

**Consultation paper on review of license terms and conditions and
capping of number of access providers**

(Comments by Dr. A.K. Seth, Executive Director, NSTPL)

Q1. How should the market in the access segment be defined?

Comment:

Since availability of spectrum results in additional constraint on number of “wireless” access providers for all products / services we should distinguish it from “wireline” access providers. Beyond that there is no need to distinguish among type of product / services as it would limit mix of product / services with better technologies.

Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition. If yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer.

Comment:

For the sake of determining market dominance we should consider HLR. VLR is only temporary and the service provider does not control it.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply.

Comment:

A market limit of 67% corresponds to HHI limit of 4489 if all other players are marginal. If additional players are limited to 3 with equal market share of 11% we have HHI value

of 4852, which is also quite high from the point of competition – it leaves no scope for other players.

My suggestion is to limit the market share of merged entity to 49%.

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified?

- a. If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits.**
- b. If no, give reasons in view of effective utilization of scarce spectrum resource?**

Comment:

In order to avoid spectrum clash between GSM and CDMA players there are separate bands allocated for each technology. Thus spectrum limit for a merged entity should be based on market share for each of the technologies which the service provider is ready to roll out.

Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should it be, and how should it be defined?

Comment:

We may maintain minimum limit of 3 or 4 access players of which one should be state owned operator.

Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

Comment:

HHI and CR2 should be the considerations for determining potential mergers, acquisitions or transfer of licenses - coverage and quality are being monitored separately.

Q7. As a regulatory philosophy, should the DOT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

Comment:

With continuous change in technology and products / services we need to follow a mix of both.

Substantial Equity

Q8. Should the substantial equity clause (1.4 USAL) continue to be the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

Q11. Whether a promoter company/legal person stakes directly or indirectly in more than one access License Company in the same service area? Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Q12. Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons therefore.

Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

Permitting combination of technology under same license

Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

Comment:

This should not be attempted without serious view of long term evolution. Furthermore there are technical issues due to different FDD separation among GSM and CDMA technologies in addition to reversal of up and down frequency components.

Q16. In case licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chosen alternate technology?

Comments:

It should be based on existing rules.

Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in (Para) 4.16 of the chapter?

Comment:

Considering the fact that fresh license is awarded to promote competition it is obligatory for new licensees to be given priority in spectrum allocation.

Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

Comment:

Under technology neutral UASL there should be no additional roll out obligation for alternate technologies.

Q19. Lastly, as such service providers would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

Comment:

As indicated against Q4, additional spectrum allocation should be based on technology and market share for that particular technology.

Roll out Obligations

Q20. Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges up to certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligation is met. Please specify, in case you may have any other suggestion.

Comment:

As commented against Q26, we can perhaps do away with roll out obligation for access services. This may also support niche players for rural connectivity with USOF subsidy.

Q21. Is there a case for doing away with performance bank guarantees as the telecom licensees are covered through the penalty provisions, which would be invoked in case of non-compliance of roll out obligations?

Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same?

Comment:

In order to meet rural communication requirements without wasteful deployment of resources it is recommended that we could introduce roll out obligation for NLD operation with own or leased resources from other licensees.

Q23. What additional roll out obligations be levied on ILD operators?

Comment:

Single international gateway is adequate based on well developed NLD facilities.

Q24. What should be the method of verification of compliance to roll out obligations?

Q25. What indicators should be used to ensure Quality of Service?

Comment:

New indicators can be considered for new product / services like IPTV.

Q26. As the licensees are contributing 5% of AGR towards the USOF, is it advisable to fix a minimum roll out obligation? If yes, what should be that? If no, whether the Universality objectives may be met through on USOF or any other suggestions?

Comment:

Based on future roll out of access services in semi-urban and rural areas we can do away with roll out obligation for UASL. However NLD roll out should be introduced as discussed above.

Q27. In case of rural roll out obligation, whether the number of BTS in a certain area (is) a viable criterion for verification of roll out obligation?

Comment:

Once rural BTS is installed and back haul engineered it is in the interest of the service providers to roll out services, thus, active BTS is a good measure of rural roll out verification.

Q28. What should be the incentives and penalties w.r.t. rural roll out obligation?

Determining a cap on number of Access Providers in each service area.

Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

Comment:

Based on spectrum availability it is desirable to limit access service providers. Consolidation to reasonable number shall promote better network operation.

Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?

Comment:

There is no problem in leaving 'wireline' access operators to market forces but for wireless services the licensor has to play a role. Since UASL covers both types of access mediums, the licensor has to cap the number of UASL operators.