



**Telecom Regulatory Authority of
India**



**Consultation Paper
On
Transparency in Publishing of Tariff Offers**

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Stakeholders are requested to furnish their written comments by 26.12.2019 and counter-comments by 09.01.2020 to Shri Kaushal Kishore, Advisor (Finance & Economic Analysis-I), TRAI. Comments and counter-comments would be posted on TRAI's website www.trai.gov.in. The comments and counter-comments may also be sent by e-mail to advfeal@traigov.in. For any clarification/information, Advisor (F&EA-I) may be contacted at Tel. No. +91 11 23230752 /Fax No.: +91 11 23236650.

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Chapter 1: Introduction and Scope of Consultation

- 1.1. The Telecom Regulatory Authority of India (“**TRAI**”/ “**Authority**”) is established under the Telecom Regulatory Authority of India Act, 1997¹ (“**Act**”) to, *inter alia*, protect the interests of consumers of the telecom sector. To this effect, TRAI has been mandated to regulate tariff for telecommunication sector in India. Section 11(2) of the Act provides,

“Notwithstanding anything contained in the Indian Telegraph Act, 1885² (13 of 1885), the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India:

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reason therefor.”

Further, Section 11(4) of the Act also mandates that, *“the Authority shall ensure transparency while exercising its powers and discharging its functions.”*

- 1.2. In accordance with the aforesaid mandate, TRAI initiated tariff regulation for the telecommunication services in India with the notification of Telecommunication Tariff Order, 1999³ issued on 09.03.1999 (“**TTO**”). The TTO has been amended from time to time considering the changes in sector landscape (hereinafter the TTO as amended from time to time is referred to as the “**Tariff Order**”).
- 1.3. The TTO provided for three types of tariffs at broader level *viz.*: (a) Tariffs specified in the TTO; (b) Tariffs subjected to tariff ceiling specified in the TTO; and (c) Tariffs under forbearance. The TRAI has expanded the scope of forbearance regime over the

¹ https://main.trai.gov.in/sites/default/files/The_TRAI_Act_1997.pdf

² <https://main.trai.gov.in/about-us/acts-policies/indian-telegraph-act-1885>

³ https://main.trai.gov.in/sites/default/files/Main_Regulations_09_Mar_1999.pdf

years and given the service providers the freedom to design the tariffs suited to the prevailing market conditions. However, the ‘forbearance’ is subject to reporting requirements and adherence to specified principles of tariff assessments, namely, (a) transparency; (b) non-discrimination; and (c) non-predation. As per the extant regulatory framework for tariff, tariffs for telecommunication services are forborne except for: (i) rural fixed line services; (ii) national roaming services; (iii) international private leased circuits and domestic leased circuits; and (iv) mobile number portability charges. Further, TRAI has over the years, moved from ‘forbearance with prior approval stage’ to a ‘forbearance regime with post-facto reporting obligation’ with regulatory oversight. The regime has led to introduction of new and innovative tariff products in the market designed to provide telecom services at affordable and competitive price to the consumers.

- 1.4. While on one side, TRAI, through its tariff regulation, has enlarged the scope of forbearance regime, on the other side, it has continuously endeavored, by providing adequate safeguards to protect and promote consumer interests while ensuring orderly growth of the telecom sector. The first and the foremost prerequisite to achieve the aforesaid objectives is by ensuring transparency in communication of relevant information by the service providers to the consumers. The transparency in communication is not only relevant to ensure that consumers benefit from the access to critical information regarding the product/service but also to maintain and increase the competition intensity, vital for growth and development of the sector. Accordingly, the subject of transparency has been accorded primacy.
- 1.5. Typically, consumer faces situation of lack of information, misleading information, unclear or hard to find information and information difficult to assess and compare in the marketplace which affects their ability to make informed choice which serves their needs. The criticality of the issue can be gauged by the fact that the same was deliberated in the OECD Ministerial Background Report, 2008. The OECD Ministerial Background 2008 Report on “*Enhancing competition in telecommunications: protecting and empowering consumers*⁴” notes,

⁴ OECD Ministerial Background Report presented in OECD Ministerial Meeting on the Future of the Internet economy at Seoul, Korea, 17-18 June 2008. <http://www.oecd.org/internet/ieconomy/40827598.pdf>

“...where consumers have too little information, poor quality information, or mis-information, they may end up misled and confused by choices on offer, may pay too much or buy the wrong services. This may, in turn, inhibit and dampen the competitive process”

- 1.6. The European Regulators Group (ERG) published a report titled "Report on Ensuring Transparency of Tariff Information" in 2009⁵. The said report elaborates various forms of deficient consumer information *viz.*, lack of information, unclear or hard to find information, misleading information or the “bounded rationality” of consumer decision. The report suggests that regulatory intervention may be appropriate to address the issues, as stated.
- 1.7. The need for communication of all relevant information in the most transparent and effective manner has also been emphasized in the literature on the subject. A recent book titled “Virtual Competition” written by Ezrachi A and Stucke M.E notes that the upsurge of sophisticated computer algorithms, Big data and super platforms of online variety have come to define and dominate the competitive landscape in the last decade. Machine learning and Big data analytics is proving to be transformative having implication for collusion among businesses and behavioral discrimination between customers. All these developments combined, have changed the competitive paradigm and market reality⁶.
- 1.8. Leading telecom regulators have been periodically reviewing and strengthening the regulatory provisions to ensure fair treatment to customers in their countries e.g. recently Ofcom (UK) has stepped in to ensure fairness for customers and announced new rules and guidelines⁷. CRTC (Canada) also has come out with a report⁸ on the use of misleading or aggressive retail sales practices by Canada’s large telecommunications carriers. Similarly, European Parliament has introduced review

⁵ ERG Report on Ensuring Transparency of Tariff Information, March 2009 available at https://bereg.europa.eu/doc/publications/2009/erg_08_59rev_2_report_on_transparency_of_tariff_information.pdf

⁶(Ref: Ezrachi, A., & Stucke, M. E. (2016). Virtual competition, Chapter on Final Reflections)

⁷ https://www.ofcom.org.uk/data/assets/pdf_file/0018/148140/statement-helping-consumers-get-better-deals.pdf, https://www.ofcom.org.uk/data/assets/pdf_file/0018/168003/broadband-price-differentials.pdf

⁸ https://crtc.gc.ca/pubs/2018_246-en.pdf

provisions in its European Electronics Communications Code⁹ for periodical review of end user rights in EU countries by BEREC¹⁰.

1.9. Given the above, the need for transparent sharing of complete set of information by Telecom Service Providers with consumers relating, *inter-alia*, to ‘rate and related conditions’ to protect consumer interests need no over-emphasis. At the core of consumer protection lies the aspect of transparency in communication of conditions of provision of goods or service. In this backdrop, the salient features of the extant regulatory framework relating to consumer protection/transparency in communication are discussed hereunder. The important provisions of the extant Tariff Order meant to safeguard the consumer interests are as under:

- i. **Flexibility and Packages:** The Tariff Order contains certain provisions aimed specifically to protect the interests of the consumers *viz.*, (i) complete protection to consumers from adverse changes in tariffs for six months from the date of enrolment; (ii) straight tariff reductions to be extended to consumers without requiring any pre-condition of explicit positive action on the part of consumers; (iii) requirement of exercise of an option by consumers when such options lead to fastening any liability or adverse conditions *etc.*
- ii. **Reporting Requirements:** The Tariff Order requires all the service providers to comply with Reporting Requirements which, *inter alia*, include (i) reporting to the Authority, any new tariff or any changes in tariff, within seven working days from the date of implementation; (ii) not terminating any existing tariff plan without giving a notice of less than thirty days to the subscriber; (iii) ensuring that at any time, not more than twenty five tariff plans (including both post-paid and pre-paid) are on offer *etc.*
- iii. **Review of Tariffs:** The Tariff Order empowers Authority to review and modify a tariff for any telecommunication service;
- iv. **Publication of Tariffs:** The Tariff Order requires the service providers to publish tariffs to be charged from subscribers along with conditions thereof in such manner as the Authority may from time to time direct; and

⁹ http://www.europarl.europa.eu/doceo/document/A-8-2017-0318-AM-002-002_EN.pdf

¹⁰ EU Competition Law and Regulation in the Converging Telecommunications, Media and IT Sectors, Nikos Th Nikolinakos

- v. **Transparency and Consumer Protection:** Apart from the aforesaid measures which directly or indirectly are aimed to ensure consumer protection, the Tariff Order contains, *inter alia*, a separate section dedicated to transparency and consumer protection and provisions requiring publication of tariffs and ensuring that there is no discrimination between subscribers of the same class and that classification of subscribers shall not be arbitrary.
- 1.10. It may be noted that although the aforesaid Tariff Order elements have different action framework, these are joined by the ultimate objective of ensuring consumer protection. The importance of transparency in flow of information, be it from the service providers to the Authority or from service providers to the subscribers to safeguard and promote consumer's interests can hardly be overemphasized. The regulatory framework is eloquent testimony of the fact that the issue of ensuring and enhancing transparency in tariff offers has always been central to the regulatory framework prescribed by the TRAI.
- 1.11. In order to enhance transparency in information flows in telecom sector particularly from the service providers to the subscribers, the TRAI issued Telecom Consumers Protection Regulations, 2012 dated 06.01.2012¹¹ (“**TCPR**”) whereby the service providers have been required to comply with various requirements on the aspects of (i) presentation and marketing of various tariff vouchers; and (ii) mandatory information to be given to pre-paid consumers.
- 1.12. Apart from the Tariff Order and TCPR, the TRAI has been issuing directions from time to time under Section 13 of the Act to enhance the transparency in information flow. Further, the TRAI has also undertaken consultation exercises specifically on the aspect of transparency. The chronological details of important developments in this regard are as under.
- i. **Directions dated 24.05.2004¹² and 02.05.2005¹³:** As stated above, the Tariff Order requires the service providers to publish details of tariff and conditions

¹¹ https://main.trai.gov.in/sites/default/files/Consumer_Protection_Regulations%202012.pdf

¹² <https://main.trai.gov.in/sites/default/files/Directions-24-05-2004.pdf>

¹³ <https://main.trai.gov.in/sites/default/files/Direction-02-may2005.pdf>

thereof. In this regard, the TRAI, right from the issue of TTO, in 1999 has been prescribing certain formats for publishing information relating to tariff offers. The Authority took up the issue in 2004 by issuing directions specifically aimed to regulate publication of tariff. The directions prescribed certain publication/advertisement formats to be used by the service providers for publishing their tariff offers. The focus of TRAI at that stage was to ensure that consumers have minimum essential information and they do not get misled by tariff advertisements. The formats were revised by directions dated 02.05.2005;

- ii. **Directions dated 16.09.2005¹⁴:** On 16.09.2005, the TRAI expanded the transparency provisions to some extent by issuing directions *vide* which the service providers were prohibited from offering or advertising any tariff plan in a manner which is likely to mislead the consumers (“**2005 Tariff Offers Advertisement Directions**”). More specifically, *inter alia*, the service providers were prohibited from offering tariff plans with misleading titles;
- iii. **2010 Consultation Exercise:** In 2010, the TRAI issued a consultation paper on “*Certain Issues relating to Telecom Tariffs*”¹⁵. The Consultation Paper, *inter alia*, focused on:
 - (a) reviewing the 2005 Tariff Offer Publication Directions considering the changes in structure of tariff offers resulting from increased competition and change in the tariff regulatory framework since 2005; and
 - (b) need to substantially expand the scope of 2005 Tariff Offers Advertisement Directions from prohibition of misleading titles to development of comprehensive framework of prohibiting misleading advertisements in order to prevent the consumers from being misled.

The consultation paper discussed that at times the advertisements go beyond the traditional role of ‘fair and truthful’ information/disclosure veering into

¹⁴ <https://main.traigov.in/sites/default/files/directions-16-09-2005.pdf>

¹⁵ https://main.traigov.in/sites/default/files/ConsultationPaperon13Oct_2.pdf

the areas of deceptive and/or false advertisements and therefore the need for expanding the regulatory ambit to cover various possible instances of misleading advertisements.

- iv. **Directions dated 16.01.2012¹⁶**: Pursuant to the aforesaid consultative process, *vide* directions dated 16.01.2012 (“**2012 Tariff Offers Publication Directions**”), the TRAI amended the 2005 Tariff Offers Publication Directions and *inter alia* prescribed/required:
- (a) separate revised formats for publishing tariff plans for pre-paid and post-paid subscribers;
 - (b) all tariff plans published to be made available at the Customer Care Centres, the points of sale, retail outlets and on the website of the telecom access service provider;
 - (c) all tariff plans to be updated every time there is change in any of the tariff plans and made available at the Customer Care Centres, the points of sale and retail outlets of the telecom access service provider by 7th of January, April, July and October of the year; and
 - (d) to publish all tariff plans in the respective formats along with the address of the website and the contact details of Customer Care Centres at least in one regional language newspaper of the service area and one English newspaper and repeat such publication at an interval of not more than six months.
- v. **Directions dated 26.03.2012¹⁷**: Subsequently, based on the aforesaid consultative process, the TRAI issued directions dated 26.03.2012 laying down the regulatory framework for tariff advertisements (“**2012 Tariff Offers Advertisement Directions**”). The 2012 Tariff Offers Advertisement Directions, which significantly expanded the regulatory framework relating to misleading advertisements as compared to the 2005 Tariff Offers Advertisements Directions, *inter alia*, provided:

¹⁶ <https://main.trai.gov.in/sites/default/files/Direction-er.pdf>

¹⁷ <https://main.trai.gov.in/sites/default/files/Direction-final.pdf>

- (a) Instances when a tariff advertisement is considered to be misleading, as if it,-
 - (a) is likely to induce the consumer to subscribe to a tariff plan, which he would not have subscribed to but for such misleading advertisement;
 - (b) contains an untrue statement;
 - (c) omits a material fact having bearing on the subscriber's decision to subscribe to a particular tariff plan or special tariff voucher ("STVs"); and
 - (d) fails to disclose all limitations and restrictions of the tariff plan or STV.

The 2012 Tariff Offers Advertisement Directions also gave a number of illustrations of misleading advertisements.

- (b) The obligations of service providers while disseminating tariff related information. The service providers were directed to ensure that:
 - (a) every advertisement published by it is transparent and non-misleading and the design, including paper size, color, font type and font size, tone and volume of the advertisement is legible, audible and unambiguous;
 - (b) the tariff advertisements disclose all material information which is likely to influence the decision of a subscriber in an unambiguous manner;
 - (c) advertisements issued in vernacular languages contain all the mandatory disclosures in the same vernacular language; and
 - (d) all tariff advertisements contain the website address and customer care number of the telecom access service provider to enable the customer to obtain any information pertaining to the tariff plan;
- (c) The service providers were further required to:
 - (a) maintain a register at its corporate office which shall contain a specimen copy of all tariff advertisements published by the service provider and the records of all audio-visual advertisements including

a notation attached to each tariff related advertisement indicating the manner and extent of its dissemination;

- (b) carry out internal audit to ensure that it is in compliance with the provisions of this Direction;
- (c) file a certificate of compliance with the Authority on half yearly basis, on the 15th of January and July each year confirming that all tariff advertisements issued by the access service provider during the preceding six months were following the provisions of this Direction; and
- (d) maintain a specimen of all tariff related advertisements for a minimum period of one year.

vi. **2017 Consultation Exercise and change in 2012 Tariff Offers Publication Directions:** In 2017, TRAI issued a consultation paper on “*Regulatory Principles of Tariff Assessment*”¹⁸ which *inter alia* sought to review the adequacy of measures prescribed to ensure transparency in the tariff offers made by the telecom service providers. Pursuant to the consultative process, the telecom service providers commented on the scope of 2012 Tariff Offers Publication Directions. Most telecom service providers suggested that TRAI should discontinue the practice of requiring publication of tariff offers in newspapers as the tariff plans are dynamic and need to be seen along with STVs/combo vouchers (“CVs”)/promotional offers in case of pre-paid consumers and Add ons/Promotional offers in case of post-paid consumers and standalone publication of tariffs same does not serve the purpose. The TRAI found merit in the suggestion of discontinuing the direction for publication of tariffs in newspapers and decided to withdraw the directions. The order withdrawing the directions for publication of tariffs in newspapers have been issued on 03.04.2019.

1.13. Given the explosive growth and scale of sweeping changes seen in the last three decades, it is to state the obvious that the telecom sector is dynamic. Dynamism gets exemplified in fast changing landscape as regards various operational aspects viz., the

¹⁸ https://main.trai.gov.in/sites/default/files/Consultation_paper_03_17_feb_17_0.pdf

nature and composition of tariffs, frequency of changes in tariff, the preferred modes of communication and along with paradigm shift in the modern age communication. The dynamics of the sector have been impacted in the recent past as the sector has undergone a phase of consolidation having implication on the competitive landscape. Further, the Authority has been intermittently receiving a significant number of complaints from the individual consumers which though varied can be said to be rooted in lack of transparency in disclosure of tariff information. The extent and nature of complaints also point to the inadequacy of existing regulatory framework.

1.14. Apart from the sector specific reasons requiring review of extant regulatory provisions, the review has also been necessitated by the increased focus on transparency and the changes proposed to be brought in other legislations.

1.15. It is observed that the Consumer Protection Act, 1986¹⁹ considers several instances of communication of misleading information to the consumers, detailed hereunder, as an unfair trade practice:

- (a) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- (b) makes to the public a representation in a form that purports to be a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out; and
- (c) gives false or misleading facts disparaging the goods, services or trade of another person.

1.16. As regards the remedial aspects in relation to misleading communication of information, the Consumer Protection Act requires the opposite party, *inter alia*, to discontinue the unfair trade practice or not to repeat it; to return to the complainant the price, or, as the case may be, the charges paid by the complainant; to pay such amount as compensation to the consumer for any loss or injury suffered by the

¹⁹ http://ncdr.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html

consumer due to the negligence of the opposite party; to pay such sum as may be determined if the opinion is that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently; and to issue corrective advertisement to neutralize the effect of misleading advertisement.

1.17. The Government of India has repealed the Consumer Protection Act, 1986²⁰ and has passed the Consumer Protection Act, 2019²¹(with the President assent on 09.08.2019). The changes in the Consumer Protection Act, 2019 specifically on the aspect of misleading advertisements are significant as these may be considered as reflective of the experience of effectiveness of the existing provisions. The issue of Misleading advertisements has gained prominence in the Consumer Protection Act 2019, as can be seen from some of the specific provisions introduced in this regard, which are detailed hereunder:

(a) *Introduction of definition of “misleading advertisement”*: The Bill seeks to define misleading advertisement as in relation to any product or service, means an advertisement, which —

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information;

(b) *Proposal to establish, a Central Consumer Protection Authority (“Central Authority”)* to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class;

²⁰ http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html

²¹ <http://egazette.nic.in/WriteReadData/2019/210422.pdf>

(c) *Remedial Measures:* Central Authority empowered to issue directions to discontinue such advertisement or to modify the same in such manner and within such time as may be specified in the event of any advertisement being found to be false or misleading and being prejudicial to the interest of any consumer or in contravention of consumer rights. Further, the Central Authority may impose a penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser which may extend to ten lakh rupees: Provided that the Central Authority may, for every subsequent contravention by a manufacturer or endorser, impose a penalty, which may extend to fifty lakh rupees.

The aforesaid changes in Consumer Protection Act also emphasize the aspect of transparency in information communication to the protection of consumer interests.

- 1.18. Considering the aforesaid, the present consultation paper has been issued with the objective of empowering end consumers by making available all relevant information to them and to eliminate the instances of adverse choices made by consumers due to lack of information, misleading information or due to difficulty in assessment or comparison of information. The scope of the present consultation paper is limited to review of transparency requirements in communication of tariff offers by the service providers to the subscribers. Accordingly, it aims to review the need, efficacy, changes required etc. in the extant Tariff Order, TCPR, and/or Directions with regard to transparency.

Chapter 2: Examination of existing regulatory framework relating to transparency in publishing of tariff offers by the service providers and identification of issues for consultation

- 2.1. The regulatory framework as regards transparency in publishing of tariff offers is primarily governed by 2012 Tariff Offers Publishing Directions as modified by the order dated 03.04.2019. Telecom service providers, as of now, are required to ensure that the tariff plans are updated on their website and customer care centers every time there is a change in any of the tariff offerings. The same is required to be made available in updated and consolidated form by 7th day of January, April, July and October at their points of sale and retail outlets.
- 2.2. Considering that the prescribed formats for publishing of tariff offers are the basis of regulatory framework, it would be appropriate to examine at the outset the prescribed formats in terms of efficacy for attainment of the objectives of regulation.
- 2.3. The first question which arises is assessing the need for prescribing such formats. As has been stated above, the Authority while prescribing such formats has tried to ensure that consumers have minimum essential information and they do not get misled by deceptive tariff advertisements. Since tariff structure and nature of tariff offerings change with change in sectoral dynamics, it becomes important that the prescribed format structure may be modified to ensure that the same contains the required information in context of the changed sector dynamics.
- 2.4. It has been observed that the actual tariff applicable to a customer may sometime be quite distinct from the tariff given in the tariff plan voucher. The reason for the same lies in the fact that the service providers provide various tariff options to customers in form of STVs and CVs which can change the applicable tariff. Under the circumstances, mere depiction of tariff plans may not be enough to convey the relevant information to the customers.
- 2.5. The foremost factor that often influences actual tariff to a consumer is availability of STVs/CVs for the tariff plan opted by a consumer. Accordingly, Clause 4(2)(c) and Clause 4(2)(d) of TCPR respectively require that STVs and CVs, *inter alia*, clearly indicate the plan to which they are applicable. Thus, in order to make an informed

choice, the consumer should have access to complete information in respect of applicable STVs and CVs. Accordingly, a provision was introduced in the Code of Practice for Metering and Billing Accuracy that *“The information about the tariff plans, Plan Vouchers, Top Up Vouchers, Special Tariff Vouchers and Combo Vouchers on offer shall be available on the website of the service provider in accordance with the regulations, directions and orders issued by the Authority, from time to time.”*

- 2.6. As on date, the Authority has not issued any specific regulations, directions etc. as regards the formats in which the information in respect of tariff vouchers or the tariff products other than the base plans, needs to be published. However, in order to make the information more effective, there may be a merit in prescribing formats for publishing of information related to tariff vouchers as well as tariff plans. The need for such a requirement is further reinforced by the changes in tariff offerings over time wherein the tariff vouchers have acquired a more dominant role commercially.
- 2.7. The tariff framework followed by various TSPs is highly dynamic and the dynamism is reflected in the number of STVs/CVs introduced by the TSPs and frequency of changes therein. Because assessment and comparability are as important as availability of information therein, even a standalone list of applicable STVs/CVs may be just the information overload without being of much help to consumers to make the informed choice. Thus, along with published information on tariff vouchers, there may be merit in introducing tariff calculators which factor various STVs and CVs eligible for a particular tariff plan. A consumer should be able to input the information as regards various aspects of tariff offering *viz.*, expected data usage, minutes of usage of outgoing voice calls, validity period *etc.* and based on information given by the consumer, the tariff calculator system should be able to offer the most optimal plan/voucher for subscription. While there can be numerous methods of communicating this information, the end objective of such requirement is to allow the consumer to make informed choice and clearly ascertain the entry cost as well as the running cost of subscribing to a tariff plan and/or tariff offering. Globally operators

in many countries have tariff calculators²². These are either voluntary or mandated by the regulator or Government.

2.8. Another issue which arises from the current tariff practices in vogue is the transparency in information relating to bundled products/offerings. It has been observed that the service providers are offering various non-telecom services as a part of the bundled offering to the existing and prospective customers. Many complaints have been received regarding the charges being imposed on the customers after the free subscription period (if offered) of such service to customers is over. It has also been noted that there may be certain situations in which there may be conflict between the obligations of the service providers as regards tariffs and as regards bundled offerings. For example, the Tariff Order requires the service providers to ensure that the tariff is not changed adversely to a customer for a period of six months from date of enrolment. **If the tariff plan offers a free subscription of certain service for a period exceeding six months and the service provider proposes to change the tariff or discontinues the tariff plan after six months, the subscriber runs the risk of losing the remaining free subscription period if he does not agree to the revised tariff or exercise option to migrate to the plan offered.** How such situations will be handled is another important informational requirement to ensure protection of consumer interest.

2.9. It has been observed that quite often Telecom Service Providers apply certain tariff policies and put conditions without disclosing the same in adequate detail in an unambiguous manner to the Authority and to the consumers. Details of such policies, either applicable to the entire range of tariff offerings or limited to a subset of the same, is many times neither reported as part of mandatory tariff filings nor made known to customers while displaying tariff through various channels. For example, most of the Telecom Service Providers apply First Recharge Condition (FRC) and Fair Usage Policy (FUP) but the terms for the same are not disclosed or disclosed in

²² <https://www.comreg.ie/compare/#!/services> ,<https://www.consuwijzer.nl/roaming-rekenhulp-bereken-uw-data-binnen-de-eu> ,<https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/costs-and-billing/price-comparison> ,<https://www.billmonitor.com/> ,<https://www.oecd.org/internet/consumer/40679279.pdf> ,<https://www.uswitch.com/mobiles/guides/guide-to-mobile-phone-tariffs/> ,<https://www.billiger-telefonieren.de/telephone-tariffs/> ,<https://www.glimp.co.nz/> ,<https://crtc.gc.ca/eng/publications/reports/compar/compar2016.htm> ,<https://www.ic.gc.ca/eic/site/693.nsf/eng/00169.html>

an ambiguous manner. Considering that the extant regulatory framework defines tariff as “rate and related conditions”, Telecom Service Providers are required to provide complete information as regards all associated terms and conditions applicable to tariff. Complete disclosure of all conditions related to service provisioning and its continued use is being accorded highest priority across different telecom jurisdictions and regulatory bodies. To give an illustration, mention may be made of a recent decision by the United States Federal Trade Commission wherein AT&T, a leading telecom service provider was asked to pay US\$ 60 million for misleading tariff consumers apart from refunding the current and former customers. The US FTC investigations revealed that AT&T promised unlimited data without qualification that the data speed will be throttled or reduced if the consumer reaches a certain amount of data use in a given billing cycle²³.

2.10. Another important issue relevant from consumer protection perspective is information in respect of the plans not on offer. It is quite possible that the service providers change their tariff offerings and publish only the updated details of tariff. While the same addresses the need of prospective consumers, the deletion of plans withdrawn but still applicable to existing subscribers may create an information vacuum for existing subscribers. Thus, it may be important to ask the service providers to publish details of all plans (on offer and not on offer but active) until there is any bona fide subscriber for a particular plan in the billing system. The service providers may distinguish between such plans by appropriate marking.

2.11. Thus, the first set of issues for consultation are,

Question 1: Whether TRAI should prescribe any format for publishing tariff? Please support your answer with rationale.

Question 2: If the answer to the Question 1 is yes, then please give your views regarding desirability of publishing tariffs on various modes of communication viz., TSP website/Portal, App, SMS, USSD message, Facebook, WhatsApp, Twitter, Customer care centers, Sales outlets etc. If the answer to the question is

²³ Please see press release by US FTC available at <https://www.ftc.gov/news-events/press-releases/2019/11/att-pay-60-million-resolve-ftc-allegations-it-misled-consumers>

that tariffs should be published on multiple channels as above, please state whether TRAI should prescribe a separate format for each channel. Please also suggest the essentials of the format for each channel.

Question 3: Whether the extant format prescribed for publishing tariff at TSP's website conveys the relevant information to consumers in a simple yet effective manner? If no, please provide the possible ways in which the same can be made more effective?

Question 4: Whether the service providers be required to publish all the tariff offerings and vouchers in addition to the publishing of tariff plans, in the prescribed format? Please provide rationale for your response.

Question 5: Whether there is a need to mandate TSPs to introduce a tariff calculator tool to convey the effective cost of enrolment and continued subscription? If yes, what can be the essential features of such a tool? If the answer is in negative, then please give reasons for not mandating such a tool.

Question 6: Whether the service providers be asked to disclose clearly the implications of discontinuation of tariff plan after expiry of mandatory tariff protection period of six months on the provision of non-telecom services offered as a part of the bundle at the time of subscription to a particular plan? If yes, what should be the exact details that service providers may be required to provide in case of bundled offerings? If the answer is in negative, then please give reasons for not mandating such a disclosure.

Question 7: Whether the service providers be required to provide a declaration while reporting tariffs to TRAI and displaying tariffs through its various channels that there are no terms and conditions applicable to a tariff offering other than those disclosed here? Do we require additional measures to ensure that all the terms and conditions are clearly communicated to the subscribers and the Authority? If the answer to the above is yes, then please provide your suggestions in detail. If you do not agree with the above requirement, please provide detailed reasons for the same.

Question 8: Whether the service providers be required to publish details of all plans in the prescribed format including the plans not on offer for subscription but active otherwise? Please support your answer with rationale.

- 2.12. The present regulatory framework requires the service providers to update the tariff plans on the website and customer care centers of the service providers every time there is a change in any of the tariff plans. The same is required to be made by 7th day of January, April, July and October at their points of sale and retail outlets. There appears to be some ambiguity in this requirement. It appears that the information of tariff plans is to be updated immediately on the website and customer care centers but the same can be updated on point of sale and retail outlets with potential lag period of 3 months. In the present scenario, it seems opportune to remove this inconsistency between the provisions of updating information on websites and customer care centers and point of sale and retail outlets. This would also have the effect of eliminating a potential gap arising from three months lag in updating of tariff information during which the consumer may not have access to the requisite information when the consumer is likely to decide on choice of plan. Accordingly, it is felt that the service providers may be required to update the information simultaneously on all channels of communication at the time of introducing/modifying a tariff offer. Accordingly, the issue for consultation is,

Question 9: Whether the service providers be required to update the information on point of sale and retail outlets simultaneously with the launch/change of a tariff offer?

- 2.13. Regardless of the effectiveness of the format prescribed and frequency of updating of information, the same is not likely to lead to attain regulatory objectives if it does not reach the consumers of the telecom service providers in an effortless and efficient manner. Of all the channels of communication prescribed in the 2012 Tariff Publication Directions, one of the most significant channels considering the ubiquitous reach is the websites of the service providers. The Authority reviewed the websites of the service providers and noticed that the tariffs published by the service providers in prescribed formats are not clearly displayed in a legible manner making

it difficult for a consumer to get access to those. Further, even if a consumer can get access to the TRAI mandated formats, the manner of display is not likely to help the consumer. The prescribed structure exhibits publishing of different tariff plans in a columnar format. In practice, it has been noted that most of the telecom service providers prepare and publish one single format containing various tariff plans leading to a situation where the information document becomes illegible and/or remains confusing to the consumers. Thus, considering the aforesaid, the first and foremost requirement is to facilitate consumer access to the tariff information published in prescribed formats, To this effect, a requirement of having a dedicated tab on the home page for all regulatory information (including tariff information) which is relevant for consumer protection can be introduced. In general, this tab may contain all applicable regulations, directions of TRAI which are relevant to the issue of consumer protection and, in respect of tariff offerings in prescribed format.

- 2.14. Apart from the publishing of tariff information in prescribed formats, the service providers publish tariff information in their own specific ways on the websites, pamphlets, posters *etc.* While TRAI feels that the service providers are free to introduce their products/services and related tariff offers in accordance with their choice, this flexibility at times leads to instances of misleading information communication going against the consumer. One way of allowing the service providers the required flexibility and ensuring that the consumers are not misled is to create a link between the tariff advertised/published with the corresponding tariff published in TRAI prescribed format and tariff reported to TRAI in accordance with the provisions of TTO. All Telecom Access Service Providers have been directed to file tariffs online w.e.f. 01.01.2019 *vide* Directions dated 20.12.2018 issued under Section 13 read with Section 11 of the TRAI Act, the online filing of tariffs entails generation of a unique id for each tariff filed with the Authority. The service providers may be required to display the unique id of each tariff offerings wherever and in whatever form, they advertise and publish details of tariffs. Further, as regards the display of information on websites/apps of service providers, they may be required to provide a hyperlink to the tariff for the same plan in the TRAI prescribed format in a prominent manner.

- 2.15. Apart from the linking and reference of tariff information given by the service provider in their own formats and the TRAI prescribed format, the next link that can be created is between the date of launch or changes therein with the Reporting Requirements contained in the Tariff Order. The extant Tariff Order requires that the service providers report all new tariffs and changes thereon within seven working days from the date of implementation. In order to ensure that the service providers do not publish/advertise any tariff offer in contravention of the Reporting Requirements, the service providers may be required to mention the date of implementation of tariff and corresponding date of reporting the tariff to the Authority. It is noted that in the present regulatory framework, there can be a time lag of seven working days between the tariff implementation and date of reporting and generation of unique id and during the same time, only the information regarding date of implementation can be made available.
- 2.16. Following are the next issues of consultation.

Question 10: Whether the tariffs published in prescribed formats are displayed on websites of the service providers in an effective manner? If no, should the manner of display on website may also be prescribed by the Authority? If it is felt that the manner of display on website may be prescribed by the Authority, please give your views on the proposed display framework.

Question 11: What are your views on introduction of concept of unique id and requiring the service providers to link the tariff advertisements etc. with corresponding tariffs published in TRAI prescribed formats including requirements to publish dates of implementation of tariff and that of reporting of tariff. Do you think that any other safeguards need to be introduced? If yes, please elaborate. Please support your answer with rationale.

- 2.17. After addressing the issue of disclosure of tariff information and formats, the next question that arises is related to monitoring and compliance. The monitoring and compliance mechanism is an integral part of any regulatory framework. In this regard, the 2012 Tariff Offers Publication Directions provided for a self-certificate to be given by service providers as regards compliance with newspaper publications

directions only. As stated above, the requirement to publish tariff offers in newspapers and consequent requirement for certificate of compliance have since been withdrawn. Thus, there is no compliance mechanism prescribed for aforesaid directions.

- 2.18. As regards devising a monitoring mechanism, it may be noted that the tariff fixation is a dynamic exercise and the tariff plans/offers are frequently withdrawn, modified and new plans are launched. Considering the frequency of changes and the scope of the entire exercise, it is essential to have a robust system to ensure monitoring of the publishing requirements on a continuous basis. The requirement of a robust monitoring and compliance system is exemplified by the fact that there is a significant risk for a number of consumers to be adversely affected because of wrong choice of tariff offer due to wrong information made available to them.
- 2.19. In this regard, it is felt that some of the proposed changes in display framework particularly the use of unique id and mandating display of date of implementation and date of reporting have the potential of creating the required self-evident monitoring and compliance framework. In addition, the service providers may also be required to provide a self-certificate on a quarterly basis to the effect that all tariff offers have been displayed on website in compliance with the regulations/directions of the Authority in this regard.

Question 12: Whether the proposed monitoring and compliance mechanism is enough to deter any violation of compliance with applicable regulations/directions. If no, please suggest further safeguards that may be introduced to ensure a robust monitoring and compliance mechanism.

Chapter 3: Issues for consultation

Question 1: Whether TRAI should prescribe any format for publishing tariff? Please support your answer with rationale.

Question 2: If the answer to the Question 1 is yes, then please give your views regarding desirability of publishing tariffs on various modes of communication viz., TSP website/Portal, App, SMS, USSD message, Facebook, WhatsApp, Twitter, Customer care centers, Sales outlets etc. If the answer to the question is that tariffs should be published on multiple channels as above, please state whether TRAI should prescribe a separate format for each channel. Please also suggest the essentials of the format for each channel.

Question 3: Whether the extant format prescribed for publishing tariff at TSP's website conveys the relevant information to consumers in a simple yet effective manner? If no, please provide the possible ways in which the same can be made more effective?

Question 4: Whether the service providers be required to publish all the tariff offerings and vouchers in addition to the publishing of tariff plans, in the prescribed format? Please provide rationale for your response.

Question 5: Whether there is a need to mandate TSPs to introduce a tariff calculator tool to convey the effective cost of enrolment and continued subscription? If yes, what can be the essential features of such a tool? If the answer is in negative, then please give reasons for not mandating such a tool.

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Question 12: Whether the proposed monitoring and compliance mechanism is enough to deter any violation of compliance with applicable

regulations/directions. If no, please suggest further safeguards that may be introduced to ensure a robust monitoring and compliance mechanism.

Question 13: Any other issue relevant to the subject discussed in the consultation paper may be highlighted.