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Sub: **Response to TRAI's Pre-Consultation Paper on Review for Tariffs for national Roaming dated 20 December 2012**

Dear Sir,

Vodafone welcomes TRAI's pre-consultation on the tariffs for national roaming. We note that the pre-consultation is confined to the issue of national roaming tariffs. This is as it should be; the Authority must resist any temptation to stray into adjacent areas such as the definition of service areas, the cost of IUCs or the structure of wholesale roaming agreements.

We request that, in the main consultation paper, TRAI explains the meaning of 'removing of roaming charge across the nation' and what objectives it is seeking to achieve through any regulation. The statements made in NTP-12 lack clarity. A clear understanding of what is in the mind of policy makers and regulators is critical if the consultation process is to have any value.

Although we welcome the consultation, we note that its tenor contrasts with the Authority's recent decision to forbear in the regulation of retail tariffs given the vigorously competitive nature of the India marketplace. Furthermore, we believe that the Authority will be unable to reach any conclusions until other matters germane to the cost of different call types have been resolved, in particular, the level at which MTCs are regulated (where the Authority has been required, by TDSAT, to include capital costs in its calculation of the costs of termination).

We note that some critical components of cost have increased since the previous review in 2007 or are expected to increase in the near future. The industry is facing a many-fold increase in the cost of spectrum resulting from the exorbitant (by any measure) reserve prices set for the forthcoming auction of 900MHz and 1800MHz

spectrum. In fact, TRAI has proposed *even higher* reserve prices for the auction of LTE spectrum in future. In addition, there are other significant, new regulatory matters which have increased costs: EMF, UCC, MNP, subscriber registration, excessive charges by local authorities for Rights of Way and towers, QoS regulations etc. These costs are in addition to the higher diesel and power costs which the industry faces to operate the networks. TRAI should include these elements of cost in its review of roaming charges.

Given the above, the Authority must conduct its review with an eye on the financial health of the industry. The latter is facing an even higher debt burden and lower profits as a consequence of higher spectrum charges. More regulation means that operators' ability to invest in extending network coverage could be further compromised. This is illustrated in the attached recent report by PWC.

Finally, we wish to reiterate the points that we made in our response to the previous information request: the consultation process must be a thorough and comprehensive exercise which includes: data gathering on all relevant costs, consultation with industry, a consideration of the wider ramifications of any tightening of the regulations, an open house hearing and a detailed explanation of the conclusions reached by the Authority.

<u>Pre-consultation Questions</u>

<u>Issue-</u>

(i) Should the present cost based approach for determining tariffs for national roaming continue?

(ii) In case your response to issue (i) is in the affirmative, what cost components should be included in the determination of such charges? You may also comment on the information sought by TRAI from the service providers in the proforma placed at Annexure.

(iii) In case your response to issue (i) is in the negative, what should be the alternative approach for determining tariff for national roaming? Please support your view with a detailed methodology.

We submit that national roaming tariffs should be under forbearance and that market forces should be allowed to determine the tariffs charged. The current regulations have proved unnecessary because all operators are charging below the permitted ceilings.

Alternatively, if the ceiling tariff is to be set on the basis of cost, all the factors and cost elements should be taken into account in setting the ceiling. The cost elements including those that we highlighted in our previous response, in addition to the future increases in spectrum charges (including the one-time fee which Vodafone believes is illegal). The methodology to be adopted by TRAI should ensure a full cost recovery.

The review in 2007 set caps for national roaming voice calls at Rs.1.40 per minute for an outgoing call, Rs. 2.40 per minute for a national long distance call and Rs. 1.75 per minute for an incoming call. These maximum charges were set to ensure that operators recover the cost of handling national roaming calls: the sum of incremental capital costs, operating costs and IUC charges. Our analysis[1] to date of the costs associated with roaming has revealed that the total cost of providing inbound and outbound calls when roaming will be above the retail price currently charged for those calls once all of the relevant costs, in the correct quantum, are taken into account.

We show our estimate of the total 'cost stack' for roaming calls in the table below. Our numbers for call origination and termination reflect our view that the cost of these services is higher than the current regulated charge. Retail costs must be recovered across outbound services and we recover a portion of these costs in call origination.

The higher spectrum costs shown in the table comprise the cost of license extension resulting from the upcoming auction and the one-time fee. We have assumed that Vodafone retains its current mix of spectrum. Since Vodafone is merely extending its license with the current spectrum mix intact (i.e., we assume no increase in the total quantum of spectrum) there can be no question that this will lead to lower network costs. This contrasts directly with the observations made by Morgan Stanley, quoted by the Authority in the Explanatory Memorandum accompanying the previous review of roaming tariffs in 2007:

[1] Our cost data is relevant to the current roaming 'framework'; if this alters then other costs may be relevant.

> "… Evidence available indicates that the cost of providing services in telecommunication sector in general and in mobile telephony in particular has been declining over a period of time. In the report of Morgan Stanley Research, Asia Pacific dated 10.1.2007; this point has been explained with evidence which is reproduced below:
>
> "The Indian operators have had several advantages since they started building their networks in the last five years.
>
> (a) …
>
> (b) India has had the further advantage of needing only cheaper 2G infrastructure, when the rest of the world has been moving to 3G.
>
> (c) The Indian Government has given additional spectrum to the operators crossing a threshold subscriber base further lowering incremental capex. The more spectrum given by the Government, the lower the capex per erlang.
>
> **…"**

The situation now is different. Operators are paying to extend their *existing* holdings of spectrum and therefore the cost of capex per erlang is higher than it otherwise would have been in the absence of license extension. An important factor that was used to justify the previous review no longer holds true and therefore TRAI must explain, in a transparent manner, the basis on which it finds it appropriate to conduct another review.

In short, our work on the cost of supplying roaming has revealed that there is no case for tightening the ceiling retail rates for calls made and received when roaming. This costing work has necessarily been completed in a short time frame and we reserve the right to amend our submission or make further submissions in the main consultation.

Issue-

(iv) After implementation of the calling party pays (CPP) regime, incoming calls are free for mobile subscribers while they are in their

home service area. Under the CPP regime, the calling party's network compensates the called party's network for terminating the call on its network by way of interconnection charge viz. mobile termination charge. The calling party's network recovers the mobile termination charge from its own subscribers. However, the incoming calls while roaming are not free as the costs involved viz. carriage charge for carrying the call from the home network to the visited network, mobile termination charge for termination in the visited network, and the incremental cost for roaming have to be paid by the roaming subscriber who receives the call. In case the burden of these costs is removed from the roaming subscriber, these costs will remain unrecovered.

In your opinion, should the burden of the cost for the incoming call be removed from the roaming subscriber? If yes, how should this cost be recovered? Would removal of the burden of the cost for the incoming call while roaming lead to an increase in overall call traffic across the country?

Vodafone considers that regulation should not be made in a vacuum and that it should be consistent over time or, at least, that changes in approach should be fully justified. The CPP regime was introduced in 2003. However it is not applicable to an incoming call to the roamer. This principle was rightfully followed and endorsed by TRAI in 2007. We urge TRAI to be consistent in its approach. If TRAI is considering a contradictory view now then it may have huge bearing on overall market structure (see below).

Vodafone believes that the cost of an inbound call when roaming should **continue to be recovered by the roaming customer**. This practice has been prevalent for nearly 18 years, it has been endorsed by the regulator, and it is well established in the minds of customers who, on average, receive a benefit from receiving calls when roaming (and therefore are willing to accept, and pay for calls, when roaming). There would appear to be no compelling reason — and TRAI has not attempted to provide one — to alter the manner in which the costs associated with incoming call while roaming are recovered.

It is currently inappropriate and impractical to recover these costs from the calling party on a call-by-call basis because he or she, when they initiate the call, does not know whether or not the called party is roaming or not and therefore what they will be required to pay for the call. In such a regime, the uncertainty about the eventual call costs may cause customers to make fewer calls. Moreover, it is not technically possible to make customers aware that the called party is roaming (we do not know the whereabouts of another operator's customers) or to bill the calling party for the roaming leg of a call.

The removal of the burden of the cost for the incoming call while roaming would not necessarily lead to an increase in overall call traffic across the country. There is a cost associated with the carriage of an inbound call when roaming. This cost will not disappear — NLD licensees will still require a payment for the service that they provide — if the retail charges for an inbound call when roaming is abolished. Under regulation operators will seek to recover these costs from somewhere; two possible candidates are: the cost of outbound calls in the home network for all customers or the cost of an outbound call for roaming customers (if permitted). The effect of these price changes on overall demand will depend on the relevant price sensitivities of the different customer types. These price elasticities are not known, however it is possible that the decline in outbound calls consequent on a price increase may well exceed any stimulus to inbound calling when roaming, particularly if, as seems likely, customers who roam are likely to be less price sensitive (and richer) than the generality of customers. Indeed, why should poorer non-roamers subsidise those customers who choose to roam?

In fact, the impact of removing the difference between roaming tariffs and home tariffs will be greater than anticipated above because it will cause an *additional* increase in the number of inter-circle calls to SIMs which are roaming (i.e., over and above the effect of roamers being more willing to accept calls when they are roaming). This will occur because, for example, a migrant worker in one circle who habitually makes STD calls to his family at his home (another circle) will purchase a SIM card from the circle in which he works (with a 'local' service area specific number) and give it to his family. In other words, the number of roaming SIMS will *increase*. The calling party will save money by paying for a local call (instead of an STD call) and the called party will not pay to receive the call. This effect will exacerbate the costs of regulation for the home network because it will be not recover the costs of carriage on a *greater* number of calls. Instead, it will need to recoup these costs from other services; both increasing the magnitude of cross-subsidy noted above and the potential negative impact on total call traffic.

Irrespective of the impact on call volumes, the effect of removing the charge for inbound calls when roaming will be that TRAI is mandating that operators make a loss on providing a specific call type by pricing below cost. We know of no instance where TRAI has required this in the past and it may well be contrary to the current regulations. If operators make a loss from providing a service they will have no incentive to invest in supporting and improving that service.

v) Under the existing telecom licensing regime, licenses are issued separately for each service area. Service providers levy a roaming tariff for any usage by a subscriber outside the home service area. The visited network in which a subscriber is roaming is compensated by the home network in accordance with the terms and conditions of the roaming arrangement between them. While some service provider share a pan-India presence, others operate in only a few service areas.

As per the existing terms and conditions of license, it is not mandatory for a service provider to enter into roaming arrangements with other service providers. Besides, there is no mandate on the terms and conditions of roaming arrangements. Therefore, it is possible for a particular service provider to demand a higher rate for allowing roaming facility to the subscribers of other service providers. This situation results in the roaming subscribers having to pay a differential higher rate for off-net roaming. Traffic flows in terms of in-roaming and out-roaming are also asymmetrical between various service providers.

In your opinion, if the difference between the tariff while roaming and the tariff in the home network is done away with, how would such an arrangement operate within the framework of the present licensing regime? What are the likely issues that may arise upon its implementation?

Vodafone reiterates that changes in approach on the part of the regulator should be fully justified. As recently as 2007, the Authority supported a cost-based ceiling for roaming calls. If it is considering changing its approach, it should explain its reasons and the benefits and costs that it has evaluated in reaching this view.

There is no sign of any market failure in the provision of wholesale roaming to operators. Indeed, operators who buy wholesale roaming have a choice of multiple suppliers which they invariably play off against each other to achieve the best terms. The bargaining power lies with the buyer (who has a variety of suppliers to choose from) and, in fact, Vodafone recently ‘lost’ one of the new operator’s roaming traffic to another supplier. There is no evidence that regional players are at a disadvantage under the current regime where wholesale roaming charges are commercially negotiated and, by definition, both buyer and seller benefit from the deal. The fact that traffic flows are asymmetrical between service providers does not matter as long as operators can charge to cover their costs (if operators want to change their traffic flows they can always buy spectrum in a service area and build and run a network – see below).

Vodafone applies a national roaming wholesale tariff between its own individual licensed service areas and therefore operators who buy wholesale roaming from Vodafone do not pay a ‘differential higher rate for off-net roaming’. This is evidenced by the fact that regional operators have been able to offer tariffs competitive with those of pan India operators and, at the same time, earn a margin above the wholesale charge. The current, commercially negotiated, arrangements have been concluded without the need for regulatory intervention; they have facilitated competition and there is clearly no need for intervention on the part of the regulator.

The competitive provision of wholesale roaming will continue in place if the difference in the tariff while roaming is eliminated. The latter is a regulation at the retail level which has no linkage with what happens at the wholesale level. Operators will continue to compete to supply national roaming at rates which cover their costs. Moreover, because the cost of supplying roaming may vary significantly between service areas, operators need to retain the flexibility to negotiate rates commercially.

Intervention by the regulator to set wholesale roaming charges risks ‘regulatory failure’ where the cost is set below the actual cost of supplying the service. This will distort competition (roaming providers would be subsidising roaming seekers) and adversely affect the home networks incentive to invest in network capacity.

We urge the Authority to resist any urge to facilitate the backdoor entry of pseudo Mobile Virtual Network Operators by regulating the wholesale charges for national roaming. Injudicious action on the latter would allow a regional operator to export SIM cards from their existing home region / circle and set up shop in a service area for which they have no license (e.g., operator A would export SIM cards from Bihar to Mumbai and begin selling them to customers). This should be strongly resisted. Operators are free to make build / buy decisions. If an operator wants a ‘home type’ presence in a market then it should buy spectrum at the market rate (R 14,000 crores for 2x5MHz of 1800MHz in the previous auction). If it chooses not to buy spectrum then its home customers can only enjoy service in that circle by buying national roaming at commercially negotiated rates (from operators that have made investments in spectrum and network) and accepting a different mix of on-net/off-net traffic. These arrangements were known at the time of the auction and surely were a factor in operators' decisions to bid. It should not be the place of the regulator to subvert the current regime and unwind the results of the previous auction.

Aside from being unnecessary and unjust we believe that any regulation of the wholesale arrangements between operators for national roaming is not part of the functions of the TRAI under the TRAI Act. Furthermore, the provision of national roaming is governed by license conditions which cannot be changed unilaterally. In short, the Authority has neither the authority nor the mandate to make such changes.

India has, to date, licensed operators by service area with a total of 22 service areas. The licenses are divided into Metros and Circles of Category A, B and C by the Government. The costs of spectrum, network set up and operation vary significantly between service areas. The recent auctions of November 2012 saw the Service Areas of Mumbai and Delhi contribute almost 40% of the total reserve price of all 22 licenses. Any arrangement where the difference between the tariff while roaming and the tariff in the home network is eliminated will undermine the investments made by the visited network. It will also result in the under recovery of costs by the visited network.

We respectfully submit that the same issue of home tariffs applying in case of roaming was part of TRAI's consultation in 2006/07. This option was rejected by the industry as a whole and such rejection was accepted by TRAI.

Issue -

(vi) In your opinion, is there a need to prescribe a tariff for video calls while roaming? If your answer is in the affirmative, what methodology should be adopted for calculation of such tariff?

(vii) In your opinion, should TRAI also prescribe a tariff for SMS while roaming? If your response is in the affirmative, what method of calculation for such tariff should be adopted? In case cost based tariffs are to be prescribed, the service providers may kindly provide the cost data and costing methodology to be adopted.

We submit that national roaming tariffs, including for video calls and SMS, should continue to be under forbearance and market forces should determine the tariff. Our table above shows that, in the future, Vodafone's charges for the basic roaming services will be below cost. This means that we require flexibility in the pricing of other services to ensure that, overall, the roaming 'business' is able to make a fair return. Such flexibility exists within the home network and we see no reason why the same should not apply for national roaming.

(viii) The subscribers widely use special tariff vouchers (STVs) to avail free/concessional usage in their home service areas. As per the prevailing tariff framework, no fixed charge is permitted for accessing roaming service or in lieu of free/concessional roaming usage. The service providers could be permitted to offer special tariff vouchers (STVs) for roaming. Such tariff vouchers would be optional.

In your opinion, would it be appropriate to allow special tariff vouchers for roaming subscribers?

In the absence of further intervention by the regulator, Vodafone would wish to offer roaming STVs to its customers; we view the current restrictions as needless and anti-consumer. Such deals can be used to offer customer roaming rates in return for a guaranteed commitment from the customer.

If national roaming is further regulated so that the roaming tariff is equivalent to the home tariff then such roaming STVs would cease to have any meaning. Moreover, operators will cease to provide STVs in some home markets for fear that the associated SIM cards would be exported to other circles, thereby making the offer of STVs uneconomic. Roaming regulation will therefore dampen competition in many service areas because operators will be wary about introducing STV deals which would otherwise, in the absence of roaming regulation, have benefited the customers.

It is worth re-iterating the point that we made in response to the previous question. The regulation of roaming should not be designed to, or have the consequence of, allowing operators who have chosen to be regional players to become pan India operators. The current arrangements allow the customers of regional players to travel outside of the markets in which they have acquired spectrum and invested in network and continue to make and receive calls on their handset. This facility exists because of the underpinning wholesale arrangements which have been bi-laterally negotiated between buyer and seller. Regulation, whether at the wholesale or the retail level, should not permit regional players to become 'home' operators in service areas where they have neither spectrum nor network by piggy-backing on the investments of operators who have. This will distort the basis of competition in India and undermine the investments of the operators.

Issue

(ix) Is there any other relevant issue related to 'tariff for national roaming' which the Authority should keep in mind while carrying out the proposed comprehensive review of the framework for tariff of national roaming services?

Not at this stage.

Please note that these submissions are without prejudice to our rights on spectrum related issues including the recent demand for a One Time Fee by the DoT.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,

T. V. Ramachandran
Resident Director
Regulatory Affairs & Government Relations