

Issues for consultation 4.1 In view of the issues discussed above, following questions are being raised for comments of the stakeholders. Responses to the questions are solicited with justification:

Question 1: Do you think that the measures prescribed currently are adequate to ensure transparency in the tariff offers made by TSPs? If not, then, what additional measures should be prescribed by the TRAI in this regard? Kindly support your response with justification.

This is true that some new service providers have been using cheap tariff plans or free as an introductory promotion. Such practices were introduced to penetrate in the market and increase competition by TRAI. But in recent years after a hyper competitive market period, the way new players using this promotion offer as a tool to enter in the market and capture the consumer base, we would see a new regime with only few big players and others either merge or exit from the market. Then the chances of making a cartel to increase the tariff will be very high, which is not beneficial for the consumers. Hence, the practices of promotional tariff plans with free or minimal charges either in the form of bundle or any other should be avoided and some base or rules needs to be define by the TRAI to avoid such cases in the future. Another issue is period of promotional charges or tariff, the charges should not be reduced. It can be in different forms like increase the data download (GBs) or free calls etc.

Question 2: Whether current definition relating to “nondiscrimination” is adequate? If no, then please suggest additional measures/features to ensure “non-discrimination”.

Yes non-discrimination such as one who enrolled in the promotional offer and others should not be treated differently as premium members and new members has different charges or facilities.

Question 3: Which tariff offers should qualify as promotional offers? What should be the features of a promotional offer? Is there a need to restrict the number of promotional offers that can be launched by a TSP, in a calendar year one after another and/or concurrently?

Yes, there should not be more than one in a year.

Question 4: What should be the different relevant markets – relevant product market & relevant geographic market – in telecom services? Please support your answer with justification.

Question 5: How to define dominance in these relevant markets? Please suggest the criteria for determination of dominance.

Question 6: How to assess Significant Market Power (SMP) in each relevant market? What are the relevant factors which should be taken into consideration? 30

Market power of those who are part of some big corporate houses and those without any backup or new venture should be treated differently. I do not know, how it will take into consideration, but for other players those who do not have any backup such as Jio or Idea etc., very difficult to survive in the long term if continuous losses in the market.

Question 7: What methods/processes should be applied by the Regulator to assess predatory pricing by a service provider in the relevant market?

The tariff prices offered by the service providers, which are not sustainable means almost free or below certain benchmark or after assessment of the cost factor.

Question 8: Any other issue relevant to the subject discussed in the Consultation Paper may be highlighted.

Yes, in the USA also it is reported that there are many different tariff offered by different operators, which are sometime very difficult to assess. How they have come up to standardised it, or some other asian country like Sri Lanka telecom market is regulated very efficiently. Its regulatory practices can be discussed and reviewed.

- i. Limits on Tariff: Provision of ceiling and floor on certain telecommunication services.
- ii. Reporting Requirement: TSPs have to report to TRAI any new tariff and the subsequent changes.
- iii. Transparency and Consumer Protection: Tariff charged along with the terms and conditions attached to it by the TSPs should be published in a manner as prescribed by TRAI from time to time.

‘Forbearance with prior Approval stage’ and finally to a ‘Forbearance regime with post-facto reporting obligation’ with regulatory oversight. Currently, except for the tariffs for national roaming, fixed rural telephony and leased lines, tariffs for other telecommunication service are under forbearance. In accordance with the policy of ‘light-touch’ regulation being followed, the tariff framework gives the TSPs, which include Internet Service Providers (hereinafter collectively referred to as TSPs) the freedom to design the tariffs according to the prevailing market conditions. This has resulted in emergence of new and innovative products in the market that are designed to provide telecom services at affordable and competitive price to the consumers.

In the year 1999 when the TFO framework was put in place, the telecom sector was primarily voice centric. However, in the recent past, there has been a shift from voice to data, driven by technological and other factors like change in user profile, proliferation of social media, development of innovative content and applications, falling cost of devices etc. Following are some of the factors that underscore the need for a comprehensive review:

TSPs on 6th January 2017 to discuss the annual calendar of activities of TRAI for the year 2017, which, inter-alia, included developing a new framework for tariffs in evolving telecommunication sector and on which there was a consensus.

in particular, the growing prevalence of bundled tariffs. For example, converged services like triple-play offerings (video, voice and data) are often accompanied by a bundled pricing approach. Initially, telecom services predominantly meant delivery of voice through telecom network. In the recent past, offer of bundled services – voice and data – have become the main feature of tariff offerings by the TSPs. Bundled services are offered through composite tariff offer. For examination of a tariff offer with reference to compliance of various regulatory principles, it is essential to assign prices for different components of the bundled services viz. voice, data, SMS, etc. In the current framework, it is not easy to apportion the price of each component of the tariff offers.

There are certain principles that have been explicitly defined in the TFO, like the term “non-discrimination”, which is one of the key regulatory tariff principles. Clause 2(k) of the TFO defines it as, “k. 5 ‘Non-discrimi’Non-discrimination’ means that service providers shall not, in the matter of

application of tariffs, discriminate between subscribers of the same class and such classification of subscribers shall not be arbitrary". However, there are certain other terms like 'transparency', 'nonpredation', which require further elaboration in the context of retail tariff.

This includes both postpaid and pre-paid tariff plans. The cap on the number of tariff plans has been prescribed on the premise that too many tariff plans on offer would confuse the consumer and make it difficult for consumers to make an informed choice.

The 43rd amendment to the TTO seeks to prevent too frequent changes in the tariff plans to the consumers and assures tariff stability for a minimum period of six months after enrolment into a tariff plan. This TTO states,

Similarly, in the Consultation paper on Tariff plans with Lifetime validity issued in January, 2006, TRAI noted that predatory pricing generally refers to a situation where a dominant firm (with Significant Market Power) charges low prices over a sufficiently long period, so as to drive competitors out of market or deter new entrants, and then raises the prices to recoup its losses.

The Competition Act defines predatory pricing as "the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of the goods or provision of services, with a view to reduce competition or eliminate the competitors". (Explanation (b) to Section 4, Competition Act, 2002) 3.8 Steps that are followed in assessment of predatory pricing are: (i) delineation of relevant market; (ii) assessment of dominant position/significant market power (SMP) in the relevant market; and (iii) evaluation of whether the dominant enterprise is resorting to pricing below Average Variable Cost (AVC) with the intention of driving out competitors from the market.

The market definitions in telecommunications context may vary significantly depending upon the premise and objective, as mostly, market definition is merely an enabling framework for competition analysis and not an end in itself⁴. An assessment of predatory pricing begins with the delineation of the "relevant market", which helps in establishing an analytical framework for 3 Telecommunication Tariff Order, 1999 (as amended up to 27.12.2016) 4See, Market definition, 2004, Office of Fair Trading, available at

URL:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284423/oft403.pdf 19 identifying the boundaries of competition between firms and the effect of various conduct on competition⁵. Relevant market has two dimensions namely, (a) relevant product market and (b) relevant geographic market.

The third competitive constraint is potential competition, which indicates the threat of entry of a new player in the long term or involves substantial sunk costs. Potential competition is an indirect constraint that is typically deferred to the assessment of market power/competitive effects assessment, since unlike supply-side substitution (which occurs immediately and in the short term) potential competition has a different time horizon.¹²