

Telecom Regulatory Authority of India
Notification
New Delhi, the day of 8th December , 2004.

No. 301-31/2004-Eco.

In exercise of the powers conferred upon it under sub-section (2) of the section 11 and Section 11(1)(b)(i) of the Telecom Regulatory Authority of India Act, 1997 the Telecom Regulatory Authority of India (TRAI) hereby further amends the Telecommunication Tariff Order, 1999 as under, namely:

1. Short title, extent and commencement:

(i) This Order shall be called " The Telecommunication Tariff (Thirty Third Amendment) Order, 2004"(9 of 2004).

(ii) This Order shall come into force from the date of its publication in the Official Gazette.

2. In Section II (Definitions) of the Telecommunication Tariff Order 1999, the following shall be inserted as sub-clause (s) under clause 2 and the existing sub-clause (s) shall be renumbered as sub-clause (t) as under:

s) Vertical price squeeze means differential tariff assuming the nature of anti-competitive conduct that may occur when an operator with significant market power controls certain key inputs required by competitors in downstream markets and where such operators or its affiliates use those key inputs to compete in the downstream market.

t) Words and expressions used in this Order and not defined but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. The following shall be added to Clause 10 (non-discrimination) in Section IV of the: Telecommunication Tariff Order 1999

Provided that differential tariffs in the nature of Vertical Price Squeeze shall be a case of discriminatory tariff.

4. This Order contains an Explanatory Memorandum as at Annexure, which explains the reasons for this amendment to the Telecommunication Tariff Order, 1999.

By Order,

[M. KANNAN]
Advisor (Economic)

EXPLANATORY MEMORANDUM

As per the existing definition of 'Non-discrimination' the service providers were not permitted to offer differential tariff within the same class of subscribers. The Authority had in the past disallowed tariff plans which provided lower differential airtime charge for calls terminating in own network.

2. In the context of certain tariff schemes proposed for Closed User Groups (CUG)/Virtual Private Network (VPN) by some telecom service providers, the Authority initiated a consultation process on the need to review the currently held interpretation of the principle of non-discrimination in retail tariff applicable for telecommunication services. The response of the stakeholders was overwhelmingly against the currently held interpretation of non-discriminatory tariff which inter-alia prohibits differential tariffs for calls terminated within the same network.

3. Evidence on trends in retail tariff published by the Authority suggests that there is intense competition in the mobile service segment. Further, with the unified access regime already in place and with unified licensing regime on the anvil and the Authority having forborne the retail tariff in general, the concerns relating to inadequate competition have substantially abated. In this background and in the context of response of the stakeholders to the consultation paper referred to above, the Authority has decided to modify the interpretation of the principle of non-discrimination in retail tariff as enunciated in the guidelines of TRAI dated 20th May, 2003, which inter-alia clarified that differential tariffs for calls terminated within the same network would amount to discrimination. The decision of the Authority to forbear in the matter of non-discrimination with

respect to tariffs was conveyed to all service providers vide letter dated 24th May 2004. The service providers can therefore offer differential tariffs for off-net and on-net calls. But cases where such differential tariffs are anti-competitive or predatory aimed at lessening competition shall invite the regulatory attention. These tariffs could take the form of discriminating in favour of a particular operator(s) with adverse effect on competition in the relevant market.

4. Instances of any differential tariff structure assuming the nature of anti-competitive conduct, continues to be an issue of regulatory concern. Vertical price squeeze is one such recognized anti-competitive conduct that may be engaged by an operator with significant market power providing service in both upstream and downstream markets in any particular service area. Here the operator controls certain services that are key inputs for competitors in downstream markets and where those same key inputs are used by the operator or its affiliates to compete in the same downstream market. To take an example, in telecommunication markets, vertical price squeeze can occur in the provision of dedicated local circuits. The operator with significant market power can increase the price to competitors for the upstream input, i.e. dedicated local circuit while leaving the downstream prices the same i.e. price for its dedicated Internet access services. The effect would be to reduce or eliminate the profits or margins of competitors. In other words, an operator with significant market power can often squeeze the margins of competitors by raising wholesale prices (upstream market) paid by competitors while at the same time lowering retail prices (downstream markets) on competitive services. Such 'squeezes' on the margins of competitors imposed by the pricing strategy of the operator with significant market power could materially affect competition. Several international jurisdictions have acted against such anti-competitive conduct with a view to eliminate barriers for entry and sustain fair competition. Therefore, in cases of vertical price squeeze where the retail price is lower than the

(wholesale) price offered to operators, the Authority would continue to intervene since such vertical squeeze unfairly limits competition.

5. The position emerging with the issue of this amendment order with reference to the principle of non-discrimination and classification of subscribers for the purpose of tariff fixation is consolidated below for strict compliance by the telecom service providers:

i) The definition of the principle of non-discrimination remains unchanged as appearing in Clause 2 (k) of TTO 1999.

ii) No service provider shall, in any manner, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary. This position as stated in Clause 10 of TTO remains unchanged.

iii) It shall be permissible for operators to provide differential call charges for off net and on net calls.

iv) Whenever differential tariffs are offered it shall be the responsibility of the operators to define in a transparent and unambiguous manner the eligibility criteria for availing such differential tariff. The Authority would consider such criteria to assess their consistency with the provisions of TTO relating to non-arbitrary classification of subscribers.

v) Any differential tariff assuming the nature of vertical price squeeze as explained in para 4 of the explanatory memorandum will not be permitted. The Authority would like to make it clear that differential discount structure in the provision of leased circuits by an operator with Significant Market Power in any service area in the nature of vertical price squeeze shall not be permitted. Such differential discounts, if already exists, shall immediately be restructured and made uniform for various classes of users.

vi) Service Providers shall conduct a self-check of existing tariff in view of the above Guidelines and if any tariff schemes in operation are inconsistent with these guidelines, the same shall be immediately withdrawn under intimation to the Authority.

[M. KANNAN]
Advisor (Economic)

