



Vodafone counter-comments to TRAI Consultation paper on 'Delinking of the license for networks from delivery of services by way of Virtual Network Operators (VNOs)' – dated 5th Dec 2014

We have gone through the response of various stakeholders on the above consultation initiated by the Authority and note that in all, 18 service providers (Access, NLD, ILD, Satellite licensees)¹ have submitted their responses to the consultation paper. We would like to submit the following in terms of counter comments.

GENERAL OBSERVATIONS

1. Of these, a **majority of the operators, who have a substantial presence** (in terms of coverage and penetration, infrastructure rollout, committed investments and services/subscriber base), **are of the view that delinking of networks from delivery of services through introduction of Virtual Network Operators (VNOs) will not help to achieve the NTP 2012 objectives and Digital India targets.**

These stakeholders have emphasized that the **focus should remain on promoting infrastructure build-up**, facilitating all forms of infrastructure sharing reform (passive and active especially spectrum sharing & trading), easing regulatory policies and bottlenecks (such as greater contiguous spectrum availability at affordable prices, RoW approvals, new technology deployment such as M2M, non-discriminatory access to NOFN, constructive & workable M&A policy etc) and **promoting investment through sustainable and predictable licensing and regulatory policy regime. We support and endorse this view.**

2. We note that **even a new operator who is in the process of making substantial infrastructure investments** but is yet to commence operations, **has reasoned that not only is there complete lack of clarity on the exact nature of the proposed framework**, but also that the proposed **delinking of networks from delivery of services will actually hinder rather than help meet the Government's stated objectives.**

The same operator has further submitted that without finishing the first step of unification of License, further changes in the licensing framework and introduction of a service delivery Operator (SDO)/Virtual Network Operator (VNO) will only create complexity, uncertainty and litigations. **It is our view that unification and de-linking are contradictory objectives** and therefore unification cannot be a pre-cursor to de-linking, rather it has to be the ultimate end objective. **We do however agree that any introduction of an SDO/VNO concept will create complexity, uncertainty and litigations.**

¹ *Aircel, Asianet, Airtel, AT&T, BSNL, BT, Idea, MTNL, RCOM, RJIO, SSTL, Tata, TCL, Telewings, Telstra, Verizon, Videocon & Vodafone.



3. We further note that on the other hand, **the operators who are vociferously supporting delinking of networks from delivery of services through introduction of VNOs**, are mostly those who **have hardly focused or committed investment /infrastructure rollout**. It is apprehended that such operators are supporting introduction of VNOs, **see this as an opportunity to cream skim the market**. It is our view that such operators **will not further the national objectives on increasing infrastructure and rollout into the rural areas** and will **only serve to further fragment the market** – leading to further hyper competition in urban areas and **consequent neglect of the build out of infrastructure and services in rural areas**.
4. We further note that the **industry is unanimously supportive that if at all VNOs are to be introduced** in the market, the **arrangements between the VNO-TSP should be based on mutual commercial agreement** and not any regulated/mandated access arrangements.

SPECIFIC COUNTER-COMMENTS

5. **We note that some stakeholders are of the view that VNOs will facilitate more competition in the market, provide better quality of services, affordable services, etc.**

In this regard, we submit that **worldwide “VNO/MVNO concept” has been used as a tool to increase competition and/or reduce tariffs**, however, we believe that this **is neither relevant nor applicable in India in the present circumstances**.

It is our respectful submission that in the case of **India, which is already one of the highest competitive telecom markets in the world with the lowest retail tariffs, lowest EBITDA margin** and having amongst the **lowest allocated spectrum** compared with their counterparts in the other jurisdictions [see Tables below], the **further fragmentation of the market through the introduction of VNOs is neither necessary nor desirable at this stage**.

Table No.1

Statement of Country-wise TSP , MVNO and Key performance indicators of Telecom industry								
S.No	Name of Country	ARPU	MOU	RPM-Voice	EBITDA Margin	No of Competitors	MVNO	HHI Index
1	India	2.83	367	0.006	15.00%	7~13	0	0.177
2	Australia	38.82	268	0.067	36.90%	3	44	0.400
3	Belgium	26.39	152	0.086	32.90%	3	46	0.300
4	Denmark	23.64	242	0.057	29.20%	4	60	0.255
5	France	28.86	245	0.064	30.70%	4	60	0.278
6	Netherlands	32.54	151	0.130	42.30%	4	70	0.349
7	Spain	23.50	166	0.090	34.20%	4	36	0.267
8	UK	27.04	188	0.069	28.20%	4	81	0.221



9	USA	49.72	937	-	41.40%	4	148	0.259
10	Germany	17.83	135	0.073	41.30%	4 ²	152	0.266
11	Japan	40.50	107	0.127	36.50%	3	354	0.330
	Average	28.33	269	0.077	33.51%			

Source: BofA Merrill Lynch, Global Research (21 July 2014), Industry, OECD's Digital Economy Papers No 243(2014), TRAI and Vodafone-India Analysis

We note that one of the stakeholders has given evidence of the **stark contrast in the spectrum allocations per operator in India and in other countries as below**

Table No.2

Spectrum allocated to Operators in other Countries		
Sl.No	Name of Country	Amount of Spectrum per operator (MHz)
1	India	13.00
2	UK	82.20
3	France	138.50
4	Spain	100.60
6	USA	96.00
7	EU allocation	92.60

6. We would also like to **draw the Authority's kind attention to a** recent report of OECD³ on Wireless Market structures and Network Sharing, which has noted that:

*"Regulators should, therefore, **keep a careful watch on the quality of services offered to ensure there is sufficient investment.** The quality of mobile services is essential to the economy and adverse influences on quality could negatively affect other parts of the economy in unforeseen ways".*

We would also like to draw attention to the GSMA Mobile Economy 2014 report, which states that :

*"ensuring sustainable effective competition in the mobile industry is important if it is to remain a vibrant and innovative sector. But a trade-off exists between increased competition and leveraging economies of scale. Mobile markets are dynamic and benefit from economies of scale and scope. In some countries, network sharing agreements or joint ventures are already enabling cost efficiencies that enables marginal investments—like network coverage in rural areas—to be made. In many markets consolidation is expected which is an often observed feature of maturing industries that require high levels of capital investment. Streamlining merger reviews and taking a more cautious approach to the imposition of remedies should reduce impediments to the efficient consolidation of mobile markets. **Regulators should focus on healthy competition that attracts***

² (Coming down to 3)

³ OECD Digital Economy Papers No.243



sufficient long-term investment instead of favouring new market entrants and short-term price cuts. Policies focused on increasing the number of competitors in dynamic markets can cause unintended harm in the long-term.

Further, the report notes that the digital economy (internet, online commerce, social networking, e-governance etc) is

“dependent on mobile broadband networks that are deployed and maintained by the mobile operators, which in turn requires a sustainable financial model for the operators that generate sufficient cash flows to meet these ongoing investment needs.”

We believe that the **objective of affordability can be better achieved by early implementation of measures such as active infrastructure sharing, spectrum sharing, etc.**, which are already on the anvil. It is respectfully submitted that these measures will help reduce costs and would be far more useful in helping to deliver more affordable services in rural areas.

7. In respect of the **view taken by some operators that VNOs will lead to better utilization of existing infrastructure**, it is very important to highlight that **presently, most of the operators are working on an “OPEX Model/Outsourcing Model”** where operational capacities are created based on existing demand and estimated future demand and there are no excess capacities lying unutilized as apprehended.
8. In response to the **comments of some stakeholders that VNOs be allowed to create infrastructure** it is submitted that **if VNO’s are allowed to create infrastructure**, then there will be **no difference between a VNO and a unified licensee. VNO, by definition means, a ‘virtual’ operator**, i.e. one that does not have its own infrastructure or resources.

Based on the above logic, **we also disagree with the view that the VNOs should be allowed to obtain own numbering resources. Numbers, like spectrum are a scarce and limited resource**, VNOs, if at all introduced, should use the numbers of the parent TSP.

9. In respect of a **view that the scope of VNO license to be same as that of existing operators**, it is submitted that **VNOs are sub-sets/satellites of host TSPs and their scope cannot be in conflict or overarching that of the host TSPs**. Further, any regulatory framework for introduction of VNOs will need to ensure that TSPs are not disadvantaged vis-à-vis VNOs.

In respect of the contention that VNOs should be permitted inter band sharing, it is submitted that the **scope of the VNO cannot be more than that of the underlying TSP. We do not however support any restrictions on spectrum sharing or on roaming** as are presently contemplated.



10. One of the stakeholders has submitted that the **VNO concept is already present today in the market in form of 3G ICR** arrangement among operators whereby an operator is able to offer services to its customers without having its own infrastructure and required resources including spectrum.

In this regard, we would like to submit that **TDSAT in its judgment dated 29 April 2014**, has **rejected the contention that 3G ICR is an MVNO arrangement** and thus the **contention** of the said stakeholder is **grossly inaccurate**.

11. We would also like to **reiterate our concern that the consultation carried no clarity** on the proposed framework thus constraining us in engaging in a constructive manner. We once again **urge that the Authority should obtain clarity from DoT and share the same with all stakeholders before any recommendations are made**.

CONCLUSION & WAY FORWARD

12. In view of the above facts and analysis of responses, **it appears that majority of the stakeholders are not in favour of the introduction of VNOs at this stage** as they believe that VNO/ delinking of license would be against the objectives of NTP-12 i.e. 'One Nation-One Licence' and convergence among others and there is a strong view that Government agencies including DoT should work towards addressing the present key industry issues i.e. availability of spectrum at affordable price, workable M&A policy, active infrastructure sharing, spectrum trading and sharing guidelines, etc.

It is respectfully submitted that the **Authority must take a balanced view of the responses** of the stakeholders, **keeping in mind national objectives** before considering any sweeping changes to the prevailing licensing and regulatory regime.

We do not believe that **VNOs can help achieve the targets defined in NTP 2012** as **they will require telecom infrastructure of TSPs, which at present is scarce for leasing out** to VNOs on a large scale due to present business model i.e. Outsourcing Model.

The Government's **Digital India programme will require significant infrastructure investment** in the access and backhaul networks – by operators alone or on a shared infrastructure basis. **Introducing VNOs will not help to achieve this**.

NOFN will be required by operators to build the necessary backhaul connectivity for provision of telecom services in far-flung areas. The **Authority's focus in terms of Digital India should be on ensuring the right wholesale access terms to the NOFN**, so that all telecom operators can extend the access network further into rural India.



We reiterate that **instead of any sweeping changes in the licensing regime**, the Authority should **consider measures within the existing licensing framework** that will help achieved desired end objectives. These include implementation of active infrastructure sharing, urging for early introduction of spectrum trading and sharing guidelines, a more liberalized and conducive M&A framework, etc.

Other **enabling measures** that can be introduced within the existing regulatory and licensing framework **which would help the industry to rapidly increase the telecom penetration and improve affordability, especially in rural areas** include:

- (i) Availability of **greater quantum of spectrum in internationally harmonized bands**, including contiguous spectrum, since wireless broadband is the primary platform for reaching unconnected/unserved and underserved geographic regions.
- (ii) **Removal of barriers to the deployment of network infrastructure** such as onerous import clearances, ROW approvals etc to accelerate the provision of telecom services.
- (iii) Promote **speedy deployment of new technologies** (remove any regulatory impediments)
- (iv) Allow **all forms of infrastructure sharing** (active and passive) **as well as spectrum sharing and trading** to facilitate efficient utilization of infrastructure and resources as well as to facilitate in expansion of coverage and services in previously underserved geographic areas.
- (v) **Phase out USO fund.**
- (vi) **Reduce taxes and levies**, especially on broadband connectivity enabling products and services so as to help proliferate broadband investment and thereby create a multiplier effect in the wider Indian economy.

The **telecom industry in India is in a critical phase** as **consumers are demonstrating an increased appetite for broadband** enabled data communications. **Significant investments are required to be made** to build the infrastructure in order to meet the growing data communications' demands. The **network investment needs to be sustainable so that the industry can continue to serve the needs of consumers.**

Given that India has still not reached saturation levels unlike the other regions like EU, USA, China, etc (where markets are saturated with declining net adds), failure to create conditions which allow adequate investment at any point pose a threat to the whole digital economy eco-system, and therefore **incentives to invest should remain. Introduction of VNOs should be assessed in terms of impact, technical feasibility, costs, risks and disruptions (if any) to the market.**



There is a **need to ensure facilitative, predictable and stable regulatory policies** to allow the industry to focus on network infrastructure investments for achieving the NTP 2012 objectives & Digital India targets.

New Delhi

22 January 2015