

RJIL/TRAI/2017-18/116  
21<sup>th</sup> April 2017

To,

**Shri Kaushal Kishore,  
Advisor (F&EA-II),  
Telecom Regulatory Authority of India,  
Mahanagar Doorsanchar Bhawan,  
Jawaharlal Nehru Marg,  
New Delhi - 110002**

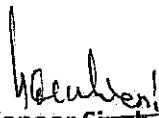
**Subject: Comments on TRAI's Consultation Paper on 'Regulatory Principles of Tariff Assessment' dated 17<sup>th</sup> February 2017.**

Dear Sir,

Please find attached comments of Reliance Jio Infocomm Limited on the issues raised in the Consultation Paper No. 3/2017 dated 17.02.2017 on 'Regulatory Principles of Tariff Assessment'.

Thanking You,

Yours sincerely,  
For Reliance Jio Infocomm Limited,

  
**Kapoor Singh Guliani**  
Authorised Signatory

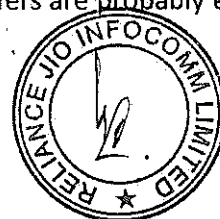


Encl.: As above.

**RELIANCE JIO INFOCOMM LTD'S COMMENTS ON TRAI'S CONSULTATION PAPER ON  
"REGULATORY PRINCIPLES OF TARIFF ASSESSMENT"  
(Consultation Paper No 3/2017 Dated 17<sup>th</sup> February, 2017)**

**General Comments:**

1. At the outset, we thank the Authority for issuing this consultation paper to discuss and finalize the principles of tariff assessment in this dynamically evolving sector witnessing a trend towards convergence of services, network and technologies and also to keep focus on the critical aspects of transparency in tariff orders and prevention of predatory and anti-competitive practices in telecommunication sector.
2. The Authority has rightly mentioned that it is incumbent on it to evolve a framework supportive of seamless delivery of converged services in a technology neutral environment. We agree with the Authority's assessment that as the networks are moving towards converged service offerings there needs to be a review of the principles governing the tariff assessment and incorporate relevant revision which befits the current environment.
3. We submit that the foremost policy governing tariffs in India is that of "Forbearance" and the principle of light touch regulations. As acknowledged by the Authority and other independent experts, the said policy and non-interventionist approach adopted by the Authority paved the way for enormous growth of telecommunication services in India during the last decade. The policy has been instrumental for numerous customer friendly tariff innovations like per second billing, flat tariffs and charging only for one of voice or data service. Forbearance needs to remain the bedrock for any evolution of future tariff principles in the era of converged networks.
4. We submit that the Authority may continue with the current principles of forbearance in tariffs. In case, due to any reason and post a comprehensive review, the Authority takes a view for revision in the tariff assessment principles, then it is necessary that the new principles are also based on the philosophy that has served the sector adroitly till date.
5. We agree with the Authority's concerns on the cardinal necessity of transparency in tariff offerings and the need for transparent communication to end users. The Authority has been cognizant of the need of transparent, lucid and certitude communication regarding the offered tariff plans to the consumers and has designed many measures to this effect including tariff publications, caps on number of tariff plans, measures to enhance transparency by means of SMS and USSD communication to the subscribers about tariff plan and charging details thereof. However, the question remains as to what more needs to be done to address and remove the large number of consumer complaints on tariff offers still being received by the Authority.
6. The international precedents of information remedies followed by various international regulators to ensure transparency in tariff offers are probably effective



in their respective markets, however what remains unexamined is whether these will address the concerns of Indian subscribers. We submit that the Authority has already prescribed tariff publication formats that cover all plausible items and heads of charging and the service providers are required to display these formats on their websites as well as publish the same in leading newspapers on a periodic basis. Further, the service providers also provide all tariff details on their mobile apps / self-care applications. Therefore mandating another set of information disclosure on the website or in newspapers may not be the ideal solution to address the complaints. **However a problem that remains is that some of the operators give personalized offers to some customers and do not publish these publically in blatant violation of extant regulations. The Authority must take strict action against such operators.**

7. Consumer education and better understanding of self-care applications offered by service providers must also be encouraged. The service providers may be required to provide details of each chargeable event on the application on demand by a subscriber. The Authority should take measures to popularize the adoption of self-care applications by service providers and consumers.
8. TRAI, in the alternate, or in conjunction with the measure proposed above, can take upon itself to publish the major plans offered by service providers on its website for better understanding of the subscribers. The Authority may also provide for a compare tool for the convenience of subscribers, to help consumers compare between different tariff plans offered by various telecom operators in a service area.
9. In the present consultation paper, while discussing the convergence of services and prevalence of bundled offers, an issue has also been discussed regarding assigning value to each component of a bundled offer and segment the bundled offers into different components of the bundled services viz. voice, data, SMS, etc. It has also been noted in the consultation paper that it is not easy to apportion the price of each component of the tariff offers. RJIL submits that assigning value to each component of a bundled offer will defeat the whole premise of the bundled offer as all bundled offers would basically work on the premise of non-assignability of monetary value to the various components of the offer. And the basic ideology for genesis of such bundled offers are basically in the nature of 'get more pay less', such scrutiny and valuation at component level will be detrimental for consumers and would avert telecom operators to incept such offers.
10. On the subject of promotional offer, we submit that the intrinsic nature of a promotional offer is to incentivize the consumers for adoption of new technology and service, provide more benefits for a pre-defined, transparently communicated duration of time to attract new consumers and/or to retain the existing consumers. The promotional offers also provide a leverage to the service providers to enter into market with deeply entrenched players. As already recorded and noted in the consultation paper, the issue of 'Promotional Offers' was consulted and deliberated by the Authority from time to time. After deliberations in detail on promotional offers, in 48<sup>th</sup> Amendment to TTO, the authority noted the general benefits for subscribers and therefore decided not to impose any new regulatory restrictions. It is submitted



that the promotional offers are generally beneficial to consumers and these should be persisted with unhindered.

11. One of the issues raised in the consultation paper is that the promotional offers is in vogue since last 15 years but, unlike regular tariff plans, its features are not that well defined. In this context, we submit that this is more an outcome of deliberate decision by the Authority than an oversight. After much thought and background work, the Authority vide its direction dated September 1, 2008 stated that all access providers, while publishing their promotional offers to public shall specify (a) the eligibility criteria of such promotional offer; and (b) the opening and closing date of such promotional offer (within the existing limits of 90 days). The promotional offers are beneficial for consumers and strictly defining the features of promotional offers will take away the flexibility of service providers to incentivize consumers in an innovative way. Hence we reckon that the regulatory provisions governing the promotional offers are sufficient as on date.
12. The consultation paper also raises issues of anti-competitive behaviour, dominance in market and predatory behaviour in telecom. With respect to anti-competitive behaviour, it is submitted that recently, we witnessed blatant cartelization and misuse of the dominant position with regard to interconnection and augmentation of POIs in the sector, where the prevalent incumbents created hurdles for the new entrant through various anti-competitive behaviour. Therefore, we endorse the view that in the changing ecosystem there is a need to undertake a comprehensive review of the potential anti-competitive practices due to cartelization that could harm the sector and its consumers; set out clearly defined standards of competitive conduct; and explore appropriate regulatory tools to address such concerns.
13. While the Authority had deliberated on predation earlier also and mentioned the same in many tariff orders, however there was no occasion for the Authority to delve deeper on these aspects more. We are of the view that while moving towards newer technology, convergence of network and services, large scale adoption of OTT services which are being offered free of cost, there is no need to get into the issue of predatory pricing in telecom sector in the current scenario. Any such move will inhibit the licensed entities to compete effectively in the evolving application driven market.
14. We submit that the relevant market definition in telecommunications needs to be drawn from the categorization as per the prevailing licensing framework, and/or historically defined marked segmentations. Narrow division of the markets will not be suitable in a dynamic sector with converging service offerings. Therefore broad market segmentations will be more suitable in Indian context as already defined by the Government in the Unified Licence i.e. Access, NLD and ILD services. Access services should include all wireline and wireless services that serve the end customer. Benefits of one technology or service should be allowed to be used for providing other services/ technologies. Artificial segregation of markets will only result in inefficiency for operators, customers and the sector. Most of the components are common for all services and therefore there should be only one market.



15. Conclusion:

1. The Authority should facilitate transparency in tariff offerings by publishing the same on its website and also providing a compare tool to compare different tariff plans across various telecom operators.
2. Regulatory principles for tariff assessment are well defined. There is no need and urgency to revise the same in the current context of converged service offerings.
3. There should not be any additional restrictions on promotional offers, from the existing regime.
4. Bundled offers and promotional offers are for the greater benefit of consumers. And there should be support and promotion for such innovations which are beneficial to end users.
5. The concept of competition and dominant powers may be aligned with the actual experiences in telecom sector and may be derived from the known experiences in telecom sector.
6. The relevant market for telecom in India is Access, NLD and ILD markets, as prescribed in the licence. There is no need of further sub-dividing the markets.
7. While moving towards newer technologies, convergence of networks and services, large scale adoption of OTT services which are being offered free of cost, there is no need to get into the issue of predatory pricing in the telecom sector.

Issue wise response:

Q1: 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.

Response:

1. RJIL endorses the view that more transparency is required for consumers to understand the tariff offerings and to ensure that the concerns of the subscribers are adequately addressed. We understand that the Authority has a view that it is sometimes difficult for consumers to find or understand the available tariff related information to make informed decisions to select the desired service provider and zero in to the best tariff packages that suit their requirements. It is very important



that consumers have complete information disclosure relating to specific tariff plans and quality of service which is easy to understand, comprehensible and can be compared so as to make informed choice.

2. The confusion for consumers is increased by the surreptitious approach of certain service providers, who game the system of tariff reporting to take undue advantage of customers. These service providers offer special tariff plans to selective customers, many offers are made under the garb of usage and retention. There are special plans made for MNP customers. The modus operandi remains same, the offers are never filed with the TRAI and made on one-to-one basis. Further, in complete violation of regulatory framework these offers are communicated to consumers through 10 digit mobile numbers. Such clandestine activities lead to more confusion in the subscribers mind leading to complaints to the Authority. **All service providers should be mandated to transparently communicate all such offers to the subscribers and the Authority.**
3. We submit that consumer education and accessibility of the tariff information would raise the levels of transparency and minimize consumer complaints..
4. The frequent difficulty experienced by consumers is perhaps in comparing tariffs offered by different service providers. The market place is cluttered with all sorts of tariff Plans, STVs, Top up vouchers and Combo Voucher offering from various telecom operators, making the selection of appropriate Plan, STVs and CVs an enormous task for consumers. Consequently, more often than not, the consumers are required to depend on the plans suggested by retailers as the best deal.
5. This conundrum of numerous tariff plans and the best deal for an individual customer can be best addressed by publishing the tariff details on the TRAI website. The format prescribed by the Authority for pre-paid services should be flexible and also have provision for monthly usage charge, if any, for transparently communicating monthly commitment to the consumers. The Authority can also think of offering a compare tool, where a subscriber can see the plans offered by all service providers for same or similar MRP, in a particular service area. The Authority has already prepared a web based and mobile app based tool to provide information to consumers on quality of service. It may consider to prepare an interactive web-based price tool or price calculator which can perform calculations based on preferred consumption volumes, circle of operation and rank subscription packages accordingly.
6. One additional measure can be the promotion of the service provider's self-care applications. The Authority can mandate that the self-care application should be made available for all chargeable events on demand to address the concerns of charging.
7. It may be noted that the Telecom Consumer's Protection Regulation 2012 specifies various types of vouchers that can be provided by a TSP to pre-paid subscribers. While transparency to consumers can be increased but the unnecessary restrictions



imposed through the regulations should be removed in view of the emerging converged services.

**Q2: Whether current definition relating to “non-discrimination” is adequate? If no, then please suggest additional measures/ features to ensure “non-discrimination”.**

**Response:**

1. RJIL is of the view that the current definition relating to “non-discrimination” is adequate. However certain operators have taken advantage of the way the regulation has been implemented, while discriminating between different subscribers and offering them differential tariff plans.
2. At present, the number of tariff plans (Pre-Paid + Post-Paid) have been limited to 25, however certain service providers are offering special tariff plans to selective customers on one-to-one basis (e.g. for Mobile Number Portability) and such offers are never filed with the Authority. Such customer specific offers are clearly discriminatory. All service providers should be mandated that a tariff plan offered even to a single subscriber must be reported to the Authority and to all subscribers through the public disclosure methods and should be counted in the specified 25 number of tariff plans.

**Q3: 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?**

**Response**

**A. Promotional Tariffs**

1. Promotional offers play an important role in promoting innovation and competition because they are an effective sales promotion technique, wherein a firm incentivizes consumers by offering an innovative scheme or lower prices than the prevailing tariffs in the market, for a limited and transparently communicated period of time. The purpose of a promotion can be wide ranging, including but not limited to introducing products or services or service plans, retain customer base, increase sales, , creation of brand equity etc.
2. Accordingly, in view of the immense benefits accrued to subscribers during the course of promotional offers, RJIL submits the operators should be given latitude in determining the nature / content of promotional offers and that such offers warrant minimal intervention from the Authority. We endorse the inclusive definition of promotional offers contained in the consultation paper on limiting the number of tariff plans offered by the access providers (March 8, 2004) to inter-alia include, tariff



plans offerings rebate or waiver of rentals, free calls/ data/ SMSs, reduced tariffs for voice/ data/ SMSs, internet or offer of gifts or other benefits in terms of discount coupons and eligibility to win prizes for a limited period of time, etc.

3. The Authority's letter dated 19 June 2002 used the expression "promotional offer" for the first time in relation to tariff plans. In the subsequent Direction issued on 1 September 2008, ("2008 Directions"), the Authority provided clarity with respect to do's and don'ts for promotional offers. Vide its 2008 Directions, the Authority said that every promotional offer should clearly mention eligibility criteria, the start and end dates and that offer be limited to 90 days. Considering that promotional schemes are in general beneficial to the consumers, no regulatory restrictions have been placed on them apart from those mentioned above. RJIL does not see a case for revision in the Authority's position on promotional offers, which is consistent with the approach taken by many regulators in other countries..

**B. Promotional Offers and New Entrant**

1. Any new entrant entering the highly competitive telecom market has to attract new subscribers to try its services. Further, new service providers face various entry barriers. For a new entrant to be successful in a market, it needs to bring in a distinction based on innovation, that can range from a new technology, a beneficial way of charging, better customer service and so on. However, the innovation and distinction will be lost in case the service provider is not able to attract the consumers to try its services. Promotional offers play an important role by attracting consumers to sample a new product or offering. As the term itself suggests these are promotional in nature and regulatory norms should apply *mutatis mutandis* to such promotional offers.
2. The regulatory authorities allow new entrant to offer freebies to win market share and do not consider promotional pricing of products and services as predatory even at zero level. Similarly new products are also allowed to be given as free samples or free services so that firm can establish or develop the market for the new product. It will be very difficult for any operator to make an entry in the market unless promotions are allowed to be used. This is true especially if the market is saturated.
3. For effective competition also, it is necessary that a new player must be allowed to offer introductory prices so that it is able to attract consumers to itself and compete effectively with the entrenched players. Any prohibition/ restrictions on the introduction of promotional offers will have a chilling effect on new entrants in the mobile telephony and other markets, and deprive consumers of the benefit of free and fair competition. A prohibition also would be contrary to the pro-competitive and pro-innovation approaches successfully achieved in many other countries.

**C. Promotional Offers and Development of Nascent Technology**





1. The mobile service market in India has been dominated by voice services, and data services, despite much statements for public consumption, remained largely unexplored and underdeveloped. Any new entrant in the hyper-competitive telecom market would logically enter without the burden of legacy and would want to offer the best and latest technology to create a value proposition in data services which is fastest growing service in the bouquet of Mobile Services. In the nascent stage of data adoption, free offering and free samplings is a widely accepted strategy so that people start adopting new technology. The expansion of nascent LTE and VoLTE technologies is not possible unless subscribers are offered promotional benefits to sample and test the service.
2. India is an open market of unbundled handsets. Thus, upgrading to newer technologies may require significant investment in handset supporting new technologies which is a big barrier. In moving to newer technologies, promotions may bring financial relief to customers and may help in faster migration to most efficient and latest technologies. Therefore promotional tariffs are essential for development and expansion of a nascent technology.

**D. Promotional Offers – Representation of Competitive Market**

1. The promotional offers can contribute to a competitive market. The absence of promotional offers/ discounts or nominal presence of such promotions is representation of non-competitive market where well established industry players are comfortably entrenched with their respective market share. The Authority has always been supportive of promotional offers and these are introduced in the market from time to time. Under the prevailing tariff forbearance regime, it is imperative that promotional offers should be allowed with minimum number of regulations so that market is able to operate freely and the best gets offered to end consumers.
2. As discussed above, promotional offers are in fact a response to the market conditions and promotional offers should be kept unfettered. TSPs should have complete freedom to design and package such offerings and only subject to reasonable time limitations. The number of promotional campaigns to be run can only be decided by an operator based on its own assessment of market dynamics, competitive forces and financial capability. No regulation should restrict free play of market forces by restricting the number of promotion campaigns.
3. It is also submitted that laying down a framework restricting the number of promotional offers an operator can provide in a particular calendar year or placing restriction on concurrent or consecutive promotional offers would not be consistent with the fundamental and underlying principles governing the decision making of this Authority, as it would run counter to consumer benefit and also discourage competition in the market. It also is not clear what purpose such a restriction would serve, other than to inhibit challenges to entrenched providers.



4. Therefore, it is submitted that promotional offers play a vital role in helping new entrants gain a foothold in the market and overcome the entry barriers in the industry, while at the same time being extremely beneficial to the subscribers.

In view of the above RJIL suggests that:

- (i) Tariff plan offerings, rebate or waiver of rentals/ monthly charge/ one time charge, free calls/ data/ SMSs, reduced tariffs for voice/ data/ SMSs, or offer of other benefits like gifts in terms of discount coupons, eligibility to win prizes etc. for a well-defined and transparently communicated period of time may be termed as promotional offers.
- (ii) Each promotional tariff within the existing provisions can be allowed for a period of 90 days without any restriction on the benefits extended to such promotional tariff.
- (iii) Complete freedom should be given to operators in matter of designing features of promotional offers and on number of promotional campaigns in a calendar year, one after another and/ or concurrently.

**Q4: What should be the different relevant markets – relevant product market & relevant geographic market in telecom services? Please support your answer with justification.**

**Response**

1. In an ever evolving technology world, market definition should be linked to service authorized under unified license rather than narrowly defined by nature or type of technology used.
2. Significant Market Power (SMP) was defined by TRAI in the "The Telecommunication Interconnection (Reference Interconnect Offer)" Regulation, dated 12th July 2002", as follows:

*"3.3 A Service Provider shall be deemed to have significant market power if it holds a share of 30% of total activity in a licensed telecommunication service area. These Services are categorized as Basic Service, Cellular Mobile Service, National Long Distance Service and International Long Distance Service."*

In the said regulations, Activity has been defined as follows:

*"Activity" would mean and include any one or more of the following:*

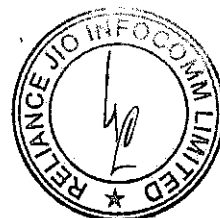
- (a) Subscriber base
- (b) Turnover
- (c) Switching Capacity
- (d) Volume of Traffic



3. Same definition has been given in Regulations 2 (xxiii) of IUC Regulations dated 29.10.2003:

*(xxiii) "Significant Market Power (SMP)" means "A Service Provider holding a share of at least 30% of total activity in a licensed telecommunication service area. These Services are categorized as Basic Service, Cellular Mobile Service, National Long Distance Service and International Long Distance Service." Where "Activity" would mean and include any one or more of the following: (a) Subscriber Base (b) Turnover (c) Switching Capacity (d) Volume of Traffic.*

4. As per the above Regulations, relevant markets in the telecom sector are Basic Service, Cellular Mobile Service, National Long Distance Service and International Long Distance Service.
5. In 2005, the licensing framework which was earlier separate for Basic Service and Cellular Mobile Service, was unified and since then unified access service license is required for both types of access services. The prevailing unified licensing regime also recognises access service as a separate segment.
6. Further, TRAI in its recommendations dated 11.5.2010 on 'Spectrum Management and Licensing Framework' has observed that relevant market comprises of all those products or services that are sufficiently interchangeable or substitutable not only in terms of consumer preference, usage and prices but also in terms of conditions of competition and/ or the structure of supply and demand of the market in question. It went on to recommend that the relevant market for determining market share would not be classified separately as 'Wireline' and 'Wireless' but defined as the entire access market.
7. Therefore, RJIL is of the view that the relevant market should be the Access service, NLD Service and ILD Service, as defined by the Government in the Unified Licence and also opined by the Authority in the above referred recommendations dated 11.05.2010.
8. Internationally also Telecom Service is generally considered as a single market and not further defined on the basis of various products, quality of services or technologies. For example, the European Commission has defined one single market which includes all forms of underlying technologies, i.e. 2G, 3G and 4G LTE. In T-Mobile Austria/ Tele-ring case, a single market was conserved for both 2G and 3G networks. The European Commission in the case of T-Mobile/ Orange merger also observed that while 3G networks did provide higher speed which enabled delivery of data heavy services (such as video calling, multimedia services), a network operator can provide to its customer access to voice communication and text messaging services indifferently on a 2G or a 3G network.
9. The Authority has sought comments on further delineation of Telecom Mobile market to decide dominance on the basis of products like voice & data, quality of service like narrowband & broadband and on the basis of technologies. We



respectfully submit that in the present era of unified licensing regime and national focus on convergence of networks and services, there is no requirement to further delineate the market on the basis of products, quality of service or technologies. As submitted above, RJIL does not support further delineation of the market and in this respect further submissions are given below:

**A. Voice and Data Services are not Relevant Product Markets**

**I. Convergence of Technology**

1. Until recently, voice, and data were delivered to subscribers over dedicated, single-purpose networks. These legacy networks were built around specific applications like voice and data but now with the advent of all-IP based networks, everything has been reduced to bytes. An IP based converged network brings all forms of voice and data communications together which travel through a single unified network.
2. The new 4G LTE networks with Voice over LTE (VoLTE) capability do not have cost-baggage of predominantly voice-only legacy networks. These networks offer significant operational and technological efficiencies, whereby voice becomes a mere incremental service on the all-IP data network offered through VoLTE enabling at virtual negligent cost.

As voice and data networks are converging and therefore there is no requirement of distinct Voice and Data markets.

**II. Bundled Sale of Voice and Data makes it a Single Product**

1. Bundling of voice and data services in a single tariff plan and selling it as a composite product is a ubiquitous commercial approach in India as well as across all telecom markets in the world. It is expected that with exponential growth of smartphones, the demand for bundled voice and data offers would continue to grow, not linearly but exponentially.
2. The Internet or data service is no longer a 'nice-to-have', rather it is a necessary utility. Much like water and electricity, we now depend on internet in some way or the other. Therefore, most consumers especially consumers with smartphones buy voice and data and generally in bundles. All service providers have started offering bundles of voice and data services for an attractive fixed amount. A bundled voice and data products helps businesses and individual customers to save costs.

As all TSPs are offering bundled offers of voice and data and the demand for these products is increasing exponentially, these cannot be considered as separate markets.

**III. Supply Substitution between Voice and Data Services**



1. Innumerable mobile applications are now available in the industry which provide voice services, that ride over data networks. The best known examples of these mobile app based voice services are Skype, Viber, WhatsApp, Google Talk, etc. Today, more and more users can directly access these applications online from any place using public internet, at any time, using the exiting data connection. Thus data is now emerging as supply substitute for voice service and therefore Data and voice are a single Mobile market.

In view of the above RJIL suggests that Mobile Services market should not be delineated into Voice and Data Service.

**B. Narrowband and Broadband Services are not Separate Relevant Markets**

1. In wireless networks, there is a dynamic relation between number of users getting service by a base station at a single point of time and service level. This is not under the control of the operator, nor is it under the control of any user. Therefore, the load on a BTS can vary within a very short span of time, resulting in variation on QoS experience into broadband and narrowband, depending on number of users.
2. Further, TSPs offer unlimited data plans which have largely given way to plans with bandwidth caps where subscribers lose network speed after exceeding the cap. Usage caps and usage-based billing encourages users to limit their use of network bandwidth or defer usage. This is done to balance the experience of various users. Thus broadband and narrow band products are concurrently offered to consumers. This can also be seen as demand side substitutability of narrowband and broadband services which makes it one single market.

In view of the above RJIL suggests that market segmentation on the basis of narrow band and broadband is not required. Such segment will only prohibit proliferation of broadband and digital services in the country.

**C. Telecom Market cannot be delineated on the basis of Technology**

1. The present licensing and regulatory regime is technological neutral. There are no restrictions on technology to be employed for providing services within the scope of the service license, if spectrum is acquired through auction. Options are also available to liberalise the administratively allocated technology specific spectrum. The liberalized spectrum can also be combined with spectrum acquired through auction, if required by technology. Successful bidder in auction is required to provide details of technology proposed to be deployed for operation of its services using spectrum block assigned through the auction. Therefore, the spectrum regime in India is also technology neutral regime and licensees are free to deploy any technology, such as GSM, CDMA, WCDMA, and LTE, in any of the spectrum bands to provide any service as permitted under the license. Thus the licensing, regulatory and spectrum regime for all technologies is same and there is no regulatory entry barrier for any service provider to offer services using any technology.



2. TSPs have deployed various technologies like EVDO, 3G, 3.5G and 4G technologies to provide high speed data services. Mobile Broadband is a generic term that describes high speed internet connectivity, but the underlying technology and spectrum bands on which service is delivered may differ. A subscriber may be availing mobile broadband services using 3G and 4G technologies interchangeably depending on the coverage. Thus it is not possible to classify subscribers or relevant market on the basis of technology.
3. While service providers may use different technologies, the service offerings including voice, video, messaging, and data services are essentially the same. SIM cards issued by each of the TSPs provide subscribers with both voice calling capability as well as data services. Even during a particular session, the technology may switch from 4G to 3G or vice versa. Moreover, services offered by service providers are portable and it is easy for a consumer to switch from one provider to another.
4. LTE, is capable of delivering high speed data service compared to other available mobile technologies but the services offered under various technologies remain the same. Consumers do not perceive data under 3G or 4G technologies as a separate service, the only difference being the quality of service. Due to demand substitution of products/ services provided under various technologies, 4G cannot be considered as a separate relevant market.
5. Technologies will keep on evolving at fast pace. Regulatory policies on such important matters should remain relevant over long horizon and it would therefore be short-sighted for any regulator to define markets on the basis of technology.
6. It is further submitted that NTP'2012 envisaged to review and harmonise the legal, regulatory and licensing framework in a time bound manner to **enable seamless delivery of converged services** in a technology and service neutral environment. According to NTP'2012, convergence would cover:

*3.1.1. Convergence of services i.e. convergence of voice, data, video, Internet telephony (VoIP), value added services and broadcasting services.*

*3.1.2. Convergence of networks i.e. convergence of access network, carriage network (NLD/ILD) and broadcast network.*

*3.1.3. Convergence of devices i.e. telephone, Personal Computer, Television, Radio, set top boxes and other connected devices.*

**In view of the above RJIL suggests that market segmentation on the basis of technology is not required in the present context.**

**D. Geographical segmentation of Market**

Market analysis can be conducted separately for every individual telecom circle as number of operators, amount of spectrum held by different operators, market share, etc. vary across circles. However, over a period of time, as services move towards "One Nation" concept, even the geographical segmentation of markets may lose



relevance. Customers from one geography can freely move to another geography and most service providers are now moving away from roaming related charges to facilitate such movement.

In view of the above, we suggest that against a background of these product markets:

- (i) Relevant market should be Access service, NLD Service and ILD Service.
- (ii) There is no requirement to further delineate the market on the basis of products like voice and data and technologies like 2G, 3G or 4G.

That the geographic markets should be defined as follows:

- (iii) Each service area could be considered as a separate geographic market for Access Services, however even this segmentation should be done away with over a period of time.

**Q5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.**

&

**Q6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?**

**Response**

1. As discussed in detail in our response to question 4, we submit that the Authority has already defined the concepts of SMP and relevant market in various regulations and deliberations.
2. In view of that, RJIL submits that criteria for determination of dominance has already been defined by TRAI in the aforementioned regulations and the same criteria is comprehensive and relevant in today's context. However, issue of joint dominance emerging out of informal cartelization has not been addressed by the Authority in these regulations, which has been exploited recently by some incumbent operators to stifle competition and the Authority needs to address this issue.
3. RJIL further submits that dominance of a firm by itself is not entirely undesirable for consumers as such firms create lots of jobs, innovate and exploit scale economies. However, abuse of dominance by a firm or abuse of joint dominance of several firms within the relevant market affects competition which is required to be monitored and addressed.
4. There are several factors that need to be considered in the context of dominance. The Competition Commission of India has also prescribed certain principles on the



basis of which dominance is considered in a market, which the Authority may consider.

5. In view of the above RJIL suggests that the existing provisions of the TRAI regulations sufficiently defines dominance and criteria for determination of dominance, therefore, there is no need to redefine such criteria. However, there is an urgent need to define and address abuse of joint dominance emerging out of informal cartelization within the market.

**Q7: What methods/ processes should be applied by the Regulator to assess predatory pricing by a service provider in the relevant market?**

**Response**

1. While moving towards newer technology, convergence of network and services, large scale adoption of OTT services which are being offered free of cost, there is no need to get into the issue of predatory pricing in telecom sector unless there is a clear evidence of anti-competitive behaviour. Any move to start examining predatory pricing in the sector without establishing anti-competitive behaviour will inhibit the licensed entities to compete effectively in the evolving application driven market.
2. Be that as it may, with respect to predatory pricing, it is submitted that the TRAI Act, the Telecom Tariff Order, 1999 ("TTO") or other regulations do not define the meaning of 'predatory pricing'. However, the Authority in its consultation Paper dated 16.1.2016 on "Tariff plans with life time validity" has observed the following:

(i) *paragraph 3.7: - "Predatory pricing is the practice of providing services that are low enough to drive competitors out of the market, so as to monopolize the market. Predatory pricing is a difficult type of conduct to prove in the telecommunications industry. In general terms, predatory pricing is a situation where a dominant firm [with Significant Market Power] charges low prices over a long enough period of time so as to drive a competitor out from the market or deter others from entering and then raises prices to recoup its losses."*

(ii) The Authority has further stated "to prove instances of predatory pricing, number of elements or tests must be satisfied:

- A. *The prices at issue must be unreasonably low;*
- B. *They must be shown to be 'designed to' substantially lessening competition or eliminating a competitor;*
- C. *There must be reasonable expectation that the predator would be able to recoup its losses after its predation ends (eg: after competitors are driven out of the market);*
- D. *From an enforcement stand point, all elements must be met and no case can proceed without each element be satisfied."*





(iii) The paper further goes on to say that a number of other factors including the existence of excess capacity and direct or indirect evidence of intent to use pricing for an anti-competitive purpose need to be established.

3. Therefore, as per the Authority, below cost or zero price alone is not sufficient to prove predatory pricing. It is prerequisite to first establish the predatory intent of the dominant operator. Under cutting a rival's price in order to target its business is an indicator of competitive process and must be permitted. Price reduction are tangible benefit for consumers and are generally a consequence of legitimate competitive behaviour.
4. Any entity which is a new entrant or does not enjoy a position of strength in the relevant market is not a dominant player. In the absence of dominance of that entity in the relevant market, the question of abuse of dominant position by way of predatory pricing does not arise. The price or promotional offers in such cases including below cost or free sampling offers are indicator of competitive processes and cannot be termed predatory.
5. Considering prevailing laws in India, position in international jurisdictions with regard to predatory pricing, the Authority's views on predatory pricing and fast changing technologies in the sector, we suggest that:
  - (i) While moving towards newer technology, convergence of network and services, large scale adoption of OTT services which are being offered free of cost, there is no need to get into the issue of predatory pricing in telecom sector in the current scenario unless a clear case of anti-competitive behaviour is established.
  - (ii) Assessment of dominant position/ significant market power (SMP) in the relevant market is pre-requisite to entertain any complaint of predatory pricing.
  - (iii) Pricing below cost is not merely sufficient to establish predatory pricing. The same must be coupled with an intent to eliminate competitors from the relevant market through this act of pricing over a sufficiently long period of time, with the ability to then recoup the losses through significantly higher pricing later.
  - (iv) Predation can be determined only when these conditions are satisfied: dominant operator, below cost, long enough period of time, driving out competition, ability to recoup losses later. Unless these are satisfied, no decision on predation can be taken even for a dominant operator. In the era of forbearance, the Authority must not form an opinion only on gut feeling of predation.



**Q8: Any other issue relevant to the subject discussed in the Consultation Paper may be highlighted.**

**Response**

1. At present, the number of tariff plans (Pre-Paid + Post-Paid) have been limited to 25, however certain service providers are offering special tariff plans to selective customers on one-to-one basis (e.g. for Mobile Number Portability) and such offers are never filed with the Authority. All service providers should be mandated to transparently communicate all such offers to the subscribers and the Authority. A tariff plan offered even to a single consumer needs to be reported to the Authority and should be counted in the specified 25 numbers of tariff plans. Strict action must also be taken against operators that are making these segmented/ specialised offers without reporting these to the Authority or making them available to all subscribers as these are clearly in breach of the tariff regulations.

