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**Subject: MRF's response to TRAI Consultation Paper No 3/2017 dated 17<sup>th</sup>February 2017 on Regulatory Principles of Tariff Assessment.**

Dear Sir,

MMA Research Foundation (MRF) is pleased to submit its response to TRAI Consultation Paper on Regulatory Principles of Tariff Assessment.

We hope that our comments (enclosed as Annexure – I) will merit consideration of the Hon'ble Authority.

Thanking you,

Respectfully submitted

Yours sincerely,  
For MMA Research Foundation

**(Ajeet Tripathi )**

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Encl: As above

## Annexure-I

### MRF's Comment on TRAI CP on Regulatory Principles of Tariff Assessment.

**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.**

#### **Comments:**

Although TRAI has taken many measures to ensure the transparency in tariff offers made by TSPs, however, we note that TRAI has not defined the term transparency in any of its regulations/TTO-99. It creates doubt and ambiguity among the consumer as well as TSP.

It is understood that prime concern of TRAI is to provide easy access to the information to consumers they need in order to make best possible choices, and, on the other hand, that they may change their tariff plan or service provider without having to deal with excessive obstacles.

It is suggested that first TRAI has to define the transparency in term of tariff of communication services along with measures / methodology/ regulations to be enforced to ensure the provision of defined transparency of communication tariff to the customer as well as regulator.

As we know that transparency is complex term and difficult to measure or implement, therefore, after considering above aspects from the regulator, customer and service providers point of view, **it is proposed that instead of defining the term transparency the term "Lack of Transparency" should be defined by TRAI.** it will not only help to understand to TSP what information mandatory to provide their customer but customer will also be able to check that information provided by the TSP is within the ambit of transparency. It will also help in effective benchmarking and implementation of regulations/ Orders and efficient monitoring to TRAI.

We are suggesting a tentative definition of "Lack of Transparency" for reference point of view:

**Lack of transparency of communication tariff or service** may mean that the Authority or end-users do not able to access or find information about tariff or services to make informed decisions and compare services. This may be because one or more causes given below:

1. lack of information, unclear or hard to find information, misleading information i.e. the information does not exist or is deceptive;
2. The complexity of tariff plans i.e. the information provided to Authority or consumers is complex, not easy to interpret and/or set out in a number of different places, which makes it difficult to interpret and/or compare.
3. The increasing number and diversity of offers;

4. The bundling of services and the deficient presentation of information by service providers;
5. Not providing the information timely i.e. at the time of making decision.
6. Information is not trustworthy or accurate.
7. Change in tariff plan or service provider without knowledge or consent of customer;
8. Consumers are subject to unauthorized or deceptive charges.
9. Contradicting service terms and conditions
10. Not informing benchmarking standards of quality of service to be offered under selected tariff plan.

The fact cannot be ignored that even when presented with full information, consumers may not always be in a position to understand and/or use that information to their advantage. Therefore, this raises questions about whether, and if so, what different policy or regulatory intervention may be necessary to help consumers adopt decisions in their best interests.

We note that sometimes so many plans are at offer by service providers that consumer is confused and unable to find the best suited plan for him. As per existing regulations of TRAI, in India a service provider can offer 25 tariff plans at a time. In India about 12 active service providers are providing services. Consumers have so many plans to choose that he is confused and unable to calculate actual best suitable plan for himself.

We note that as per existing regulations the Authority has also mandated to file the tariff plan in TRAI by service provider within one week of launching of it, however, these tariff plans are not available for customers at Authority's website. **We believe that there is a need to bring the transparency in this area.**

We note that to facilitate such customers, in many countries regulatory Authorities are running an interactive price calculator website where customer can go and compare the actual applicable price by various service providers or under various tariff plans for their tentative usage pattern. The Authority establishes a system for the accreditation of such websites maintained by third parties. An accreditation scheme can provide quality assurance, for example by certifying that the price calculations offered by accredited websites are accessible, accurate, transparent and comprehensive.

For ready reference the authority may refer UK regulator Ofcom accreditation with various members. We note that Ofcom currently has eight accredited members of the price comparison scheme:

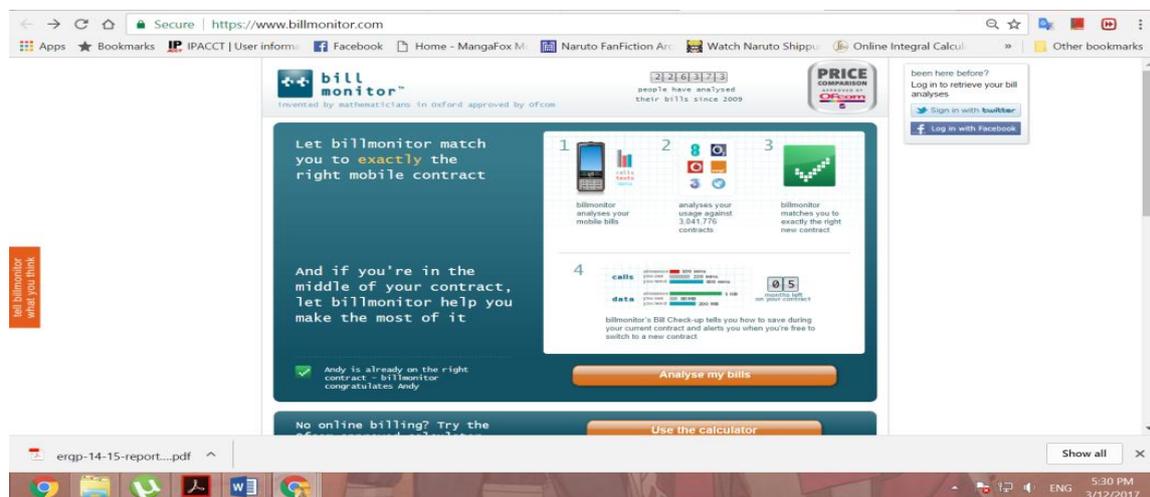
1. broadbandchoices.co.uk
2. simplifydigital.co.uk
3. cable.co.uk
4. broadband.co.uk

5. digitalcompare.co.uk
6. billmonitor.com
7. mobilephonechecker.co.uk; and
8. ctrl.io.com.

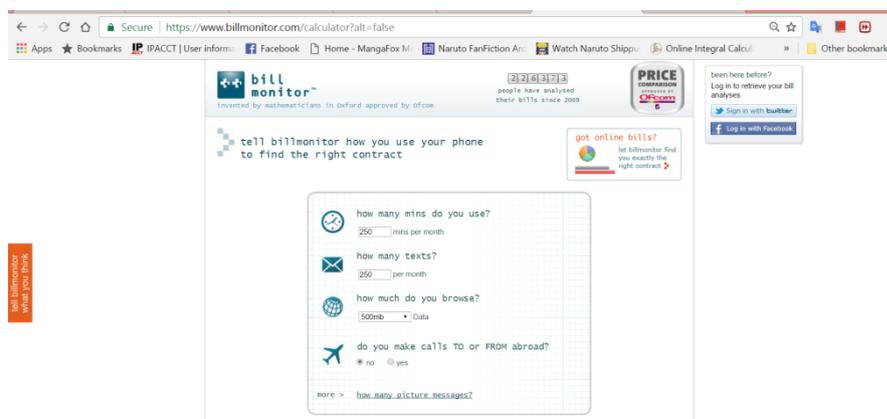
we further note that Billmonitor.com, Mobilephonechecker.co.uk and ctrl.io.com compare mobile phone deals, broadbandchoices.co.uk, simplifydigital.co.uk, digitalcompare.co.uk and cable.co.uk compare landline, TV and broadband services, while broadband.co.uk compare broadband and landline deals. Only the pages comparing services they are accredited for can display the Ofcom logo.

**The Link of some Ofcom accredited members are given below for ready reference:**

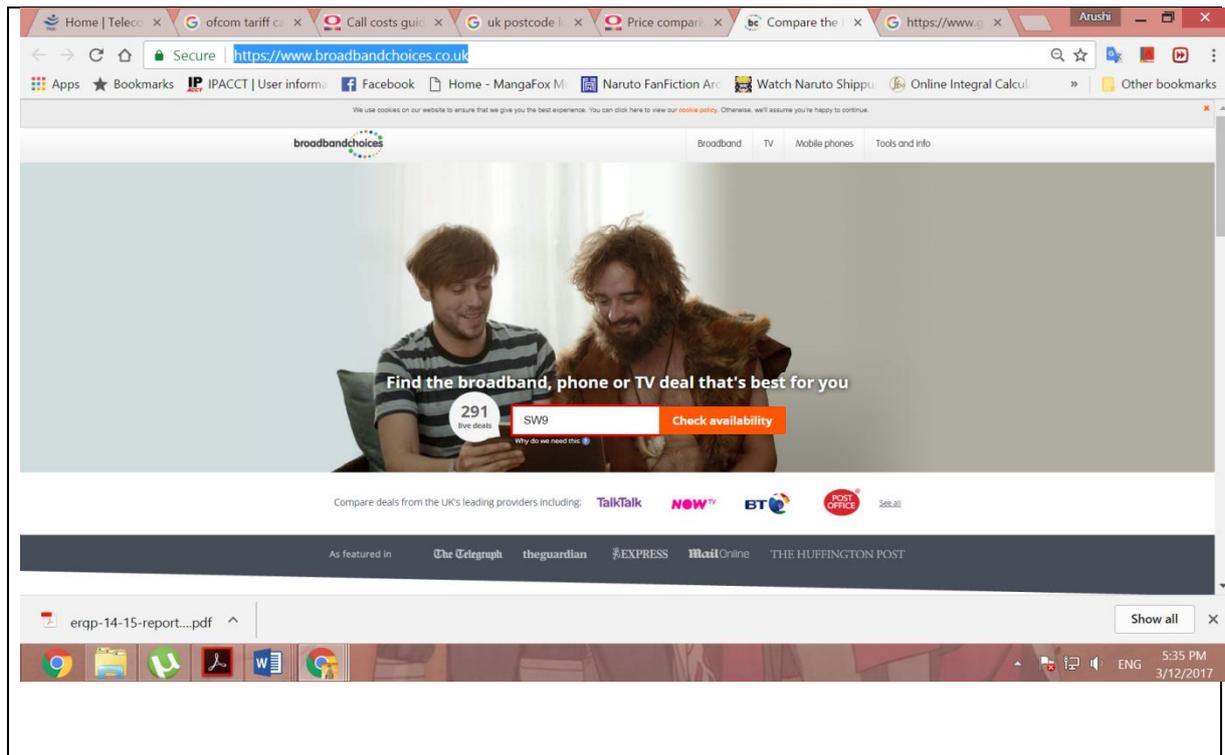
<https://www.billmonitor.com/>



<https://www.billmonitor.com/calculator?alt=false>



<https://www.broadbandchoices.co.uk/>



**Therefore, it is high time to decide that TRAI should have develop interactive website with various purposes including online filing of tariff plans for various services, displaying all approved and applicable tariff plans of service providers to general public, interactive price calculator etc. Customer can also make a request to provide various plans through email. Such website may be developed by TRAI itself or by a system for accreditation by a third party.**

In India, telecom tariffs can be segregated in three types:

1. Individual Regular Tariff Plans
2. Promotional Tariff Plans
3. Corporate Tariff Plans

At present TSP are filing only individual and promotional tariff plan to the Authority. There is no cap or watch on corporate plans being offered by TSP to its corporate customer which result very large number of corporate plans in TSP system. These plans are running or modified at the will of TSP or corporate and the Authority has not mandated any filing requirement, cap or audit for these plans. **Therefore, it is suggested that there is a need to specify the filing requirement of such corporate tariff plans to the Authority and if practically possible, there is also need to fix a cap on number of corporate plans any service provider can offer at a time.**

We note that Insurance Regulatory Authority (IRDA) has mandated to file the tariff / product to Authority before launching or modify the same. One of example is IRDA, has mentioned in its **GUIDELINES ON “PRODUCT FILING**

**PROCEDURES FOR GENERAL INSURANCE PRODUCTS” vide No. IRDAI/NL/GDL/F&U/030/02/2016 dated 18<sup>th</sup> Feb. 2016 that:**

“All Retail Products (including their modifications) shall be filed with the Authority under File and Use Procedures. However, the commercial products offered to commercial customers (such as Micro Small & Medium Enterprises, small shops and establishments, trustees, cooperative societies etc.,) with a policy Sum Insured up to 5 Crs (for package policies fire section Sum Insured) or as prescribed by the Authority from time to time shall be filed under File and Use Procedures.”

**We note that No insurance product of a Life Insurer, General Insurer and Health Insurer under Health Insurance Business and any revision or modification thereon shall be marketed or offered by any insurer unless it is filed with the Authority as per the Product Filing Guidelines and duly disposed of by the Authority as provided therein, for example Premium or product filing is governed by the guidelines on “Product filing procedures for general insurance products’ dated 18th Feb 2016 and Guidelines on “Product filing in Health Insurance Business” dated 29th July 2016.**

As we all aware that Insurance sector is equally complex with respect to telecom sector in tariff structure in multi-operators industry. IRDA has done a tremendous job for setting very transparent procedures for filing of all products’ tariff including life insurance, general insurance, health insurance etc. and issuing an unique identification number for each tariff. Details of each and every tariff along with its terms and conditions are available at IRDA website, which can be viewed by any individual.

The screenshot shows the IRDAI website interface. The main content area displays the 'Terms and Conditions of Life Products for F.Y. 2016-17' and a table titled 'INSURER WISE LIST OF LIFE INSURANCE PRODUCTS LAUNCHED / MODIFIED IN THE FINANCIAL YEAR 2016 - 17'. The table lists products from Aegon Life Insurance Co. Ltd. and Aviva Life Insurance Co. India Ltd. with columns for S.No., Financial Year, Comp. wise Sno., Name of the Product, UIN number of the product, Policy Documents (Download), Date of Approval by IRDAI, New product / Modification, Date of Launch / Date of effecting Modification, and Remarks (if any).

S.No.	Financial Year	Comp. wise Sno.	Name of the Product	UIN number of the product	Policy Documents (Download)	Date of Approval by IRDAI	New product / Modification	Date of Launch / Date of effecting Modification	Remarks (if any)
<b>Aegon Life Insurance Co. Ltd.</b>									
1	2016-17	1	Aegon Life Group Credit Shield Insurance Plan	138N057V01	Download	12-Feb-16	New product	6-May-16	-
2	2016-17	2	Aegon Life Jeevan Riddhi Insurance Plan	138N058V01	Download	31-May-16	New product	13-Jun-16	-
3	2016-17	3	Aegon Life Invest Insurance Plan	138L059V01	Download	6-Jun-16	New product	21-Jun-16	-
4	2016-17	4	Aegon Life iTerm Insurance Plan	138N016V04	Download	22-Aug-16	Modification	5-Oct-16	-
<b>Aviva Life Insurance Co. India Ltd.</b>									
5	2016-17	1	Aviva i-Growth	122L106V02	Download	15-Feb-16	Modification	13-May-16	-
6	2016-17	2	Aviva Corporate Shield Plus	122N066V04	Download	23-Feb-16	Modification	20-May-16	-
7	2016-17	3	Aviva Live Smart Plan	122L098V03	Download	3-Feb-16	Modification	30-Jun-16	-
8	2016-17	4	Aviva Young Scholar Advantage	122L085V03	Download	17-May-16	Modification	12-Aug-16	-

**In view of above best regulatory practice in India, it is right time to decide by the authority that Individual and Corporate both Tariffs should be reported to TRAI and should be made available on TRAI's website and TSP's websites.**

We understand that TRAI's Billing and Metering Regulations 2006 have a provision to check number of tariff plans offer by TSP by Auditor in its quarterly audit. However, fact is that TRAI has not published filed Tariff plans of TSP in any portal and it is difficult to compare actual tariff plans available in TSP system with tariff filed in TRAI. **Therefore, it is proposed that tariff filed by TSP should be available in public portal of TRAI along with its unique Number, date of starting of tariff plan and closing date of tariff plan ( if any ).**

It is also suggested that periodic audit of these plans in TSP billing system and customer care system should be carried out. For this, scope of Billing Metering Audit may be enhanced or a separate audit may be carried out by the TRAI.

We note that Billing Metering Audit is being carried out by the Auditors empaneled by the Authority; however, these auditors are being appointed by TSP and paid by them (which is negotiable). It is obvious that expecting the accurate reports from auditors in such scenario is debatable. Therefore, instead of merely fulfilling the formality of carrying out audits by emplaned auditors by the Authority through TSP, it is suggested that, to bring the more transparency, such audits should be carried by the Authority through its empaneled auditors by deciding the suitable fee per audit per service area. Payment of fee should be made through TRAI, although, methodology of bearing the audit cost by TSP or by the Authority or by both may be decided by the Authority. This will make auditors more responsible towards the Authority and The Authority will be able to get more accurate results.

It is also suggested that Web-based methods can be complemented by "off-line" methods able to reach a wide audience especially where a material share of this audience may not have access to the Internet. An uniform USSD code for checking the applicable tariff plan and its main details should be mandated by the Authority for all service providers.

**The instant billing control applications,** the voice announcements/acoustic signals when calling a ported/off-net/special tariff number or the information sent via SMS or e-mail directly to the user.

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

**Comments:**

Definition of non- discrimination should be more elaborated and provide uniform opportunity for all customers who wish to join that particular class or classification.

We note that the Authority has given a very valid example of “New Customer” classification. TSP is providing discount for new customer however in many cases it is not applicable for existing customer who is loyal to service provider and already paying to service provider since a period.

**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 denied 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. Service provider should not bundle the tariff plan with particular brand or technology for customer end equipment.**

**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?**

**Comments:**

**Promotional offer:** Anew or existing tariff plan which is offered by TSP, to new customers on discounted rate or free with some ingredients such SMS, DATA etc to increase the subscriber base.

As telecom sector is highly competitive market, it is good for customer, where customers are King .However, it is well known fact that Nothing comes free in the world, every service has its own cost. If any,TSP offering telecom services free of cost in a particular tariff plan for a long period or more than 90 days. It may be beneficial to the customers/subscribers for a short period say may be 1 or 2 or 3 years, but it would be costly affair for the telecom customer in future, as such type free offers for long period are anti-competitive. These matters are easily understood by the sector Regulator. It would monopolize the telecom sector, and again customers will be looser. The role of the sector regulator will be diluted.

**Restriction on number of Promotional Offer:**

It is submitted that to maintain the competition in telecom sector, completely free tariff plan should not be allowed, however promotional offer

at marginal cost or average variable cost of the TSP may be allowed. Otherwise, we believe that telecom subscriber may be ready to pay high cost for the telecom services in future.

Promotional offer should be within the limit of 25 tariff plans. Promotional offers may also be available for existing customers/ subscribers.

It is submitted that the same promotional offer should not be allowed for next quarter on same existing or new plan. It means same set of customers should not be allowed for discounted rate on same tariff plan.

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

**And**

**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?**

**And**

**Question 8: Any other issue relevant to the subject discussed in the Consultation Paper may be highlighted.**

#### **Comments:**

By defining a relevant market and then calculating market shares or other concentration measures for the companies present in the market, authorities seek to identify in a systematic way the competition constraints that the undertakings involved face. Given the importance of market definition, it is not surprising that various jurisdictions publish documents which provide a systematic conceptual framework that should be followed when defining relevant markets. For example, in the EU, the European Commission published Notice on the Definition of the Relevant Market for the Purposes of Community Competition Law. In the US, market definition methodology is laid down in the Horizontal Merger Guidelines, while in Mexico it is described in the report 'Market Definition: Assessment of the Relevant Market in Competition Matters'. OECD has also released a report on Defining the Relevant Market in Telecommunications in 2014, in which it is mentioned that telecommunications markets exhibit certain features which may complicate a straightforward application of the SSNIP (small but

significant and non-transitory increase in price) test, a tool most commonly used to define markets.

OECD also mentioned that A proper market definition is critical in most competition and regulatory cases. The delineation of the relevant market, one of the most decisive and most litigated issues, is not, however, an end in itself. Closely related to the objectives pursued by competition law and sector-specific regulation, it is a means used to help identify the market participants and the area of effective competition. This, in turn, requires the determination of whether one or several undertakings present in the market jointly possess dominance or significant market power (SMP). The definition of the relevant market permeates analysis in essentially every branch of competition law. In abuse of dominance cases, competition authorities (CAs) define the relevant market in order to help determine whether there is a company holding a dominant position, and whether the conduct of such company produces anti-competitive effects. Also, with respect to mergers, market definition is useful in order to identify overlaps and thus evaluate effects of the transaction. Finally, even if market definition plays different roles in the assessment of agreements and in abuse of dominance cases, it is still necessary in order to determine whether there is an effect on competition.

We note that presently there are three regulatory documents which are directly or indirectly dealing with competition related issues in the sector i.e. Telecommunication Tariff Order 1999 (TTO-99), IUC Regulations and Accounting Separation Regulations. Thus deciding these issues under tariff regulations will also affect other regulations.

**Therefore, we believe that these issues are quite complex and examination of these issues can not be limited to tariff only, it required a separate consultation paper on the competition related issues with broader prospects such as competition, merger acquisitions, dominant market player including tariff issues.**

However, It is suggested that the following regulatory principles should be considered before taking any decision on competition related issues , these are summarized below;

- I. **Reliance on Market Forces-** We believes that Market forces are generally far more effective than regulation in promoting consumer welfare. Competitive markets are most likely to provide consumers with a wide choice of services at just and reasonable prices. Therefore, to the extent that markets or market segments are competitive, TRAI may consider its primary reliance on private negotiations and industry self-regulation, subject to minimum requirements designed to protect consumers and prevent anti-competitive conduct under TRAI Act.
- II. **Promotion of Effective and Sustainable Competition** -Recognising the effectiveness of market forces in promoting consumer welfare, TRAI may take definite measures to promote and maintain effective

and sustainable competition in the telecommunication sector. Such measures will include:

- (a) removing or minimising any artificial form of impediment to market entry and exit;
- (b) curtailing any concentration of Significant Market Power that has the effect of unreasonably restricting competition;
- (c) eliminating anti-competitive behaviour by industry participants;
- (d) ensuring that industry participants and consumers have easy access to information on market conditions; and
- (e) ensuring that there is inter-operability and, where necessary, reasonable access to networks to prevent impediments to effective competition and market growth

**III. Promotion of Facilities-based Competition** -We believe that effective and sustainable competition will be best achieved through facilities-based competition. However, where there are technological, markets or other impediments that will hamper competing TSPs' ability to deploy new services or technologies, in such a situation TRAI may consider to strike a balance between providing the way to deploy facilities and taking pro-active measures to facilitate services-based competition.

**IV. Proportionate Regulation** -To the extent that a given market is not yet competitive, significant *ex ante* regulatory intervention is likely to remain necessary. Where this is the case, TRAI may impose regulatory requirements that are carefully crafted to achieve clearly articulated results. However such requirements will be no broader than necessary to achieve TRAI's stated goals under TRAI Act and National Telecom Policies issued by the Government of India.

**V. Technological Neutrality**-We believe that regulatory requirements may reflect the phenomenon of convergence, which is eroding historical differences among platforms such as wireline, wireless, Internet, and others. Regulatory requirements must be based on sound economic principles and, to the extent feasible, will be technology-neutral.

-End-