

No.:78/TRAI/2015-16/ACTO

Dated: 23rd April, 2015

Shri M.P. Tangirala
Advisor (F&EA)
Telecom Regulatory Authority of India
MahanagarDoorsancharBhawan,
JawaharLal Nehru Marg,
(Old Minto Road), New Delhi – 110 002

Sub.: Review of "The Reporting System on Accounting Separation Regulations, 2012 (7 of 2012)" dated 10th April 2012 (as amended)

Dear Sir,

This is with reference to your captioned letter No. 16-02/2015-F&EA dated 1st April 2015. The contents of the letter have inter-alia informed about the review of the captioned regulations and have sought comments / inputs on any aspect relating to the said regulations (as amended).

At the outset, ACTO would like to thank the Hon'ble Authority for providing us the opportunity to offer our comments on the captioned regulation.

We are pleased to submit our comments attached as Annexure – I and sincerely hope that the same will merit the consideration of Hon'ble Authority.

Thanking you,

Respectfully submitted,
for Association of Competitive Telecom Operators


Tapan Patra
Director

Encl.: As above

Annexure - I

1. The System on Accounting Separation is a set of rules and procedures to ensure the attribution and allocation of revenues, costs, assets, liabilities and capital employed to individual activities and services, in particular considering direct and indirect operating costs.
2. The purpose of imposing an obligation regarding the Accounting Separation is to ensure that fair, pro-competitive and transparent criteria are followed by telecom service providers in allocating their costs to the services/ products and to prevent predatory conduct. The major resulting benefit has a transparent illustration of the relation between costs and prices (at both wholesale and retail levels), as the Accounting separation system should be able to break costs down in order to ensure that costs allocated to services/products do not result in cross subsidies, excessive prices and, in general, that costs are efficiently incurred.
3. We have examined & analysed the various jurisdictions where Accounting Separation is applicable and noted that Accounting Separation is applicable only to incumbent / SMP telecom operators who are integrated telecom service providers in its jurisdictions/products. Therefore we would like to submit that TRAI may also adopt the similar international best practices for Accounting Separation Regulation. In light of the above, ACTO submits that TRAI should consider doing away with the requirement for non-dominant/SMP operators like our member companies to comply with the Accounting Separation Regulation. The identification of Non-dominant / SMP may be decided by the TRAI after a detailed market analysis with the consultation of relevant stakeholders.
4. We would like to draw the attention of the Hon'ble Authority to the fact that International Telecom Union (ITU)'s Guidelines on the implementation of Regulatory Accounting in Telecommunications Sector of March, 2009 has recognized that accounting separation and cost accounting models are *ex-ante* obligations imposed on Significant Market Power (SMP) operators worldwide. Other available documents on the subject have also recognized that Accounting Separation is typically applied only to incumbent / SMP telecom service providers to monitor and identify anticompetitive conduct. Operators that have not been designated dominant or SMP

in the relevant markets are exempt from such obligations or are subject to light-handed reporting requirements.

5. When considering which operators should be subject to an ex-ante regulation, the principles of proportionality and regulatory forbearance are considered. The implementation and upkeep of the accounting separation system requires significant regulatory resources if detailed and extensive reporting is required. This is justified if the operator in question is in a position to exploit its market power and potentially behave in an anti-competitive manner in the provision of wholesale and retail telecom services to access seekers. Conversely, imposing the same reporting requirements on operators that are not in the position to influence competition like our members and that do not have dominant control bottleneck and/or other essential facilities should be reconsidered as the application of regulation must be driven by the objectives that they are meant to achieve. A one-size-fits-all regulation in this instance could be construed as "over-regulation" of alternative operators. Proportionate regulation also ensures that the authority's resources are focused on more critical areas i.e. where there is a risk of anticompetitive conduct.
6. We are of the view that the proposed accounting separation guidelines, which are extremely detailed, will be appropriate for the monitoring of dominant/SMP operators but will be disproportionate for alternative carriers. We urge TRAI to adopt practices similar to that applied internationally to the applicability / ambit of the proposed ASR on the service providers.
7. As you are aware that ACTO members provide enterprise data services to multi-sited global and Indian corporations, as well as BPO outsourcing and ITES sector operating global networks. Our member companies are not integrated facility based telecom operators. Instead they are standalone ILDOs/NLDOs non-facilities based operators who only provide enterprise data services to their customers. Hence such operators even being ILDOs/NLDOs should not be subject to the same ASR requirements. In fact for such category of operators, the ASR requirements should either be exempted or there should be some light-handed accounting regulation, as applicable in Singapore. The present ASR requirement should be meant for other telecom operators who are dominant and integrated.

8. We also note that there are no operators currently designated as SMP or dominant even if there are criteria recommended for such a determination (e.g., based on market share / revenue). An alternative approach to applying the proportionality principle therefore is to distinguish between vertically integrated telecoms operators and non-integrated, stand-alone operators (our member companies) that compete predominantly in the downstream telecom services market along with vertically integrated operators.
9. The latter would not be in a position to influence the competition particularly given that we rely on the integrated operators to provide us with relevant telecoms resources. Given this, we believe that the information provided to the TRAI will largely be inconsequential in the TRAI's monitoring of anticompetitive conduct, but will require considerable regulatory resources of alternative operators.
10. **We request that the authority forebears vertically non-integrated / standalone operators from imposing ASR, by revising the threshold limit to INR 2000 crores and above as maintained in other legislations.**
11. As per existing regulations, the authority requires that in addition to the reports prepared based on Historical Cost Accounting, reports prepared based on Replacement Cost Accounting are also required for every second year. It is our experience that such requirements for Replacement Cost Accounting reports are almost always exclusively required only for dominant/SMP operators as arriving at such reports can be extremely costly involving consultant costs and significant resources and increases regulatory cost. We are of the view that only the vertically integrated / SMP operators should be obliged to provide these Replacement Cost Accounting reports. The replacement cost based reporting every alternate year should be dispensed with for vertically non-integrated operators due to their inherent characteristics.

12. Preparation of ASR on replacement cost basis (every alternate year) is a huge task involving lot of time and efforts. It is extremely difficult to get replacement costs for the equipment deployed in the network for following reasons:

- Equipment/technology deployed becomes obsolete/outdated quickly and mapping the same to new version/variant is quite a task
- Vendors do not support requests for replacement costs as they know that they are not getting any business but is a futile exercise from their perspective.
- Another option of hiring a professional firm and getting the replacement costs for the entire network could be an expensive proposition

In our view reporting based on replacement cost should be limited to once in 5 years if not abolished.
