of the following all or any of the following as per CCI guidelines:

- (a) market share of the enterprise;
- (b) size and resources of the enterprise;
- (c) size and importance of the competitors;
- (d) economic power of the enterprise including commercial advantages over competitors;
- (e) vertical integration of the enterprises or sale or service network of such enterprises;
- (f) dependence of consumers on the enterprise;
- (g) monopoly or dominant position whether acquired as a result of any statute or by virtue of being a Government company or a public sector undertaking or otherwise;
- (h) entry barriers including barriers such as regulatory barriers, financial risk, high capital cost of entry, marketing entry barriers, technical entry barriers, economies of scale, high cost of substitutable goods or service for consumers;
- (i) countervailing buying power;
- (j) market structure and size of market;
- (k) social obligations and social costs;
- (l) relative advantage, by way of the contribution to the economic development, by the enterprise enjoying a dominant position having or likely to have an appreciable adverse effect on competition;
- (m) any other factor which the Commission may consider relevant for the inquiry.

(iii) Both "SMP" and "Dominant positions as defined in CCI Act" are complementary to each other. It is suggested that assessment of SMP and(or) dominant position status of a TSP should be done based on both the criteria of relevant product and geographical market and CCI criteria mentioned in (ii) above.

(iv) However, looking at the conduct of incumbent TSPs in response to Govt's efforts to enhance /expand competition by bringing in additional new TSPs in the year 2008-12 leading to steep decline in consumer tariffs and during the period post supreme court judgement in the year 2012 cancelling all new telecom licenses when the consumer tariff was sharply increased many fold by all incumbent TSPs in unison, one could smell the existence of "pseudo - cartelization" among the leading market players. The similar scenario manifested itself much more openly during the entry of strong and serious market player in later half of the year 2016, when many incumbent players came together to defend their turf in the face of looming stiff competition and managed to gain virtual dominance in the market place by way of perceptibly informal cartelization and were largely successful in distorting the much desired level-playing field of the competition in Telecom market.

In view of such a scenario in Telecom services Market, it is extremely important that the Authority must look into the issue of real / virtual dominance critically with utmost urgency and take corrective action to discourage and stop any such real or virtual cartelization in this highly competitive market in order to protect consumer interests and promote advancement of new technologies / services / innovations in telecom sector in particular and realize goals of "Digital India" in general, at the earliest.

(v) CCI has defined the Predatory Price which is relevant to Dominant Player only in the following term:

"predatory price" means 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.

However, TRAI has so far not specifically defined the term "non-predation"

(vi) While assessing the predatory pricing, the present regime of "forbearance" in Indian Telecom Sector has to be factored in. There is no floor price as well ceiling fixed by the regulator. One can argue that the interconnection charges possibly be considered as floor price, but the regulation has nowhere linked the tariff with interconnection charges payable to the terminating operator. Further the interconnection charges are on decline consistently in line with the international trend and will eventually have to be abolished with BAK in the all IP regime. Thus, there is no concept of predation in Telecom Tariff inherent in TRAI regulation at present.

(vii) The compliance of Antitrust – predatory pricing, is applicable to a dominant TSP only as per CCI Act. The dominance is determined in accordance with CCI stipulations and SMP status. New TSP who is commencing the service with no market share is not a dominant player. In any case, assessment and determination of predatory pricing by a service provider has to be on case by case basis based on the principles enunciated in the CCI Act.

For advisory@iCTrobot

S S S
S.S. Sirohi