

ISPAI Response to TRAI's Consultation Paper on "Regulatory Principles of Tariff Assessment"

At the outset, we would like to thank the Authority for providing us with an opportunity to submit our response to this Consultation Paper. We hope that TRAI will consider our submissions favourably.

TRAI, in its tariff order on IUC Compliance has asserted that the tariff offered by a service provider must not be below the floor.

TRAI has also maintained that all tariffs need to be non-predatory, i.e., no TSP (should offer a 'below-cost' tariff to its customers (Retail or Enterprise)

TRAI also suggests that all tariffs should be non-discriminatory, i.e., TSPs should do no discrimination between subscribers

With the Government focus on Digital India, Skill India, Start up India and Make in India, it is very important that the financial health of the Telecom Industry is stable and self-sustainable to protect investments. Therefore, the tariffs should be based on economic principles.

With this, we submit our question-wise detailed response as follows:

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.

ISPAI response:

We strongly believe that the current measures prescribed by TRAI are adequate to ensure transparency. All Service Providers are offering unique offers and quality services to their customers. The offers and the quality of service ensure customer retention, else the customers are free to opt for alternate service providers.

We are of the view that existing measures prescribed by TRAI are sufficient to protect the consumers' interests.

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

ISPAI response:

We believe that the current definition of "non-discrimination" has been well-defined by TRAI, which mandates that service providers shall not, in the matter of application of tariffs, discriminate between subscribers of the same class, and that such classification of subscribers shall not be arbitrary.

There is no requirement for prescribing any additional measures with respect to non-discrimination, as the current regime is functioning well.

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?

ISPAI response:

The existing guidelines of TRAI for any offer to qualify as a 'promotional offer', the following criteria should be met:

- a. It should not be offered for duration of more than 90 days.
- b. The benefits of such an offer should not last for more than 90 days.
- c. In a regular tariff plan, the service provider is required to offer the same features and benefits for at least 6 months, whereas a promotional offer can be offered for a maximum duration of 90 days.
- d. The validity of a regular tariff plan may be unlimited, whereas a promotional offer can only be offered up to 90 days.

We feel these guidelines should continue to exist.

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

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

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

ISPAI response:

1. In the telecom world, all the service providers are linked to each other. Hence it is essential that principles of any tariff are uniformly applicable to all telecom operators irrespective of their size.
2. We believe that the issues related to relevant markets (products and geographic), dominance and Significant Market Power are irrelevant when it comes to defining the regulatory principles of tariff assessment.

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

ISPAI response:

We believe that predatory pricing, as defined in the tariff orders, is directly related to the absolute cost of producing the service. Thus, predatory pricing can be defined as a service that is provided at a 'below cost' rate to end customers by a service provider, irrespective of its market share and size, or the technology used.

Predatory pricing occurs when a firm sells a good or service at a price below cost (or very cheaply) with the intention of forcing rival firms out of business. And with the intent of raising the prices thereafter .

Section 4(2) of The Competition Act, 2002 reads as following “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.

To establish the allegations of predatory pricing, first, one has to establish whether the company holds a dominant position in the industry. This position means that the company has the power to operate independently of the market status and because of its strength can steer the market in its favour. Solely on the basis that a company is a dominant player it cannot be accused of predatory pricing, but, it has to be shown that they abused this position in order to make the market favourable to them.

In Re: Johnson And Johnson Ltd. Case ((1988) 64 Comp Case 394) , Justice S Manchanda said that “the essence of predatory pricing is pricing below one’s cost with a view to eliminating a rival”.

In MCX Stock Exchange Ltd. V. National Stock Exchange of India Ltd., DotEx International Ltd. And Omnesys Technologies Pvt. Ltd. Case (2011 Comp LR 129 (CCI)) , the CCI defined predatory pricing as the conduct, “where a dominant undertaking incurs losses or foregoes profits in the short term, with the aim of foreclosing its competitors”. It was further stated that "before a predatory pricing violation is found, it must be demonstrated that there has been a specific incidence of under-pricing and that the scheme of predatory pricing makes economic sense. The size of Defendant's market share and the trend may be relevant in determining the ease with which he may drive out a competitor through alleged predatory pricing scheme-but it does not, standing alone, allow a presumption that this can occur. To achieve the recoupment requirement of a predatory pricing claim, a claimant must meet a two-prong test: first, a claimant must demonstrate that the scheme could actually drive the competitor out of the market; second, there must be evidence that the surviving monopolist could then raise prices to consumers long enough to recoup his costs without drawing new entrants to the market."

Question 8: Any other issue relevant to the subject discussed in the consultation paper may be highlighted?

ISPAI response:

- a. The regulatory framework should ensure that the tariffs of all Service Providers are non-predatory and non-discriminatory.
- b. Similar floor price may also be applicable on cost plus basis to International Incoming Calls
