

Vodafone's response on Consultation Paper on Review of The Telecom Commercial Communications Customer Preference Regulations, 2010

The Authority has initiated two separate but simultaneous consultations on the issue of TCCCP (Unsolicited Commercial Communications) regulations. One is in the form of a consultation paper and the other is a draft amendment. We respectfully submit that taking decisions in silos will complicate matters as a whole. Each amendment will have a ripple effect on the entire processes and the operations of the service provider. Therefore, we believe that a holistic review needs to be undertaken on the issue of 'Unsolicited Commercial Communications' and 'Telemarketing' regulations and their relation with Quality of Service.

We are of the firm belief that the only effective method of managing unsolicited commercial calls is for a law to be enacted against individuals making such calls. Hence, this has to be driven from the legislature. However, in the current scenario, where no such law exists, there is no legal disincentive for any fly-by-night operator to discontinue such activities.

Since the Authority, through TRAI Act, exercises control over the Telecom Licensees, all the rules and regulations, for controlling UCC, have been imposed upon the telecom operators. The regulations enforce the operators to impose penalties, disconnections and black-listing on the Telemarketers. And if the operators fail to enforce these mandates, then the regulation envisages a penalty on the operator. The regulations are very stringent and any inadvertent and one off error in any part of the process results in actions like penalties and disconnection.

With due respect, we believe, the TCCCP regulation has gone into micro-detailing of the various procedures to be adopted by operators without addressing the root cause of the problem. This regulation is not 'Light Touch' and has been one of the most expensive regulations to implement. Under this regulation, operators need to replicate their CRM on the TRAI NCCP portal. Operators also invested large sums for installing the filtering capabilities.

As mentioned earlier, due to the lack of any law, the few fly-by-night telemarketers have been very innovative and adaptive in their approach. This has resulted in nine amendments to the regulation. However, the telemarketer has remained a step ahead of the game leading to operators investing even more.

The TCCCP regulation, has prescribed very strict set of terms and conditions for registered Telemarketers. Consequently, barring the big and organized Telemarketing entities, most mid-sized and small telemarketers prefer to remain unregistered. The black-listing for two years on six instances of complaints against promotional calls to DND registered customers is prohibitive.

The rules of the game should be conducive so that the various telemarketing entities should find value in registering as a Telemarketer.

Please find below our response to specific issues for consultation raised by TRAI.

- 1. What are your views on the proposal of blocking the delivery of SMS from the source or number or entity sending more than a specified number of promotional SMS per hour with similar signatures as proposed in the above para?**

- 2. What should be the limit on the number of SMS per hour to be specified in this regard? Please give your views along with reasons thereof (para 2.1.1 to 2.1.4).**

Vodafone's Response

- a) The consultation paper has referred to a similar solution employed at the ILD gateways by ILD operators. However, the ILD SMS landing into India are a minuscule volume as compared to the domestic SMS volumes. Catering to these massive volumes will not be technically feasible.
- b) This regulation, if notified, would force the operators to invest in very expensive servers and specialized software and the large volumes will drive the cost prohibitively high.
- c) The 'Signature' , 'Key-word', 'Check-sum' methods of analyzing content is also in a way looking into content. As per the privacy laws, operators are not allowed to see and analyse content/ messages. Therefore, such a regulation may have an adverse legal implication on operators.
- d) The above methods are 'Trial & Error' methods. We could successfully employ them in the ILD scenario as there were no concerns from international operators. However, in the domestic scenario, trial and error would expose operators to disputes/ complaints and possible legal proceedings as well. Several valid SMS may also get blocked. Eg. There was a recent court case where-in a petitioner had placed before the court the fact that he needs to send his party members and supporters mass SMSs for various purposes. If the TRAI proposals are notified, such instances of SMS may get blocked. This would lead to operators facing numerous legal disputes.
- e) ILD operators may possibly face no repercussions for inadvertent blocking of international SMS. However, this will not be the case domestically.
- f) Based on the past experience, it is evident that the fly-by-night Telemarketers remain a step ahead of the game. In all probability, they will be able to decipher the algorithm for the signature checks and will manage to beat the system. Thus the investment on the various servers and filtering capabilities will go in vain. Additionally, it will always be difficult to ascertain how efficiently each operator manages to filter out UCC SMSs. The Authority may then resort to intrusive audits to monitor the filter algorithms of each operator. This would be entirely avoidable.

We therefore strongly urge the Authority not to notify this regulation as operators are not in a position to make such huge investments without any measurable and guaranteed results.

3. **Please give your comments on the proposal to mandate the telecom service providers to obtain an undertaking/agreement from registered telemarketers and other transactional entities that in case they want to outsource promotional activities to a third party, they will engage only a registered telemarketer for such promotional activities. What are the other options available to control such activities? Please give your views along with reasons thereof (para 2.2.1 to 2.2.3)?**

Vodafone's Response

- a) We have entered into agreements with Telemarketers and bulk SMS senders and only after that we have provided them with the Telecom resources.
- b) We do not envisage a situation where a registered TM would chose to ignore the resources that we have allocated (for which he is paying a considerable amount as rental) and rather opt for outsourcing his activity to another party. Also, it is highly unlikely for a registered Telemarketer, who is aware of all the regulations related to UCC, to deliberately outsource the activity to a 3rd party who also happens to be unregistered.

- c) Therefore the proposal for taking an undertaking from registered Telemarketers serves no purpose.
- d) It may be noted that operators can exercise control over only registered telemarketers through the agreement. Operators would have no control over any other entity with whom we do not have a telemarketer agreement signed.
- e) This can be addressed to some extent if TRAI takes up the concerns with other sector regulators like Insurance/Banks so that their constituents do telemarketing in a responsible and disciplined manner.
- f) **We therefore request the Authority not to notify this regulation as it will not serve any useful purpose.**
- g) Notwithstanding the above, if the Authority still chooses to mandate this clause, we would like to respectfully submit that this can be done only for prospective agreements. Re-engaging with the existing Telemarketers for an addendum/ undertaking to the existing contract will not be possible.

4. Please give your comments along with reasons thereof on the proposal to disconnect telecom resources after ten violations, of entities for whom the promotion is being carried out? Also indicate whether ten violations proposed is acceptable or needs a change. Justify the same. (para 2.3.1 to 2.3.3)?

Vodafone's Response

- a) No operator has access to the content of a Voice call or SMS. This is as per the existing prevalent laws. The only mode of receiving this content is through the customer, which is not verifiable.
 - b) In case of a customer complaint, the customer either narrates the mobile number/ short code to the call centre agent or he re-types the message onto an email. In either case, there is a possibility that the number may have been incorrectly quoted. Additionally, there is a scope of the number being deliberately misquoted for malafide purposes. Disconnecting numbers/ short codes contained within the SMS content will be unscientific and hence open to legal disputes.
 - c) Without a Telemarketing agreement in place, we cannot disconnect any resource of any customer.
 - d) As an example, if the operators were to receive a complaint against a bank/ insurance company, and as a consequence all operators were to disconnect all resources the entire banking operations would be jeopardized as well as the citizens would face severe difficulties. Such disconnections cannot be done and would surely be illegal.
 - e) **We strongly believe that this regulation is un-enforceable since it is unscientific and therefore open to legal disputes. We therefore request the Authority not to notify this regulation.**
- 5. What additional framework may be adopted to restrict such subscribers or entities from sending UCC, other than the one proposed above (para 2.3.1 to 2.3.3)?**

Vodafone's Response

- a) Through TRAI, request our honorable legislators to enact suitable laws against unregistered telemarketers.
 - b) Usher a conducive and amenable regime for registered telemarketers so that unregistered entities find value in registering and playing by the rules.
6. What are your views on the time frame for implementation of the facility for lodging UCC related complaints on the website of service providers? Please give your comments with justification (para 2.4.1 to 2.4.3).

Vodafone's Response

- a) We are fine with the proposal of registering UCC complaints through the web-site. However, we request the Authority to grant us three months to complete the activity since it will include testing before going live.
- b) We are already accepting complaints through emails on our currently existing and advertised Customer Care email ID. However, we request that another email ID (dedicated) may not be mandated. This is because generating awareness of two email ID's will not only be a big challenge but would instead cause confusion in the minds of the customer. Subsequently, we would start receiving all kind of complaints in the new email ID as well.