

**Reliance Communications Ltd. (RCOM) Response to Consultation Paper on
Regulatory Principles of Tariff Assessment**

1. Reliance Communications Ltd. (RCOM) is thankful to the Authority for floating the consultation paper on various regulatory principles for the assessment of Tariffs and welcomes the opportunity given to respond on these issues.
2. At the outset, RCOM is committed to provide its consumers clear explanations of its tariff plans along with proactive and clear communication about the benefits and any limitation, restrictions or conditions, if any, associated with these tariff plans. Our tariff plans are always structured in such a manner that it provides clear understanding of the tariffs to the consumers and rules out any misrepresentation on part of RCOM. We rarely have come across any instance where the consumers have complained about the intricacy of the plans which they were unable to understand.
3. RCOM also recognizes the fact that as a service provider we must tailor our products/services to the different needs and expectations of the consumers while establishing transparency on the conditions of applicability, usage and pricing. We also share the objective of the Authority that the consumers should be able to make informed choices so as to enable them to get the value for their money as per their requirements.

Executive Summary

- A. **The existing regulations / orders / directions are adequate to ensure transparency in the tariff offerings and no additional measures are required for the same.**
- B. **Review of TTO (43rd Amendment) is imminently called for and it is suggested that the mandatory protection period of 6 months before effecting revision of tariff, should be reduced to 3 months instead.**
- C. **The TSPs should be allowed to create class of consumers based on the territory / sectors within a LSA as well.**
- D. **Tariff offerings of shorter durations (7 to 30 days) should be kept out of the purview of the reporting requirements and TSPs should be permitted to submit only an undertaking for their compliance to the provisions of the tariff regulations i.e. IUC compliant, non-arbitrary, non-discriminatory and non-predatory.**
- E. **The current definition of 'non-discrimination' is adequate to ensure that the TSPs' tariff offering does not discriminate amongst the same class of consumers hence, no additional regulation is required for the same.**
- F. **Only those tariff offerings which are available for the consumers or a particular class of consumers with clearly defined eligibility criteria, for a fixed period of 90 continuous days from the date of launch of the offer should be construed as a promotional offer.**
- G. **TRAI's letter dated 19th June, 2002 and direction dated 1st September, 2008 clearly define the promotional offers and the same are sufficient to define the concept and period of offering any promotional tariffs.**

- H. In addition to the 3 basic principles of telecom tariffs, viz, IUC compliant, non-discriminatory and non-predatory, an additional condition should also be added wherein there should be a minimum of 90 days gap between any two promotional offers. However, the TSPs should be allowed to offer simultaneous promotional offers for different category of services i.e. voice, messaging and data.
- I. The relevant geographic market for the telecom sector should be defined as the LSA itself.
- J. The relevant product market based on different technologies has become obsolete for the telecom sector and should therefore be discarded.
- K. The relevant product market, for the telecom sector, is required to be defined based on four different service categories, viz, Voice, SMS, Wireless data services and Wireline data services and the same should be defined separately for all 22 relevant geographic markets (LSA).
- L. If a TSP has acquired significant strength in the relevant geographic and product market / is able to leverage its monetary strength to influence the acquisition of subscribers in the relevant geographic and product market, then that TSP (Incumbent or a new entrant) should be treated as a dominant player in that market.
- M. The definition of SMP, as per TRAI's IUC regulations in the interconnection framework, is of significant relevance in determining the SMP of a TSP in a relevant geographic and (or) product market and hence should be adopted for the same.
- N. The assessment of SMP and (or) Dominant Position status of a TSP should be done based on both the criteria of relevant geographic market and relevant product market as well as the seven criteria listed by the CCI.
- O. If any TSP leverages its SMP and (or) dominant position in a relevant market to price its services below the cost of provisioning of such services, then such tariffs / services should be considered as 'Predatory Pricing' by the Regulator.
- P. TRAI should examine the cost an operator bears on its own network to provide the voice and data services (per min and per MB cost respectively) and examine the tariffs of the operators in view of such costing to decide whether the tariff is compliant to the principle of non-predatory or not.
- Q. To avoid inadvertent setting of a floor price for off-net calling, due to the MTC, we suggest that TRAI should adopt the BAK regime for the termination charges.

Our comments on the issues raised in the consultation paper are given below

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.

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

Our Response

1. Existing regulations, orders and directions adequately address the issue of transparency with respect to different tariff offerings of the service provider. These regulations, not only cover the manner of information communicated to the service providers, but also the activation of any plan/pack with explicit consent of the subscribers. These regulations have a broad spectrum of checks and balances to ensure non-transparent offerings.

Transparency in Tariff Offers

2. We at Rcom believe that, transparency in tariff means that the end user can easily make informed decisions and compare services of various TSPs from the information made available by the TSPs. This information should not be deceptive, complex and difficult to interpret. There are mainly three factors which are required to be addressed to ensure the transparency in the offerings of the TSPs:
 - a. False and / or misleading information through the advertisements.
 - b. Cramming i.e. unauthorized or deceptive charges.
 - c. Mystifying i.e. confusing the end user with too many offerings affecting the informed choice.
3. Driven by stiff competition, the Telecom Industry, ensures that the end users get the information about the tariffs in a transparent manner so that they doesn't feel cheated as it will lead to churn of such users to other TSP. Apart from complying with the different provisions of the TRAI regulations / orders / directions, TSPs are also facilitating the awareness about the tariff plans, to their consumers, through various apps, their respective websites and call centres in order to ensure that the consumers take an informed decision before subscribing to the services of the TSP. Regular internal audits of the TSPs and the M&B audit done by the TRAI accredited auditors also helps in ensuring the transparency of the tariff offerings and their advertisements by the TSPs.
4. Therefore, **it is submitted that TRAI has adequately addressed all the 3 factors, listed above, through its various regulations / orders / directions to ensure that the tariff offerings of the TSPs are transparent and unambiguous.**

Requirement of Forbearance

5. The Telecom Tariff Order (43rd Amendment) provide protection to the customer from any tariff increase before six months from the date of its enrollment or for the validity period of the tariff whichever is later, even if the input costs of the product increase for the TSP. Tariffs are offered to the customers on the basis of existing costs and the costs projected over a period of time. A time period of six months to one year is a very long

time to insulate a subscriber against the escalation of price of service. **Such statutory protection for services is unprecedented nationally and internationally and is not available in any other sector.**

6. Currently, telecom market has become very dynamic in nature where new and innovative products are required to be launched into the market as per the fast changing requirements of the customers. Additionally, with the introduction of MNP, the market dynamics have forced TSPs to ensure availability of tariff plans that are better than the competition as they do not wish to lose loyal customers on account of higher tariffs.
7. It is brought out that this policy of, mandatory protection period of 6 months before effecting revision of tariff, is not consistent with the Authority's policy of forbearance in tariffs. Therefore, **review of TTO (43rd Amendment) is imminently called for and it is suggested that the mandatory protection period of 6 months before effecting revision of tariff, should be reduced to 3 months instead.**
8. As the market dynamics and other regulations are already there to ensure the interests of the consumers such an amendment shall provide the necessary flexibility to the TSPs to be able to match the speed of changing requirements of the subscribers without compromising on the essence of forbearance in the telecom sector. It is also brought out that revision of tariff protection period to 3 months would have the advantage of aligning the same with the mandatory period of a subscribers' age on network before MNP can be initiated by them.

Definition of Non-Discrimination

9. Clause 2.2(a) of the UASL allows the TSPs to have "Home Zone Tariff Scheme (s)" as a subset of full mobile service in well defined geographic area through a tariff of its choice within the scope of orders of TRAI on the subject. TRAI regulations allow the TSPs to offer different tariffs to different class of consumers provided that the eligibility criteria defined for such classes is non-arbitrary. Such segmentation of subscribers and offering of special tariffs to such segment of subscribers offers flexibility to the TSPs to promote its services to certain class of the consumers and is beneficial for the consumers as well. To provide additional flexibility for offering better tariffs to the subscribers, **it is submitted that the TSPs should be allowed to create class of consumers based on the territory / sectors within a LSA as well.**
10. **Further, such offers for certain class of the consumers are made available only for very small time period (ranging from 7 - 30 days) hence, these tariff offerings should be kept out of the purview of the reporting requirements. TSPs can submit an undertaking to TRAI confirming that all its existing as well as future segmented offerings will be in compliance to the provisions of the tariff regulations i.e. IUC compliant, non-arbitrary, non-discriminatory and non-predatory.**
11. As long as the tariff offerings of the TSPs are transparent in nature and the eligibility criteria for the applicability of tariff is well defined, the issue of non-discrimination amongst the same class of the consumers doesn't arise. It is therefore submitted that **the current definition of the non-discrimination is adequate to ensure that the TSPs' tariff offering does not discriminate amongst the same class of consumers.**

12. In view of the above we recommend that,
- a. The existing regulations / orders / directions are adequate to ensure transparency in the tariff offerings and no additional measures are required for the same.
 - b. Review of TTO (43rd Amendment) is imminently called for and it is suggested that the mandatory protection period of 6 months before effecting revision of tariff, should be reduced to 3 months instead.
 - c. The TSPs should be allowed to create class of consumers based on the territory / sectors within a LSA as well.
 - d. Tariff offerings of shorter durations (7 to 30 days) should be kept out of the purview of the reporting requirements and TSPs should be permitted to submit only an undertaking for their compliance to the provisions of the tariff regulations i.e. IUC compliant, non-arbitrary, non-discriminatory and non-predatory.
 - e. The current definition of 'non-discrimination' is adequate to ensure that the TSPs' tariff offering does not discriminate amongst the same class of consumers hence, no additional regulation is required for the same.

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?

Our Response:

1. Only those tariff offerings which are available for the consumers or a particular class of consumers with clearly defined eligibility criteria, for a fixed period of 90 continuous days from the date of launch of the offer should be construed as a promotional offer. This is also in line to the existing provisions of TRAI w.r.t. promotional offerings.
2. TRAI's letter dated 19th June, 2002 and Direction dated 1st September, 2008 clearly define the promotional offers as given below

19th June, 2002:

".....Accordingly the Authority has decided that the validity of promotional tariff plan should not extend beyond a reasonable period, say 90 days. Service providers are therefore, advised to restrict the validity of promotional packages and/or the benefits offered to customers under such packages on offer to a maximum of 90 days from the date of launch....."

1st September, 2008:

"....(2) All access service providers shall, while publishing their promotional offers to public, specify therein-----"

a. the eligibility criteria for such promotional offer;

b. the opening and closing dates of such promotional offer (within the existing limit of ninety days);....."

3. Thus, **the existing instructions of the TRAI have taken care of the issues relating to eligibility criteria and transparency in promotional offerings of the TSPs.**
4. Promotional offers, which are used to provide an incentive to the reluctant subscriber to make choices by increasing the value of the product and used by the service providers to spur growth in sales, are an effective tool in a highly competitive market, when the objective is to influence subscribers to select it over those of competitors. The promotional offers should be seen as a sign of a competitive market. Hence, the features of any of the promotional offer should be such that when it is combined with the other regular tariff offerings of the TSP then the overall tariff offerings of that TSP should be compliant with these three principles of the telecom tariff.
5. The three basic principles of Telecommunications Tariff Orders i.e. IUC compliant, non-discriminatory and non-predatory are the three pillars of the telecom tariff which are required to be complied by the service providers in their tariff offerings. Non-compliance to any one of them would be disruptive for the sector as such offerings allows the incumbent operator/new entrant to stifle the market competitiveness.
6. An incumbent / new entrant TSP, while complying with the above suggested definition and features of the promotional offer, can still disrupt the market by offering back-to-back promotional offers, with similar features / benefits albeit under different schemes, which too can have the ability to disrupt the market. In order to avoid such scenario, we suggest that in addition to the above mentioned 3 basic principles of telecom tariffs, an additional condition should also be added wherein there should be a minimum of 90 days gap between any two promotional offers. However, the TSPs should be allowed to offer simultaneous promotional offers for different category of services (i.e. voice, messaging and data).
7. **In view of the above, we recommend that:**
 - a. **Only those tariff offerings which are available for the consumers or a particular class of consumers with clearly defined eligibility criteria, for a fixed period of 90 continuous days from the date of launch of the offer should be construed as a promotional offer.**
 - b. **TRAI's letter dated 19th June, 2002 and direction dated 1st September, 2008 clearly define the promotional offers and the same are sufficient to define the concept and period of offering any promotional tariffs.**
 - c. **In addition to the 3 basic principles of telecom tariffs, viz, IUC compliant, non-discriminatory and non-predatory, an additional condition should also be added wherein there should be a minimum of 90 days gap between any two promotional offers.**
 - d. **However, the TSPs should be allowed to offer simultaneous promotional offers for different category of services i.e. voice, messaging and data.**

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

Our Response:

1. As per the Competition Act, 2002, the 'Relevant Geographic Market' has been defined as,
“relevant geographic market” means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;”
2. In telecom sector, the license to provide the telecom services have been awarded basis the geographic area called as Licensed Service Area (LSA). The Country is divided into 22 LSA by the DoT and separate license agreements are required to be signed to operate in these LSAs by any TSP. Hence, **the relevant geographic market for the telecom sector should be defined as the LSA itself.** This will be in line with the current license regime and would be appropriate in defining the SMP of a particular TSP.
3. As per the Competition Act, 2002, the 'Relevant Product Market' has been defined as,
“relevant product market” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;”
4. Accordingly, in the context of telecom services, the relevant product market could be characterized with respect to two parameters, viz, Technology (GSM, CDMA, LTE etc.) and services (Voice, SMS, Data etc).
5. Earlier, the licenses were awarded along with the administratively allocated spectrum to provide services using a particular technology. With the advancement of technologies, which allowed use of different band(s) to provide the same service(s) and with the introduction of auction of spectrum, the license has been modified to make them service technology agnostic. Therefore, **relevant product market based on different technologies has become obsolete and should be discarded.**
6. However, the telecom services (Voice, Messaging and Data) are distinctive in nature and hence they have to be considered as different products. There cloud be a scenario, wherein a TSP may opt to provide one particular service and become a SMP for that category thereby would obtain the ability to leverage its dominant position to offset the competitive balance of the market. Hence, **relevant product market, for the telecom sector, is required to be defined based on four different service categories, viz, Voice, SMS, Wireless data services and Wireline data services.**
7. **The relevant product market should be defined separately for all 22 relevant geographic markets (LSA) of the telecom sector.**
8. **In view of the above, we recommend that:**
 - a. **The relevant geographic market for the telecom sector should be defined as the LSA itself.**
 - b. **The relevant product market based on different technologies has become obsolete for the telecom sector and should therefore be discarded.**

- c. The relevant product market, for the telecom sector, is required to be defined based on four different service categories, viz, Voice, SMS, Wireless data services and Wireline data services and the same should be defined separately for all 22 relevant geographic markets (LSA).

Question 5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.

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Question 6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration?

Our Response:

1. As per the Competition Act, 2002, 'Dominant Position' has been defined as,
"... 'dominant position' means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to—
 - a. *operate independently of competitive forces prevailing in the relevant market;*
or
 - b. *affect its competitors or consumers or the relevant market in its favour."*
2. Thus, **if a TSP has acquired significant strength in the relevant geographic and product market / is able to leverage its monetary strength to influence the acquisition of subscribers in the relevant geographic and product market, then that TSP (Incumbent or a new entrant) should be treated as a dominant player in that market.**
3. As per TRAI's IUC regulations, 'Significant Market Power (SMP)' has been defined as,
"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 and (d) Traffic Volume".
4. Though, **the above definition of the SMP is not of much relevance in the interconnection framework, but the same is of significant relevance in determining the SMP of a TSP in a relevant geographic and (or) product market and hence should be persisted with.**
5. As per the Competition Commission of India (CCI), factors that are required to be considered for determination of the SMP and/ or the dominant position¹ of a TSP are as follows,
 - a. Market Share.
 - b. The size and resources of the company.
 - c. Size and importance of the competitors.
 - d. Economic power of the company.

¹ http://www.cci.gov.in/sites/default/files/advocacy_booklet_document/AOD.pdf

- e. Vertical integration.
 - f. Dependence of the consumers on the company.
 - g. Extent of entry and exit barriers in the market, countervailing buying power.
 - h. Market structure and size of the market.
 - i. Source of the dominant position viz. Whether obtained due statue etc.
6. Both SMP and (or) Dominant Position are complementary to each other and attainment of one can lead to achievement of the other. It is suggested that **the assessment of SMP and (or) Dominant Position status of a TSP should be done based on both the criteria of relevant geographic market and relevant product market as well as the seven criteria listed by the CCI.**
7. In view of the above, we recommend that:
- a. If a TSP has acquired significant strength in the relevant geographic and product market / is able to leverage its monetary strength to influence the acquisition of subscribers in the relevant geographic and product market, then that TSP (Incumbent or a new entrant) should be treated as a dominant player in that market.
 - b. The definition of SMP, as per TRAI's IUC regulations in the interconnection framework, is of significant relevance in determining the SMP of a TSP in a relevant geographic and (or) product market and hence should be adopted for the same.
 - c. The assessment of SMP and (or) Dominant Position status of a TSP should be done based on both the criteria of relevant geographic market and relevant product market as well as the seven criteria listed by the CCI.

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

Our Response:

1. As per the Competition Act, 2002, 'Predatory Pricing' has been defined as follows,
"the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors."
2. Further, the said Act also prescribes that no enterprise or group shall abuse its dominant position directly or indirectly, impose unfair or discriminatory price in purchase or sale (including predatory price) of goods or services provided that if the same is adopted to meet the competition.
3. In an article 'Market Power in the New Economy' by Ajay Shah published on 03 Apr in the Business Standard², the author states that *"It is a cause of concern if sheer financial might is the tool through which market dominance is achieved."* He further states that,

² http://www.mayin.org/ajayshah/MEDIA/2017/online_competition.html

“We worry about rent-seeking behaviour in the old economy, and revere high tech entrepreneurs. However, some high tech companies have tried to obtain monopoly power through ‘network effects’. Once such a position is established, supernormal profits are produced at the expense of consumers. Some entrepreneurs and their financiers have taken to large scale discounting in order to obtain a head start in capturing network effects. We need to broaden our concept of predatory pricing in competition law to grapple with these situations. This will require new work at CCI and ultimately, new thinking about the Competition Act.

Innovation is the foundation of economic progress. While we normally revere technology companies for their disruptive innovations and the efficiencies that they create, we must recognise that some technology driven businesses’ real revenue channels are through the acquisition and abuse of market power.”

4. Quoting the example of Uber, the author states that,

a. *“People from a technology background take pride in identifying opportunities to setup network effects. My ears go red when I hear tech entrepreneurs and their financiers talk about these opportunities and ways to capture them. Many entrepreneurs and their financiers have lunged for a strong position in industries with network effects. If a head start cannot be obtained through technological innovation, they are willing to subsidize users to artificially induce the network.*

Tech companies and their backers have burned large sums of money to create or buoy network effects. The global taxi company ‘Uber’ made losses of \$1.27 billion in the first half of 2016, where it was giving out money to drivers and passengers aiming to create conditions where both sides of the market would solely use their platform. Money has become the raw material. The ‘innovation’ is to spend money to achieve market power and then raise prices so as to earn supernormal prices forever.”

b. *“It is one thing for a company to get to a leadership position owing to technological innovation. There is merit in the Schumpeterian argument that it may make sense for society to accept supernormal profits by some firms for some time as this creates incentives to innovate. Yet, it is a cause for concern if sheer financial might is the tool through which the leadership position is achieved. Such strategies for obtaining market power actually create incentives to under-invest in building the best product. What matters is financial muscle, not intellectual muscle.”*

5. Thus, **if any TSP leverages its SMP and (or) dominant position in a relevant market to price its services below the cost of provisioning of such services, then such tariffs / services should be considered as ‘Predatory Pricing’ by the Regulator.**

6. Accordingly, **TRAI should examine the cost an operator bears on its own network to provide the voice and data services (per min and per MB cost respectively) and examine the tariffs of the operators in view of such costing to decide whether the tariff is compliant to the principle of non-predatory or not.**

7. The existing IUC regulation has prescribed the mobile termination charge (MTC) at 14p / min. However, this has created a misconception in the sector that any off-net call tariff which is lower than 14p / min should be considered as predatory pricing of services. To address this misconception and **to avoid inadvertent setting of a floor price for off-net calling, we suggest that TRAI should adopt the BAK regime for the termination charges.**
8. **In view of the above, we recommend that,**
 - a. **If any TSP leverages its SMP and (or) dominant position in a relevant market to price its services below the cost of provisioning of such services, then such tariffs / services should be considered as 'Predatory Pricing' by the Regulator.**
 - b. **TRAI should examine the cost an operator bears on its own network to provide the voice and data services (per min and per MB cost respectively) and examine the tariffs of the operators in view of such costing to decide whether the tariff is compliant to the principle of non-predatory or not.**
 - c. **To avoid inadvertent setting of a floor price for off-net calling, due to the MTC, we suggest that TRAI should adopt the BAK regime for the termination charges.**

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

NA.