

TRAI ISSUES FOR CONSULTATION : LICENSE TERMS

Q1. How should the market in the access segment be defined (see ¶2.22)?

Access segment is the 'last mile segment' whatever be the technologies. In the context of consumer market, subscribers differentiate between Basic (Wireline) & Mobile (Wireless) products & services. Also traditionally 'Wireline' is the basic service & 'Wireless' Mobile is the Value Added Service. However with FMC such dividing line will also get blurred in the emerging era of Convergence.

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?

To determine dominance market share is a key criterion. This should be worked out based on subscriber base, MoU, traffic load (erlangs), coverage, urban / rural ratio, total no of operators, no of operators in each technology (CDMA / GSM / WiMax etc), allocated spectrum to max (as specified in the current policy) & revenues (AGR). It should be per circle with relative weightage to the parameters.

As regards the subscriber base VLR is an option, but more preferred could be the subscriber base & details that are compulsorily submitted to the Security agencies.

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?

Impact of any M&A is different in different circles as well as at the regional & national level. Being still a developing country with sharp digital divide (2-3% rural & 24% urban teledensity), huge diversity, high level of heterogeneity etc, it may not be proper to fix one figure across the country. Also huge potential exists still in areas that are covered & what remains still untapped. To keep healthy competition without the threat of monopoly trends or possible cartelization, 67% is too high in any situation. It should be around 40-45% max, say in C circles down to 30-33% in metros, A circles & nationwide.

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

In principle, no. Spectrum is limited everywhere in every country. However some of the developed countries have still achieved 110-120% penetration. The key issue is how well the given spectrum is being utilized. Another question is how much could really be made available in the relevant bands to agreed timescales from various other users. In Indian scenario earlier spectrum was not quite properly & methodically standardized & allocated to the needs of various users. NFAP 2002 has to be further revised to various new technologies. Other users including defence agencies are required to deploy more modern & secure alternative communication technologies. And above all, whoever uses spectrum has to be efficient & effective by all possible means. To look into all these & many other related aspects perhaps an independent empowered committee should be set up preferably by the Union govt before any GoM approves its findings & recommendations. The spectrum roadmap & how to farm out could only be dealt this way. Later the concept of a Spectrum Regulator could take shape. Spectrum issue cannot remain in principle within one user department when such a scarce & premium resource is to be dispensed to multiple users including Defence, Space, Railways etc. Of course WPC may continue to discharge such functions with greater transparency during the interim period – preferably distancing itself more from the ministries & departments! If such a step is taken, unused or inefficiently used spectrum will then be located & vacated, if required. It will usher in an orderly way to continue the journey to get to the targets (500 mn by 2010 & 750 mn by 2015) – reaching closer to levels of saturation! In the fast changing world policy & regulation always require re-tuning & fine-tuning at intervals.

Presently the limits may stay as it is even in case of mergers. If any operator is allowed the cross-holding GSM-CDMA in a circle, it should then be 15 MHz for GSM & 5MHz for the CDMA subject to efficiency tests & rigorous examination of the justifications in the claim.

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?

It has to be more than duopoly in every circle. 3 may be the minimum no of operators including CDMA & GSM.

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?

Market forces will encourage shake out & consolidation at times. Obviously the criteria on dominance, cross technologies, FDI structuring, valuation (if excessive & unreasonable), area of business consolidation (urban / rural), spectrum consolidation & usage so far, QoS performance, business parameters etc could be looked into. The critical qualitative factors are the business motives, synergy, impact on other services like NLD, ILD etc (if relevant)

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?

More on ex-ante competition regulation but ex-post also to be considered.

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.

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

Presently yes. However it will depend on the number of operators in a circle. If the latter comes down to min 3 (including the incumbent) after consolidation, perhaps the limit of 10% should be 5% in such cases. M&A could be on automatic route under the guidelines though each case has to be duly reported with details. The concerned Ministry & MRTP / CCI (where appropriate) should be advised to examine the details in each case.

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, preferably to the max 2 if the no of operators is more than 3 in the circle.

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?

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

Under the FDI guidelines an Indian partner may have min 26%. A promoter, company registered in India or Indian citizen resident in India, should have substantial stakes, preferably with telecom background or at least telecom diversification in its business charter (Memorandum of Articles & Association). The equity should be min 15% or more - at least in UASL license.

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

No.

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?

In the context of 'Unified & Universal' technologies, technology neutrality & convergence of technologies, it should be allowed in principle. However for practical reasons of spectrum shortage this may not be feasible just yet. The present practice is to be continued until well thought out reforms take roots.

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;

Spectrum is firstly to be priced as a scarce resource. For certain bands it requires extra price loading. While considering existing & possible new operators of their requirements in the related band, any dispensation to an operator proposing to use this in alternate technology should attract a level of premium pricing.

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

The order of priority should be as follows:

- Existing licensees using the chosen technology from the start in a circle & already applied for additional spectrum in the same circle (intra circle expansion)
- Existing licensees using the chosen technology from the start in a circle & already applied for new spectrum using the same technology in other *contiguous* circles (inter circle expansion – contiguous)
- Existing licensees using the same chosen technology & applying for new spectrum in other new non-contiguous circles (inter circle expansion – noncontiguous)
- New operators already given license but waiting for new spectrum in the queue
- New operators already applied for licenses for the same technology but awaiting LoI / license
- Existing operators with alternate technology in new circles applying for spectrum
- Existing operators keen to use alternate technology in the *same circle* applying for spectrum

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?

Certainly yes. Scarce spectrum is being given to be properly used ahead of many other priorities. The use of spectrum has to be seen to benefit consumers. Therefore additional roll out is actually to be considered as the basic roll out for the new technology in a circle.

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?

Please refer to the answer to Q17.

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 provision of mandatory roll out is a must because the use of spectrum is at stake in the national interests. However the roll out obligations may now be changed a little introducing rural coverage as opposed to only DHQ or towns.

The principle of LD does not quite work since it is low & sometimes more acceptable to some operators, if required to pay, than setting up the operations as specified. It adds substantially to valuation of business & therefore paying LD at its current level is almost like a pittance. Enforcement of LD payments is also a long drawn process with operators often citing delay in getting spectrum. Perhaps to be fair the effective date should be changed to when the spectrum is given. And the LD figures should also be increased. Additionally the operator may be listed as a kind of defaulter in not using spectrum that may affect its later claims for additional spectrum.

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?

Currently telecom is also an attractive business wherein some are only interested to make money reaping the benefits of high valuation without real commitment to infrastructure, operations & quality services. In most of these cases PBGs are handy & more readily expeditious in case of non-compliance.

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.

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

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

Not necessary. With huge NLD / ILD capacity already in place, MNCs coming in to ensure global connectivity, equal access to landing stations & Carrier Access Code (CAC) expected some time in future, market forces could suffice.

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

Usual QoS criteria can be developed like uptime/downtime, grade of voice quality, error rate in transmission, tariff accounting rate / billing (to be monitored unless intervention is required), requisite level of customer care etc. Since NLDs can reach out to end users QoS looks more relevant.

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.

Yes, if 5% is reduced. Perhaps 10-15% of network spread in rural areas as defined in Census. USO administration should further be more liberal in providing incentives. For example if any BTS is set up in rural areas by an operator or a qualified infrastructure service company to the DoT's laid down specification (outside the list of USO designated towers), the party may get a percentage of its total costs reimbursed. If such a tower is further shared the percentage will be higher. This is feasible since huge USOF funds are lying unused. Also it's a way to get back some after paying the 5% USO charges. Another incentive will be such operators will have better claims to additional spectrum when required.

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

Yes provided it is activated & operational. This way the percentage coverage in rural area can also be determined.

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

Please refer to earlier answers.

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?

Certainly NO. Most of the reasons are well known. Additionally few to note:

- **UASL includes Basic Wireline & other technologies / services. Therefore it must not be restricted.**
- **Spectrum is location specific. The shortage is presently limited to metros & some of the dense pockets elsewhere. Existing operators can still expand to other circles. New operators can still do the same in select circles to begin with.**
- **With NGN & IP telephony in the wings UASL must be open & liberal as a policy direction.**
- **New technologies using spectrum in different bands are already available. More new technologies enhancing the efficiency in spectral use are ongoing developments.**
- **HHI index tends to indicate market concentration where the operators exist. If the existing but uncovered are as well taken into account circle wise it will show reduced competitiveness.**
- **TRAI itself conceived Niche operators in its second phase of UASL implementation. India including existing & untapped markets can be a huge potential for one & all certainly in the next 5-10 years.**

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