



Association of Unified Telecom Service Providers of India

AUSPI/12/2017/010

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Subject: AUSPI's Response to the TRAI's Consultation Paper No.3/2017 on Regulatory Principles of Tariff Assessment

Dear Sir

Please find attached AUSPI's Response to the TRAI Consultation Paper on 'Regulatory Principles of Tariff Assessment' for your consideration.

Thanking you,

Yours sincerely,

Ashok Sud
Secretary General
Mob: 9312941515

Encl: As above

Copy to :

1. Shri R S Sharma, Chairman, TRAI
2. Shri Anil Kaushal, Member, TRAI
3. Shri Sudhir Gupta, Secretary, TRAI



**AUSPI's Response to Consultation Paper No. 3/2017 on
Regulatory Principles of Tariff Assessment**

Our comments on the issues raised in the consultation paper are as follows:

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.

&

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

AUSPI's Response:

1. Existing regulations, orders and directions address the issue of transparency with respect to the different tariff offerings of the service providers. These regulations are broad enough to address and check non-transparent offerings.

Issue of Transparency in tariffs

2. Transparency in tariff means that the end user can easily make informed decisions and compare services of various TSPs from the information made available by the TSPs. TRAI has adequately addressed all these three factors [as follows] through its various regulations/orders/direction to ensure transparency of the tariff offerings of the TSPs.
 - i) False and/or misleading information through the advertisements.
 - ii) Cramming i.e. unauthorized or deceptive charges.
 - iii) Mystifying i.e. confusing the end user with too many offerings affecting the informed choice.
3. The competition in the market place also ensures that the end users get the information about the tariffs in transparent manner for customer satisfaction and to avoid churn of such users to other TSPs.
4. Apart from complying with the different provisions of the TRAI regulations/orders/directions, TSPs are also facilitating the consumers through various apps, their websites and call centres in order to ensure that the consumers take informed decisions. Regular internal audits of the TSPs



and the M&B audit done by the TRAI has also helped in ensuring the transparency in the tariff offerings and advertisements of the TSPs.

Requirement of true Forbearance

5. The Telecom Tariff Order (43rd Amendment) does not permit to revise tariffs even if input costs increase for six months or for the validity period of the tariff whichever is higher. This policy is not consistent with the Authority's policy of forbearance in tariffs. We suggest abolishing the said provision of the 43rd amendment in the TTO as the market dynamics and other regulations are already there to ensure the interests of the consumers.

Issue of non-discrimination:

6. We would like to submit that the current definition of the non-discrimination is adequate to ensure that the TSPs' tariff offering should not out rightly discriminate amongst the same class of consumers.
7. As long as the tariff offerings of the TSPs are transparent in nature and the eligibility criteria for the applicability of tariff is well defined, the issue of non-discrimination amongst the same class of the consumers doesn't arise. TRAI regulations allow the TSPs to offer different tariffs to different class of consumers provided that the eligibility criteria defined for such classes should be non-arbitrary. Such segmentation of tariffs provides flexibility to the TSPs to promote its services to certain class of the consumers and is beneficial for the consumers as well as for the TSPs. We submit that TSPs should also be allowed to create class of consumers based on the territory/sectors within an LSA in order to promote the telecommunication services in such classified areas.
8. It is also submitted that such offers for certain class of the consumers are only for very small time period (ranging from 7-30 days) in order to promote the services or to give some special benefits to the consumers for their long term patronage of the TSP's services, hence, these tariff offerings should be kept out of the purview of the reporting requirements. TSPs can submit an undertaking to TRAI confirming that all its existing as well as future segmented offerings will be in compliance to the provisions of the tariff regulations i.e. IUC compliant, non-arbitrary, non-discriminatory and non-predatory.
9. **In view of the above, we believe that :**
 - i) **The existing regulations/orders/directions are adequate to ensure the transparency in the tariff offering and no additional measures are required.**

- ii) The six month protection clause should be done away as the market forces and competitiveness in the market is enough to ensure the interest of the consumers.
- iii) The existing provisions are adequate to take care of any discriminatory offering of the TSPs and no additional features are required.
- iv) The offerings for certain class of consumers should be kept out of the purview of reporting requirement. TSPs can give undertaking to confirm that all such offerings are in line with the prevalent provisions of the Tariff Regulations.

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?

AUSPI's Response:

1. We suggest that only those tariff offerings which are available for the consumers or a particular class of consumers with defined eligibility criteria for not more than 90 days and the benefits under such offer should also remain within that period of 90 days from the date of launch shall be construed as a promotional offer. This is also in line to the existing provisions of TRAI w.r.t. promotional offerings.
2. We would like to submit that, we beg to differ with the views of the Authority that the concept of 'promotional offer' is in vogue since last 15 years (Para 2.19 of the consultation paper). TRAI's instructions to TSPs of 19th June, 2002 addressed the issue of promotional offers and the restrictions on such promotional offerings are as follows:

Quote

".....Accordingly the Authority has decided that the validity of promotional tariff plan should not extend beyond a reasonable period, say 90 days. Service providers are therefore, advised 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....."

Unquote

3. Further, to strengthen the transparency in the tariff offerings, TRAI in its Direction dated 1st September, 2008 stated that:

Quote

*"....(2) All access service providers shall, while publishing their promotional offers to public, specify therein-----
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);.....”

Unquote

4. Thus, the existing instructions of the TRAI have taken care of the issues relating to promotional offerings of the TSPs.
5. The basic three principles of Telecommunications Tariff Orders i.e. IUC compliant, non-discriminatory and non-predatory are the three pillars of the telecom tariff which are required to be complied by the service providers in their tariff offerings. Non-compliance to any one of them would be disruptive for the sector as such offerings allows the incumbent operator/new entrant to stifle the market competitiveness.
6. Promotional offers, which are used to provide an incentive to the reluctant subscriber to make choices by increasing the value of the product and used by the service providers to spur growth in sales, are an effective tool in a highly competitive market, when the objective is to influence subscribers to select it over those of competitors. The promotional offers should be seen as a sign of a competitive market. Hence, the features of any of the promotional offer should be such that when it is combined with the other regular tariff offerings of the TSP then the overall tariff offerings of that TSP should be complied with these three principles of the telecom tariff.
7. We suggest that there should be a minimum of 90 days gap between two promotional offers. However, the TSPs should be allowed to offer different promotional offers for different category of services (i.e. voice, data) simultaneously.
8. **In view of the above, we suggest that:**
 - i) **The promotional offers as defined by TRAI should be continued as the concept of offering any promotional tariffs.**
 - ii) **The features of any of the promotional offer should be such that when it is combined with the other regular tariff offerings of the TSP then the overall tariff offerings of that TSP should be complied with these three principles (IUC compliant, non-discriminatory and non-predatory) of the telecom tariff.**
 - iii) **There should be a minimum of 90 days gap between two promotional offers. However, the TSPs should be allowed to offer different promotional offers for different category of services (i.e. voice, data) simultaneously.**

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

AUSPI's Response:

1. The demarcation of the relevant markets is essential to determine the true significant market power (SMP) of a particular TSP. This will help to identify the players within such relevant markets that are capable of manoeuvring the market dynamics in the absence of effective competitive pressure.
2. The relevant geographic market as defined under Competition Act, 2002 is as follows:

Quote

"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 neighbouring areas;

Unquote

3. In telecom sector, the license to provide the telecom services have been awarded on the basis of the geographic area called as Licensed Service Area (LSA). The Country is divided into 22 LSAs by the DoT and separate license agreements are required to be signed to operate in these LSAs by any TSP. Hence, the relevant geographic market should also be defined LSA wise. This will be in line with the current license regime and would be appropriate in defining the SMP of a particular TSP.
4. The relevant product market has been defined in the Competition Act, 2002 as follows:

Quote

"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;

Unquote

5. In the context of telecom services, the relevant product market could be characterized with respect to two parameters - Technology (GSM, CDMA, LTE etc.) and services (Voice, SMS, Data etc).
6. Earlier, the licenses were awarded along with the spectrum allocation (administratively) to provide a particular technology. With the advancement of technologies, which allowed use of different bands to provide all type of services, and with the allocation of spectrum through

auCTION (liberalized), the licenses have also been modified and became technology agnostic. Thus, there shouldn't be a relevant product market based on different technologies.

7. However, the services, which are distinctive in nature, have to be considered as different products and the relevant market for the same are required to be defined. One TSP may opt to provide one particular service and achieve the SMP in that category of services which in turn adversely affect the competitiveness in the market. Hence, relevant product markets are required to be defined and for that, four different service categories should be identified: Voice, SMS, Wireless data services and wireline data services.
8. We believe that for these relevant product markets should be defined separately for all 22 relevant geographic market and measurement of SMP viz-a-viz dominant position of a TSP should be done based on these criteria.
9. In view of the above, we request that:
 - i. The relevant market has to be defined in both ways: relevant product market & relevant geographic market, in order to identify the SMP of a particular TSP.
 - ii. The relevant geographic market should be defined LSA wise, in line with the current license regime.
 - iii. Relevant product markets are required to be defined as Voice, SMS, Wireless data services and wireline data services.

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

&

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

AUSPI's Response:

1. Dominant position has been defined in the Competition Act, 2002 as follows:

Quote

"dominant position" means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –

- a. *operate independently of competitive forces prevailing in the relevant market; or*

b. *affect its competitors or consumers or the relevant market in its favour.*

Unquote

2. If a TSP has acquired a significant strength in the relevant market, then that TSP should be treated as dominant player in that market. Significant market Power of the TSP plays a major role in the determination of the dominance of that TSP in the relevant market.
3. Significant market Power (SMP) has been defined by TRAI in The Telecommunication Interconnection Usage Charges (IUC) Regulation 2003 (2 of 2003) as follows:

Quote:

" 2. (xxiii) "Significant Market Power (SMP)" means "A Service Provider holding a share of at least 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." Where "Activity" would mean and include any one or more of the following:

- (a) Subscriber Base
- (b) Turnover
- (c) Switching Capacity
- (d) Volume of Traffic

Unquote

4. The above definition of SMP should be taken into consideration and any TSP falling under this definition in a particular relevant market shall be considered having SMP and considered as dominant player in that relevant market.
5. Some of the factors as per the Competition Commission of India, which should be considered in the determination of SMP and the dominance position of a TSP¹:
 - a. market Share
 - b. the size and resources of the company
 - c. size and importance of the competitors
 - d. economic power of the company
 - e. vertical integration
 - f. dependence of the consumers on the company
 - g. extent of entry and exit barriers in the market, countervailing buying power,

¹ http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/AOD.pdf

- h. market structure and size of the market
 - i. source of the dominant position viz. Whether obtained due statue etc.
6. Keeping all these factors into consideration, the Authority can decide the dominance of a particular TSP in the relevant market.
7. In view of the above, we request as follows:
- i) The definition of SMP provided under IUC regulations should be applied in a relevant market to determine the SMP of a TSP.
 - ii) Along with the SMP, other factors (as suggested above) should be considered to establish a TSP as a dominant in that relevant market.

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

AUSPI's Response:

1. Predatory pricing has been defined under the Competition Act, 2002 as follows:

Quote

"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."

Unquote

2. The said Act also prescribes that no enterprise or group shall abuse its dominant position directly or indirectly, imposes unfair or discriminatory price in purchase or sale (including predatory price) of goods or services provided that if the same has been adopted to meet the competition.
3. If any TSP who is at a dominant position in a relevant market as explained in our earlier responses, has indulged into the pricing of its tariffs and other services below the cost of provisioning of such services, then such tariffs/services shall be considered under the Predatory pricing by the Regulator.
4. TRAI should examine the cost an operator bears on its own network to provide the voice and data services (per min and per MB cost respectively) and examine the tariffs of the operators in view of such costing to decide whether the tariff is compliant to the principle of non-predatory.



5. In view of the above, we request as follows:

- i) Predatory pricing should be examined basis the concept of dominant position and relevant market.
- ii) Gain in market share v/s time (Market share trends) also needs to be examined by the regulatory to asses the predatory pricing by a service provider in a relevant market.
- iii) TRAI should examine the Voice (per minute) and data (per MB) cost on the network of a TSP in order to ensure the compliance to the principle of non-predatory.
