rainbow
the joy of communication

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6th July, 2007

The Chairperson
Telecom Regulatory Authority of India
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Sub: Consultation paper on Review of License terms and conditions and capping of number of access providers dated 12th June 2007.

Dear Sir,

We would like to take this opportunity to congratulate TRAI for coming up with an exhaustive consultation paper on the above mentioned subject.

One of the key responsibilities of TRAI is to encourage competition, and capping is not in the interest of consumers. Telecom growth story till now is based on open and healthy competition amongst all players including public sector.

Further one circle is as good as one European country both in terms of population and size.
At present there are six operators nationwide and average subscriber per pan India operator is close to 200 Million. Is this fair to the consumers?. The leading operators boost of over 20 Mn subscribers in their network,

First and foremost TRAI should strictly follow the license conditions, and restrict frequency allocation to the existing players. Further on a time bound basis operators to return the spectrum, which has been allocated over and above the licensed conditions paving way for entry of new operators. Till such time the frequency is returned, WPC should charge exponentially for the frequency allocated to the operators in excess of the license conditions.

India has great potential and more players are willing to come, If entry of new players are capped, this will deny the choice to the consumers of this country and getting the services from international players.

We strongly feel that there should not be any restriction of entry of new players, and TRAI should not cap the same.

Further any discriminatory policy amongst existing Pan India and Regional players should be avoided at any circumstance, as this would encourage monopoly amongst existing players and reduce available choice to the subscribers, which in turn may result in increase pricing.

We are however filing our reply for all issues raised under in the above referred consultation paper.

Thanking you,

Yours faithfully

Authorised Signatory.

Q1. How should the market in the access segment be defined?

Wireless has become the dominant technology both for fixed and mobile offerings.

Under the fixed access domain, wireless technology such as CDMA, CorDECT, Wi-Max, Wi-Fi etc play a very important role. Under the mobile offerings both CDMA and GSM operators offer voice and high-speed data services.

The tariff for these services are also charged differently, the data is charged at fixed price per month along with limitation on both in speed and quantity for downloading and streaming. Voice is still charged per minute.

In this background the access can be classified, as fixed and mobile services.

Q2. Whether subscriber base as the criteria for computing market share of a service provider in a service area be taken for determining the dominance adversely affecting competition, if yes, then should the subscriber base take into consideration home location register (HLR) or visited location register (VLR) data? Please provide the reasons in support of your answer?

Most of the developed markets in the world use the measure of HHI for computation of market share. In India we should follow the combination of HHI, cross verified with HLR/VLR data.

India is the only country, which has universal access license, whereby the operators are allowed to offer both mobile and fixed services.

It is pertinent to mention here that an operator need not be dominant player in both in fixed and mobile offerings. Collectively the operator could have substantial revenue muscle through which he can dominate the market.

Therefore while determining dominance, regulator should consider not only the subscriber dominance but also the revenue dominance of the operators.

Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% of more, of the merged entity, is not permitted. Keeping in mind, our object and the present and expected market conditions, what should be the permissible level of market share of the merged entity? Please provide justifications for your reply?

In the present oligopoly regime, the permissible level of market share of the merged entity should be 25% or more. This is in line with the European Commission and the policies adopted in USA.

Q4. Should the maximum spectrum limit that could be held by a merged entity be specified?

a) If yes, what should be the limit? Should this limit be different for mergers amongst GSM/GSM, CDMA/CDMA & GSM/CDMA operators? If yes, please specify the respective limits?

If no, give reasons in view of effective utilization of scarce spectrum resource?

The objective of regulators is to that see plenty of choices are available to the consumers. The motive behind the M&A is to enhance shareholder's value and dominance in the market.

By virtue of this merger, the operator would enjoy more economical scale and greater spectrum efficiency, this will lead to further dominance and this is anti-competition. This should be curtailed. Therefore the merged entity should be treated as one entity even after the merger and in the interest of level playing field, the same restrictions should be applied to the merged entity. In the present case the maximum limit as per license conditions for CDMA operators is 5 MHz and for GSM operators it is 6.2 MHz.

Q5. Should there be a lower limit on the number of access service providers in a service area in the context of M&A activity? What should this be, and how should it be defined?

Presently the Access Providers not only offer local access but also offer long distance within the circle and they act as a pipe for NLD/ILD services. In this background, there should not be any lower limit

Q6. What are the qualitative or quantitative conditions, in terms of review of potential mergers or acquisitions and transfers of licenses, which should be in place to ensure healthy competition in the market?

Government and the regulator have a responsibility towards the consumers. One of the important functions of the regulator is to provide choice to the consumer.

In this background the review of mergers and acquisitions can be qualitatively seen from the perspective of tariffs, and quantitatively from the perspective of number of operators after the merger for both services.

Q7. As a regulatory philosophy, should the DoT and TRAI focus more on ex post or ex ante competition regulation, or a mix of two? How can such a balance be created?

The philosophy should be ex ante. Further regulator should be made one of the parties for pre-merger approvals, wherein he takes into consideration of all aspects as laid down above.

Q8. Should the substantial equity clause (1.4 of UASL) continue to be part of the terms and conditions of the UAS/CMTS license in addition to the M&A guidelines? Justify.

The substantial equity clause should continue to be part of the terms & conditions of UAS/CMTS licenses in addition to the M&A guidelines. The government has responsibility

towards Indian consumers and by diluting this clause; they will curtail the competition and harm interests of the consumers.

Q9. If yes, what should be the appropriate limit of substantial equity? Give detailed justification.

As per the UASL conditions, existing level of substantial equity, i.e., 10% should be retained

Q10. If no, should such acquisition in the same service area be treated under the M&A Guidelines (in the form of appropriate terms and conditions of license)? Suggest the limit of such acquisition above which, M&A guidelines will be applied.

A10. Not applicable

Q11. Whether a promoter company/legal person should be permitted to have stakes directly or indirectly in more than one access License company in the same service area?

Yes. However, the stipulation of substantial equity not being more than 10% as per UASL should not be violated.

Q.12 Whether the persons falling in the category of the promoter should be defined and if so who should be considered as promoter of the company and if not the reasons therefore?

Persons having equity of 10% of more in a company should be treated as a promoter.

Q13. Whether the legal person should be defined and if so the category of persons to be included therein and if not the reasons thereof?

The legal person is defined in the company's act and the same is well understood in judicial parlance.

Q14. Whether the Central government, State governments and public undertakings be taken out of the definition for the purpose of calculating the substantial shareholding?

In the interest of level playing field, central/state government and public undertakings should be treated at par with other operators and should not be taken out of the definition for the purpose of calculating the substantial shareholding.

Q15. In view of the fact that in the present licensing regime, the initial spectrum allocation is based on the technology chosen by the licensee (CDMA or TDMA) and subsequently for both these technologies there is a separate growth path based on the subscriber numbers, please indicate whether a licensee using one technology should be assigned additional spectrum meant for the other technology under the same license?

The licenses are technology neutral and the mere fact that separate growth paths are available, should not become an hindrance in deployment. The regulator should ensure that the state-of-the-art technologies are being used by the operators with good quality of service as prescribed.

Further as India has taken up the initiative of providing choice to its consumers by non-restricting number of players, could have some serious impact in the availability of spectrum. In this background the Government should not allocate any additional beyond what is stipulated in the license conditions.

Q16. In case the licensee is permitted, then how and at what price, the licensee can be allotted additional spectrum suitable for the chose alternate technology

The licensees should not be allowed additional spectrum beyond the stipulated limits in the license conditions, any additional spectrum should be charged exponentially in the same way as done in the power tariffs.

Q17. What should be the priority in allocation of spectrum among the three categories of licensees given in para 4.16 of the chapter?

The priority in allocation of spectrum should be in the basis of first come first served basis as per the eligibility criteria and there should not be any preference to existing licensees over the new licensees or for use of alternate technology.

Q18. Whether there should be any additional roll out obligations specifically linked to the alternate technology, which the service provider has also decided to use?

Licenses are technology neutral, and therefore there should not be any rollout obligation specifically linked to a particular technology

Q19. Lastly, as such service provider would be using two different technologies for providing the mobile service, therefore what should be the methodology for allocation of future spectrum to him?

Since licenses are technology neutral and upper ceiling of spectrum for merged entity should also be prescribed, the operator should be given the liberty to choose the technology path for the combined entity.

Q20. Should present roll out obligations be continued in the present form and scale for the Access service providers or should roll out obligations be removed completely and market forces be allowed to decide the extent of coverage? If yes, then in case it is not met, existing provision of license specifies LD charges upto certain period and then cancellation of license. Should it continue or after a period of LD is over, enhancement of LD charges till roll out obligations is met. Please specify, in case you may have any other suggestion.

The rural roll out obligations is covered under USO and in the urban area there is already a plenty of choices available for the consumers, In this background, the roll out obligations should be done away.

Q21. Is there a case for doing away with the performance bank guarantees as the telecom licensees are covered through the penalty provisions, which could be invoked in case of non-compliance of roll out obligations?

The performance bank guarantees can be done away with. As the telecom licensees are covered through financial liability provisions, which can be enforced in case of non-compliance of terms and conditions of the license agreement.

Q22. Should roll out obligations be again imposed on the existing NLD licensees? If yes, then what should be the roll out obligations and the penalty provisions in case of failure to meet the same?

Fast changing of technology, and the emergence of IP based topology, has helped in rationalizing NLD tariffs.

In this background enforcing any roll out obligations on the NLD, will have adverse repercussions and customer tariffs may even go up, and therefore should be done away with.

Q23. What additional roll out obligations be levied on ILD operators?

No additional roll out obligations for ILD operators.

Q24. What should be the method of verification of compliance to roll out obligations?

Verifications to the compliance of the roll out obligations should be mandatory by third parties, which could be TEC or VTM units. This will ensure that no self-certificate is issued for completion of roll out obligation without any statutory clearances from the various authorities.

Q25. What indicators should be used to ensure quality of service?

The existing quality of service regulations of TRAI are adequate.

Q26. As the licensees are contributing 5 per cent of AGR towards the USOF, is it advisable to fix a minimum rural roll out obligation? If yes, what should be that? If no, whether the Universality objectives may be met through only USOF or any other suggestions.

With the government funding the rural infrastructure, it is not advisable to enforce any minimum rural rollout obligations.

Q27. In case of rural roll out obligation, whether number of BTS in a certain area a viable criterion for verification of rollout obligation?

Not applicable

Q28. What should be the incentives and the penalties w.r.t rural roll out obligations?

The barriers in reaching out to rural are availability of power, related OPEX, availability of backhaul, low density of subscribers etc. Government can create a common backhaul whereby traffic of the village/BTS are carried free to the nearest LDCA. This will take away huge burden from the operator. Further rural niche operators and MVNOs for rural areas can be a very good option.

Q29. Should there be a limit on number of access service providers in a service area? If yes, what should be the basis for deciding the number of operators and how many operators should be permitted to operate in a service area?

Q30. Should the issue of deciding the number of operators in each service area be left to the market forces?

Answers to 29 and 30 questions.

The government of India took liberal path by announcing NTP 99 and doing away with duopoly. The growth of Indian telecom for which every one proud of, is a direct reflection of the policy. The telecom segment has witnessed the highest FDIs in India. The business houses are supposed to do a due-diligence before entering into any business.. In this background the regulators or the policy makers should not cap the number of service providers and it should be left to the market forces to find its level.