

# ASSOCIATION OF UNIFIED TELECOM SERVICE PROVIDERS OF INDIA



Response to TRAI Consultation Paper  
on  
Review of license terms and conditions and capping of  
number of access providers

**Consultation Paper No.7/2007 dated 12<sup>th</sup> June 2007**

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**AUSPI's Response to TRAI Consultation Paper No. 7/2007 dated June 12, 2007 on  
Review of license terms and conditions and capping of number of  
access providers**

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Merger and Acquisition

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

*Our member companies will respond individually.*

**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?**

Market Power is an economic concept and a function of not only concentration but also of demand elasticity, supply elasticity of rival firm, market share of competitive firms and their reactions and differences in cost and risk. Position of economic strength enjoyed by an undertaking/company enables it to show its market share/dominance in the competition prevailing in the telecom market.

In view of above we consider that for determining the dominance in the market, Audited Adjusted Gross Revenue (AGR) and Subscriber Base criteria should be considered to calculate the market share of a service provider in a service area.

The number of subscribers should be based on Exchange Data Records (EDR) and Visitor Location Register (VLR).

**Q3. As per the existing guidelines, any merger/acquisition that leads to a market share of 67% or more, of the merged entity, is not permitted. Keeping in mind, our objective 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 view of the presence of a large number of operators and most of the service areas being highly competitive, the existing criteria of monopoly market share of 67% or above of the subscriber base within a service area of the merged entity is very high.

In response to Q2, we have suggested that Subscriber Base and Audited AGR should be considered as criteria for computing market share because both are used for determining the valuation of telecom Business and, therefore, are natural choices. Subscriber base alone doesn't give correct indication of market power.

Internationally, in general, a market share of 40 per cent to 50 per cent is indicative of dominance. In the European Union the presumption of the market dominance is, if a company has a market share consistently above 50%. According to US practice HHI in excess of 1800 points, which translates to 45% Market share, is considered to be concentrated market.

AUSPI, therefore, suggests that the permissible level of market share of the merged entity should not exceed 45% based on Subscriber base and Audited AGR criteria.

In the present day market situation, we suggest CR2 with a cap of 67%.

**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?**

Yes, AUSPI submits that the amount of spectrum to be held by a merged entity at the time of merger should not exceed 15+15 MHz per service area for all categories of service areas.

- b. If no, give reasons in view of effective utilization of scarce spectrum resource?**

Not applicable in view of our response above.

**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?**

Yes, there should be a lower limit on the number of access service providers in a service area in the context of M & A activity so that the subscribers' choice is not adversely diminished and there is genuine competition and increased efficiency.

The existing condition for merger of licenses that there are at least three operators in the service area for the service(s) consequent upon such merger be continued.

AUSPI proposes that merger and Acquisition be permitted subject to the condition that there are at least three operators in that service area for that service and this should be accompanied by the requirement that the concentration ratio of top two firms (CR2) in the post-merged scenario to be capped at 67%.

**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?**

Some of the qualitative or quantitative conditions for healthy competition are as follows:

- Well-designed competition law/policy and competition based economic reform to promote efficiency.
- Uniform and appropriate policy irrespective of technology deployed by the merging entities.
- Competition friendly regulation.
- Number of operators in the market-The minimum limit to be three operators consequent to mergers and acquisitions.
- Market Monopoly Power (MMP) be taken as a market share consistently exceeding 45% depending on subscribers base and Audited AGR.
- Desirability of M & A needs to be examined if the concentration ratio (CR2) is 67% or above.

**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 present M & A guidelines for telecom sector are ex ante. It is felt that taking into consideration facts like flexibility, market forces etc. ex ante philosophy should be followed.

The regulator and the Government should also focus on friendly and proper regulation to support ex ante competition.

Substantial Equity

**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.**

And

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

And

**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.**

And

**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?**

And

**Q12. 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?**

*Our member companies will respond individually.*

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

AUSPI submits that further definition of the legal person is not necessary. The licensee companies are registered under the Companies Act 1956. As such the definition as per Companies Act 1956 and other relevant law of the land should apply.

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

*Our member companies will respond individually.*

Permitting combination of technology under same license

**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?**

Yes, a licensee using one technology may be assigned additional spectrum meant for another technology under the same license.

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

And

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

*Our member companies will respond individually.*

**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?**

We do not subscribe to the view to have roll out obligations. We suggest that roll out obligations be removed and market forces be allowed to take care of roll out obligations even in the present case.

**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?**

*Our member companies will respond individually.*

## Roll out obligations

**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 obligation is met. Please specify, in case you may have any other suggestion.**

The roll out obligations in the license agreement do not serve any purpose. It is a road block and acts like an 'inspector raj' where service providers depend on various agencies in order to roll out the network to meet the obligation.

AUSPI suggests that the present roll out obligations for Unified Access Service Licensee (UASLs) be removed. There are 5-7 access service licensees in each service area and there is fierce competition in the telecom market. As such, roll out obligation mandated in the initial phase of privatization is considered no longer necessary. The intense competition will force the operators to roll out and extend their coverage so as to provide good quality service to the subscribers to remain in business.

In view of above, we submit that henceforth there should be no roll out obligations for UASLs.

**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?**

In response to Q 20 above, we have submitted that present roll out obligations for UASLs be removed as these are considered not required in view of effective competition in the market.

As such provision of performance bank guarantee is not necessary and it is to be dispensed with.

**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?**

And

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

*Our member companies will respond individually.*



**Q24. What should be the method of verification of compliance to rollout obligations?**

Not applicable in view of our response above. Roll out obligations are not required in consideration of present intense competition in the market place.

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

TRAI's present regulations regarding quality of service except that pertaining to in-building coverage are adequate to ensure QoS.

The stipulation of indoor coverage in QoS is impractical and unnecessary as indoor coverage criteria are determined by telecom market/business demands which anyway is being met by service providers whenever required by providing in-building solutions. In a fiercely competitive market in India the operators compete with each other to provide better QoS and meet customers requirement. In view of that, indoor coverage stipulation is not required. Internationally also wireless operators are not mandated to provide indoor coverage.

**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.**

Roll out obligations are not required as the network expands, geographical and population coverage increases and competition grows. We, therefore, consider that all the objectives of universal service would be met by the service providers.

USO Fund, in addition to whatever is doing as a catalyst to increase the connectivity in the rural areas must also consider:

- Support for OFC connectivity upto SDCCs
- Support for OFC connectivity to rural BSCs and BTSs from the nearest SDCCs/BHQs.
- Early action for announced schemes like additional towers, infrastructure and services.
- Present USOF collection is much more than sufficient to meet universal service obligation. Contribution needs to be reduced and finally abolished.

**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?**

There should be Incentives and no penalties. We firmly believe that regulation-recognizing incentives could be a more effective tool rather than imposing penalties. In this connection we suggest the following incentives:

- Reduced license fee revenue share.
- Exemption of rural income of service providers from license fee and spectrum usage charge.
- RDEL scheme (of USOF) be extended by further 2 years.
- Spectrum usage charges (both for access and backbone) only to cover administrative charge.
- Reduction in license fee once the network is completely rolled out in rural areas.
- Subsidy from USOF equal to 80% of the amount decided under USOF Phase I scheme as per TRAI's recommendation on Infrastructure sharing for all operators.

For Broadband rural connectivity we propose incentives to service providers as follows:

- Allocation of dedicated carriers for rural broadband data services.
- Allocation of 450 MHz for broadband services in rural areas.
- Subsidy for content development for rural areas.
- Hundred percent Govt. subsidies in rural areas for Customer premises Equipment (CPEs).
- Hundred percent depreciation in CPEs like PCs in the first year itself.
- No custom duty on broadband equipment including CPEs for rural areas.
- No custom Duty and CVD on data card used for broadband.

Determining a cap on number of Access provider in each service area.

**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 operators and how many operators should be permitted to operate in a service area?**

*Our member companies will respond individually.*

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

*Our member companies will respond individually.*

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