

INTRODUCTION

- 1.1.As mentioned in the South Africa's Benchmark Report, telecommunication tariffs structure in India is one of the most competitive and well regulated sectors in the world. It was due to the early intervention of the government, a light touch regulatory structure provided by the regulator and a healthy competition in the telecom space that tariffs were reduced considerably in a very short duration of time.
- 1.2.Tariff structures, as it has also been mentioned in the various international guidelines documents, should **be a perfect balance between consumer's interest and business interest**. Ideally, the income from the totality of services provided by a telecommunication organization should cover all the costs incurred by that organization, namely: a) operating expenses; b) interest on capital involved; c) fiscal charges; d) depreciation of equipment; e) cost of research and development; f) capital investment (as required). However, in view of the difficulty of applying rates based on these criteria, in certain cases, for the political or social reasons mentioned, telecom players have to come up with the innovative products to cover the costs. It is where the responsibility of the government also kicks in, to instead of strangulating the industry with high tax investment in resources, facilitating it with as much as possible public resources so that the services of the TSPs can be made accessible to everyone.
- 1.3.Further, to ensure that these tariff structures are in the interest of consumers, it is important that TSPs are subjected to certain regulatory measures and follow certain best practices to allow customers to make informed decisions. Although the core of this issue is about transparency for consumers, but we also need to understand that as much as transparency is a measure which TSPs should be ensuring for consumers, it is a principle which the regulator and government should abide by as well i.e. follow a transparent mechanism to issue regulations. As mentioned in the CP as well, there have been 62 amendments so far in the TTD orders, **and there are further many rules and guidelines issued by the regulator which TSPs have to abide by**. Although the process of consultation is done for many of these regulations, they are so many in number that for a new (and one with limited capital) entrant in the market, it becomes extremely difficult to wade through the regulations and thus, making **the regulatory structure a burden for the market players**. Thus, it is important that when certain regulations are issued, they are justified with the logical arguments and they are few and far between, so as not to muddle the regulatory space.
- 1.4.On the another aspect of transparency for consumers, we need to understand that we are limiting the idea of transparency just to the availability of the information to the consumers which they need about products and services, and it includes the information on the terms on which the services are provided, and what to do when things go wrong i.e. readdressal mechanism. But, as various reports (for ex: European Consumer Consultative Group on Consumers) and court cases (for ex: Richard vs Time Inc. of Canada) across the world has mentioned that an average consumer is "someone who is

credulous and inexperienced and takes no more than ordinary care to observe that which is staring him or her in the face upon first entering into contact with an entire advertisement”. Thus, we need to **move from information disclosure for consumers to consumer education** to make sure that consumers can interpret the information provided and can understand it completely. This point has also been mentioned as one of the basic pillars in Ofcom’s Information Remedies.

1.5. On the competition front, it is important that no player is allowed a dominant position in the market. It is only when there are multiple players and powers are not consolidated in the hands of a limited few that we can expect that consumers will get the right price for the products. This is the most basic principle of market dynamic. But, due to the high handedness of the India authorities lately, the competition in the market is being consolidated through various M&A. **Before, the regulator embarks on a journey to rationalize tariff system, it is important to investigate the basic issue of why the competition in the market is being reduced.** This would require an open consultation with various stakeholders, understanding their grievances about functioning in Indian market and taking action on those grievances, instead of making it another consulting document, and only after this, the regulator would possibly be able to understand that why are only a few players left in the market.

1.6. We also suggest the inclusion of various market players, not only in consultations but in decision making process, when the decision is being taken on the issues relating to a dominant market player or in other cases, predatory policies being followed by any other player. As a consequence of the reduced competition, it is obvious that there will be an increase in anti-competition behavior. Thus it is important that such players are clearly identified, allowed to present their case in front of an authority which should have a wide representation, and then, these **errant players are regulated upon effectively** as has been the case across the world for dominant market players, to make sure that no one misuses its position in the market.

RESPONSES TO THE QUESTIONS

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.

It is important that certain standard principles are followed to ensure transparency from the end of TSPs. Majority of them has been captured under various TTOs, but there could be certain additional principles that may be employed to ensure transparency on the part of TSPs, which are as follows

- 1) Provide a brief, clear, non-misleading, plain language description of the service or services rendered to accompany each charge, for example a per minute cost, per SMS cost and per GB cost;

- 2) Disclose full and non-misleading descriptions of charges;
- 3) Identify those charges for which failure to pay will not result in disconnection of the customer's basic local service. (this may resolve the issues mentioned in Point 2.6 of *Consultation Paper*)

But, we need also need to understand that the success of any competitive market depends crucially on fully engaged and active consumers. **Regulators around the world have the task of upholding the twin pillars of consumer empowerment (enabling informed consumers to exercise choice) and consumer protection (minimizing harmful side-effects of competitive markets for consumers).** Both these notions in turn rely on “market transparency”. This is generally understood as the availability to consumers of all the information that they might need about products and services, the terms on which these are provided, and what to do when things go wrong.

But, as various reports (for ex: European Consumer Consultative Group on Consumers) and court cases (for ex: Richard vs Time Inc. of Canada) across the world, an average consumer is “someone who is credulous and inexperienced and takes no more than ordinary care to observe that which is staring him or her in the face upon first entering into contact with an entire advertisement”. It is with keeping this basic tenet in mind, that the regulator needs to draft the transparency guidelines. Though the present transparency measures are adequate as a principle for “information disclosure”, it does not take into consideration the need to educate and sensitize consumers.

Measures suggested in *Information Remedies by OfCom*, against which information disclosure by TSPs can be tested, are important as it takes into consideration the limited knowledge of the consumers, while at the same time it suggests fixing the responsibility of providing clear, understandable and comparable information on TSPs.

But, Information Disclosure can go so far only. It should be made sure that an average consumer can interpret and understand the consequences of that information disclosure. It is only when such a scenario is achieved that we can expect the transparency measures to be effective unless it will simply become a tool to burden the telecom companies with providing information, while still putting the blame on TSPs when any consumer comes with a complaint, just because he did not make an informed choice despite the availability of correct information.

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

The present definition of Non-discrimination i.e., “Non-discrimination means that service providers shall not, in the matter of application of tariffs, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary”, can be further updated to add, “provided that the inter-class difference in the tariff for the same type of service should not exceed a fixed percentage. Further, following can be added: “provided that

services of same type should not discriminate between the type, make or technology of the carrier product through which those services are being utilized by the consumer”.

The fixed percentage of difference mentioned can be calculated for various services in concurrence with TSPs and should be updated when necessary. This is akin to putting a minimum price ceiling at a service which will make sure that certain players, due to their dominance or capital, do not put other players at a disadvantage.

Any either non-discriminatory or predatory pricing must not be such so as to cause damage to the competitive environment of the industry, where by resulting in monopolistic situation or dominant market share. The authority must avoid irrationality which brings in distortion in the market place, both by way of competition and health of industry. Such tariffs should have a time limit. They must not be allowed to continue in perpetuity.

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?

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

(Combined answer for 3 and 7)

The definition of non-discrimination, as answered in the earlier question, can be applied to the broader principle of promotional offers. It is important to understand that promotional offers are required to grab the attention of consumers, but if any promotional offer unreasonably tries to distort the market, regulator should consider that practice invalid.

The broad features of the promotional offers should be the ones that have already been addressed:

- a) It should not be anti-competitive or predatory in nature.
- b) It should be time barred (in the present case 90 days) as it allows flexibility to TSPs to attract consumer attention, while not being anti-business

Further to determine if one after the other promotional offers is being launched just to be relevant in market, the regulator should follow the basic principles of business. The fact that promotional offers (also applies to predatory pricing) are required to attract consumer attention and it is required to have a healthy competition should not ignore another important fact that the ultimate goal of the offers is to increase the revenues of the TSP. In the likelihood that the revenue is stagnant or still reducing, but the market share is invariably increasing, then the practice need to be scrutinized against anti-competition practices. In the case, this practice is being followed by a new entrant, for whom there is no referencing

revenue; the invariable increase in market share should be cross verified against the input cost for the services, which can be referred to as “**Minimum Survival Cost**”. If the input cost of the services provided for the period of consecutive promotional offers exceeds (the extent could be later quantified) the gained revenue for that period, then the case could be further scrutinized. This requirement will make sure that individuals/ companies with deep pockets should not crowd out other players.

This scrutiny should be done by a panel which should comprise representatives from the civil society, consumer awareness campaigners, TSPs and the regulator and the report whether the practice is competitive or not, then should be produced in a time-bound manner. The scrutiny could be initiated either at the behest of TRAI (suo-moto) or if TSPs having market share of more than 30% in the country, have complained against the practice. (30% seems adequate in the present Indian system as there are very limited market players and if the practice by any market is anti-competitive, it will consolidate other players, who otherwise, seemingly, would have only selfish business interests in mind.)

There must be distinction between introductory or promotional pricing and predatory pricing. Predatory pricing by very definition means destruction, aggression resulting in harm reversible or irreversible whereby making competition irrelevant or diminishing to die eventually. Similarly, any promotional campaigns should be for limited fixed duration to be able to create awareness of the novelty of a product or new entrant.

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

As also referred to in many documents related to the competition law, it is important to ask certain questions when defining what relevant markets should be and these are as follows:

- Which products and/or services are relevant for the investigation?
- What are the characteristics, functionalities and end-use of the products/services in question?
- Are there any substitutes to the products and/or services in question?
- How would customers react to a small but significant (e.g. 5-10%) and non-transitory price increase (SSNIP) of the product/service in question?
- Do consumers have to incur any costs when switching from product A to a substitute product B? Is there evidence of switching?
- Would another firm start providing the product or service in question in case of a SSNIP?
- How far would customers go to buy a substitute product in case of a SSNIP? Are conditions of competition homogenous across the country?

Based on the cases discussed in the CP and on the questions asked above, **it would be prudent to delineate market primarily into retail and wholesale first and then further segment them into voice, data services and combination of voice and data services, which can then be further delineated on the basis of technology (2G, 3G or 4G), and mode of transmission.**

It is important here to refer to the widely accepted judicial definition of relevant market advocated by Australian regulator. The definition mentioned in the CP is fairly open ended, which in Indian context, would require further mechanisms to deal with questions like who would decide what constitutes 'much of reaction' and on what basis.; but this definition, recognizes the fact that the relevant market are ever changing, but if something disturbs this required change abruptly, it needs to be corrected by other players and regulators to make sure that there is a healthy competition.

Now, if we were to define the relevant market on any basis which restricts it to the further launch of new products or technologies, it would create more open room for arbitrary regulations. Thus, it is important that instead of going into specifics to define the relevant market, we work on defining the relevant markets in two broad based categories and then further keep on adding the categories as and when necessary.

As the market players in Indian telecommunication sector are already limited presently and then there is a spate of M&A, these categories are broad enough to define relevant market. But as and when, competition increases, a section of geographic markets based on the telecom circles can then be further created.

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?

(Combined answer for 5 and 6)

The available definition of Service provider holding a share of at least 30% of the total activity in a licensed telecommunication service area can be used to define dominance (or Significant Market Power) in the relevant markets, **both by way of consumer numbers and revenues.** Now, based on the delineation of relevant market suggestion above, this market could be either retail or wholesale or further going down the lane, one or other type of services mentioned or in further cases, a certain access to the technological system. Undoubtedly then, in Indian context, this will make top telecommunication players dominant in these markets.

Thus, in that situation TRAI should follow the system of tariff filing as practiced in many jurisdictions across the world i.e. to increase the level of regulation on the dominant players to make sure that they are not distorting the market. This might create a hurdle, then, when it comes to M&A as market players might hesitate to merge their assets due to foreseen

regulatory net, but as the basics of competition suggests, more market players are better than a big market player, which, otherwise, will have the power to monopolise the market. The strategy mentioned above will push the companies to share their assets with other market players making the market more cooperative and self sustaining in nature, which is what the basic idea of regulatory body is.

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

Though the paper is first in a series of papers to create a broader framework for tariff assessment policies in India, we believe one of the things that can be of relevance from consumers' point of view, particularly, is the absence of a carry-forward system in the prepaid and postpaid services in India. For instance, in case the required bundled package is not used in the provided time duration of product, the services are considered void, but if the consumer overuses the limit of bundled packet, the company charges the consumer for that overuse.

This idea might have counter argument that consumer, with all his awareness chooses to take the package and in the likelihood if she does not use it, it should not be the responsibility of the TSPs to carry that package forward. But, as telecommunication sector in India has always experimented with new and innovative idea, we would like to suggest that the idea of carry forward may also be taken in consideration in concurrence with the TSPs.