

## **CHAPTER – 4**

### **CHAPTER 4 - ISSUES FOR CONSULTATION**

**4.1. What are the primary factors for poor effectiveness of Telecom Unsolicited Commercial Communications Regulations, 2007 (4 of 2007) in its present form? Give your suggestions with justifications. (Reference Para 2.3)**

We believe that regulation of this industry, is the only way in which the industry can continue to thrive. We believe that persons generally responsible for causing huge number of complaints and nuisance to consumers constitute the unregulated sector of the industry. It is our view supported by statistical data that more than 50% of the industry is unregulated. This unregulated sector of industry, basically consists of individuals working out of their homes or a collection of such persons who are not willing to conform to the regulated industry practices. In this regard, it is of utmost importance to bear in mind that any type of regulation would not cover such individual players who would in any case constitute majority of the industry and continue to remain unregulated. Persons to whom any proposed Legislation would apply would to be placed at a disadvantage and worse still, the regulated sector would in all probability be wiped out due to unviable business operations on account of changes in the Law. The restrictions on regulated players would automatically increase the demand for unregulated sector, since there is always going to be a demand for telemarketing services which

need to be met. In turn, this will lead to an increase in complaints and consumer frustration and consequent litigation.

**4.2. Do you feel that there is need to review the existing regulatory regime of Unsolicited Commercial Call (UCC) to make it more effective? What needs to be done to effectively restrict the menace of Unsolicited Commercial Communications (UCC)? (Reference Para 2.3)**

In order to regulate the industry further and bring about observance of meticulous standards to prevent consumer complaints, **the regulated sector feels there is a need to use available technology and avoid further regulations or restrictions which are not going to be useful in the long run.** With this in mind, we would like to give you some details of the simple and effective technological means to continue enforcement of the regulations in a strict manner.

**As you are now doubt aware, all major service providers such as Airtel, Reliance,..... have the ability by technological means to bar calls from any registered telemarketer to the number of a consumer who has already registered in the 'Do not call Registry'. To elaborate this the process being followed today is as follows:-**

- 1) Registered Telemarketer uploads database of numbers on to the NDNC server for scrubbing.

- 2) He gets back two lists:-
- i) Numbers that can be called.
  - ii) Numbers that cannot be called.
- 3) He uploads the “ numbers that cannot be called” list on to the server of his service provider (Airtel, Reliance, etc.,).
- 4) He submits a list of numbers which are registered with NDNC as telemarketing numbers to his service provider.
- 5) Using technology the service provider is able to block an call from the pre-designated numbers of the telemarketer going through to the list of “cannot be called numbers”. This happens at the switch level.**
- 6) This effectively through technology ensures that customers registered with the NDNC do not get called at all.**
- 7) This has been validated in practice in our organisation as well.

If this process and technology can be applied across operators i.e., if NIC can share the mother list of NDNC customers with all Service providers and the service providers can use the same technology to block calls to this

list of numbers from all the lines of Telemarketers registered with NDNC. By this way it can be ensured that the customers registered with NDNC will not be called. This will be one giant step in curbing this problem.

However, the bigger task will be of ensuring registration of un-registered Telemarketers.

All service providers, in fact, know the lines that are actually used by telemarketers who are not registered also. The same type of service lines and bulk discount which is offered to persons like us would be offered to unregulated sector also and even assuming that the identity of the user is not disclosed, by the very nature of the call pattern, the service provider would be able to effectively block calls made to consumers. It is not known why this technological advancement has not been thought of for implementation thus far. We are at a loss in fact to find out the need for further policing of our industry when such a facility is available with all service providers. BSNL in general, is not used as a service provider for telemarketers and it is the private players who have garnered practically all the registered industry players. All such service providers are also catering to the unregulated market. By updating their internal servers/routers and such sensitive equipments, barred call can be prevented to such an extent that there would be practically zero complaint. As a

registered Telemarketer we would strongly urge the Honourable Chairman, TRAI to immediately look into implementing this instead of adding to the statutory restrictions which are going to continue to be selectively followed and applied.

**4.3. Do you perceive do call registry to be more effective to control Unsolicited Commercial Communications as compared to present NDNC registry in view of discussions held in para 2.4 to 2.9? Give your suggestions with justification. (Reference Para 2.10)**

There are various aspects to whether the Do Call Registry will be more effective in curbing unsolicited Commercial Communication as compared to the current NDNC registry. First and foremost implementation of any control without controlling the un-organised sector would be meaningless. Consisting of individuals, who could keep changing numbers they would continue to thrive. Consequently, the only affected would be the organised sector. Contrary to popular belief, it would leave consumers more harassed, resulting in more and not less litigation.

Even from the Consultation Paper, it is obvious most countries follow an (Opt-out) and not (opt-in) system. Even where the Opt-in system were used these apply mostly to E-mails, faxes, etc., not to voice calls.

Such a regulation if brought about, would have resulted in uproar since the U.N. charter provides for freedom of speech and expression. There are no doubt restrictions applied in various countries and stringent penalties have been proposed and imposed. That by itself would be welcomed by the regulated industry in India but proposal for 'Do call Registry' will not be welcome. International practices clearly show that just as privacy is respected, consumer literacy and freedom of expression need not be curtailed to the extent where it affect free commercial speech.

Another aspect which we wish to place on record is that international practices do not and cannot form the basis for any review of the existing regulations in India considering the size of the market and our unique socio-economic growth levels. Literacy and awareness of consumer rights in the developed world are different from the peculiar needs of consumers in India. The growing middle class, improvement in the health and literacy levels of the rural and semi rural population as well as the continuing inability of the consumer to comprehend the various choices available to take an informed decision would dictate the requirement of a simple and effective marketing tool namely telemarketing.

It is quite common to see among the semi-rural population, particularly the literate population to possess credit cards. This revolution in banking and consumerism has been largely brought about by the efforts of telemarketers like our company. The right of the consumer to make an informed choice far transcends the need for all out restrictions in the nature of 'Do call Registry' Therefore, the practice adopted in the western world or the developed world or for that matter in any other part of the world would not apply to Indian conditions. In our view this can be straight away discarded. Available technology is the only practical solution for strict compliance and consumer satisfaction.

As stated earlier, the majority of the telemarketing industry are not subject to any rules and regulations or directions. By implementing NDCR, the registered telemarketers would be dealt a death blow. We cannot foresee even a single consumer registering in the NDCR. The entire industry consisting of thousands of gainfully employed persons would be unceremoniously closed out.

We are also advised that Article 19(1)g of The Constitution of India would be violated if registered telemarketers are prevented from advertising the service products of their principals and the right of free commercial

speech is guaranteed under Article 19(1)g of The Constitution of India.

We are advised that the implementation of NDCR would have an indirect move of destroying the entire industry and this move would seem to be totally irrational and disproportionate to the requirements of current situation.

Arbitrariness would be writ large on the face of such regulation or Legislation and thus, this proposal would be violative of Article 14 of The Constitution of India.

For all the above reasons, we humbly request you to take into consideration our views as stated above and protect the legitimate business activity of telemarketing, albeit with regulations which we are wholly supportive of.

**4.4. Do you perceive the need to control telecom resources of telemarketers to effectively implement provisions of Unsolicited Commercial Communications and to encourage them to register with DoT? What framework may be adopted to restrict telecom resources of defaulting telemarketers? (Reference Para 2.11.3)**

In order to encourage the unregulated sector to register and conform to the present guidelines and statutory regulations, we feel that here again available technology can be utilized. Private service providers should be directed to inform those in the unregulated sector that unless a registration has been



done, the service provider would not be in a position to entertain any calls made by such individuals or association or persons seeking bulk rates of such other concessions. Apart from this, the service provider can be directed to give a list of names of such persons so that stringent action can be taken against them. This would encourage the unregulated sector to register themselves and conform.

**4.5. Do you agree that maximum number of calls as well as SMS per day from a telephone number (wireless as well as wireline) can be technically controlled to force telemarketers to register with DoT? What other options you see will help to effectively control telemarketers? (Reference Para 2.12.4)**

In our opinion, it could work, and we would welcome any process which will enforced registrations of Telemarketers with DoT.

**4.6. Do you envisage that second screening at SMSC as proposed in para 2.12.3 will effectively control unsolicited SMSs? Give your comments with justification. (Reference Para 2.12.4)**

No specific comments.

**4.7. What changes do you suggest in existing provisions to control the Unsolicited Commercial Communications effectively? Give your suggestion with justification. (Reference Para 2.13.6)**

No specific comments.

**4.8. Do you agree that present panel provisions to charge higher tariff from telemarketers are resulting in undue enrichment of service providers? What penalty framework do you propose to effectively control UCC without undue enrichment of service providers? (Reference Para 2.13.7)**

No specific comments.

**4.9. Do you feel that present UCC complaint booking mechanism is effective? What more can be done to enhance its effectiveness? (Reference Para 2.13.8)**

No specific comments.

**4.10. Do you feel that there is a need to enact legislation to control the Unsolicited Commercial Calls? Give your suggestion with justification. (Reference Para 2.13.9)**

No specific comments.

**4.11. Do you agree that definition in para 2.14.1 correctly define Unsolicited Commercial Communications in Do Call registry environment? Give your suggestions with justification. (Reference Para 2.14.2)**

No specific comments.

**4.12. Do you feel that proposed framework to register on NDCR will be user friendly and effective? What more can be done to make registration on NDCR more acceptable to customers as well as service providers? (Reference Para 3.7)**

No specific comments.

**4.13. In your opinion what are the various options which may be adopted for setting up and operating the NDC registry in India? Among these suggested options which options do you feel is the most appropriate for implementation and why? Give your suggestion with justification. (Reference Para 3.8.3)**

No specific comments.

**4.14. Do you agree that present NDNC registry can effectively be converted to NDC registry? What measures need to be taken to make it more effective? (Reference Para 3.8.4)**

No specific comments.

**4.15. In view of the discussion held in para 3.9, which option of charging and funding model do you suggest for procuring the data from National Do Call Registry by telemarketers? What should be the various provisions you want to incorporate in suggested model? Giver your suggestion with justification. (Reference Para 3.9.5)**

No specific comments.

**4.16. What measures do you suggest to protect data of NDC registry? Give your suggestions with justification. (Reference Para 3.10.2)**

No specific comments.