

TELECOM WATCHDOG

(Registered under the Societies Registration Act, 1860)

Regd Office: 305, Lotus Chamber, 2079/38, Nalwa Street, Karol Bagh, New Delhi-110 005

Correspondence Address: B-5/51, Paschim Vihar, New Delhi - 110 063

Is It In The Interest Of The Consumers To Allow Dvoika To Rule The Telecom Sector For All Times To Come?

The Advisor (Networks, Spectrum and Licensing)
Telecom Regulatory Authority of India
New Delhi

Date: June 12, 2017

Kind attn: Mr Sanjeev Banzal (advmn@traai.gov.in)

Sub: Trai's CP on "Network Testing before Commercial Launch of Services"

Sir

We are pleased to submit our response to the questions raised by Trai in its consultation paper titled "Network Testing before Commercial Launch of Services" as follows:

Q1. Should a TSP be allowed to enroll subscribers as test users and in such case, should there be any restrictions on the number of test SIM cards and the period of such use? Please justify your response.

A1. TSP must be allowed to enroll users / subscribers during trial period without any restriction on number of SIM cards and period of use. Only dvoika (Bharti Airtel and Vodafone-Idea) are opposing a longer test period for no explainable reason. They have no locus in this matter. Trai should have informed the complete facts to the general public, who may or may not be aware of the following important facts: -

- (i) Costs of PoIs are paid for by the "Interconnection Seekers" even during the test period.
- (ii) Costs of EIs is payable even during the test period.
- (iii) Termination charges and long distance charges too are paid by the concerned operators even during the test period.

Thus, as far as the monetary benefits are concerned, the incumbents' interest is taken care of and there is no difference between what they get during the trial period or after the commercial launch. In fact, they get additional revenue (termination charges and long distance charges) during the test period because they will receive more incoming calls during the initial years of a new entrant. Therefore, the incumbents have no locus whatsoever to complain about limiting the number of subscribers that can be enrolled and the quantum of live traffic, during the test period. If they object, then it must be viewed as an anti-competitive behavior. It is only the consumers who must be concerned about the availability of services and tariffs after the trial period is over.

We know that before any operator puts its network on real traffic with real subscribers, the basic inter-working tests with other networks are already performed successfully. Only

thereafter an operator puts live traffic on its network with real end users. If an operator wants to conduct trial on large scale, and also pays for the interconnection costs, it must be welcomed. No one should have any objection if trials are conducted on larger network under heavy traffic conditions. The QoS issue comes only when some operator deliberately denies interconnections by providing less E1s than demanded. In the case of R-Jio, the demand was raised well in time (July 2016) yet the dvoika tried to delay E1s. If an operator tries to block the other operator by not providing E1s, then that operator must be subjected to heavy penalties. The issue needs to be addressed head-on, not the other way around. There is no need to restrict number of test SIMs and test period.

Q2. To clearly differentiate test phase from commercial launch, which of the options discussed in Para 1.12 would be appropriate? Please provide justification. Please explain any other method that you feel would be more appropriate.

A2. Through a number of options in para 1.12, Trai has suggested various options to protect the interest of the subscribers, ensure level playing field, and compliance of the regulatory requirements. Trai has suggested the following options: -

- a) Testing may be restricted within own network of the concerned Licensee / TSP. For testing of processes / systems which may require connectivity with the other networks ie other TSPs, the same could be carried out using the test SIMs given to business partners or employees on a small scale.
- b) Put a limit on the time period for which any test subscriber can be provided the services during test phase.
- c) Provide a temporary number series to the TSP for testing of network before commercial launch of services, which would be withdrawn upon commercial launch by the TSP and a fresh number series would be issued for enrolling commercial subscribers. This would ensure that enrolment of subscribers prior to commercial launch is not exploited or misused by a TSP to circumvent the regulatory provisions and compliances.
- d) To limit the number of test subscribers by way of allotment of smaller chunks of numbers, say 10,000, as against about 10 lakh per series, during test phase. The test subscribers may be enrolled purely on temporary basis.
- e) Perform intensive testing on the Radio Access Network (RAN) in a relatively smaller geography, for which small number of test users/subscribers would be required. The TSP could perform load testing in one city or a couple of cities and tune the network in other parts of the service area. In any case, the network tuning is a continuous exercise performed by the network providers so as to optimally meet the dynamic demand.

None of the above options 'a' to 'e' is desirable. Explanation has been given in our answer 'A1' and also herein in A2.

Level Playing Field: It is a known fact that the new operators pay charges for PoI, E1, MTC, transit charges, License Fee, SUC, etc. These charges are the same irrespective of the stage of operation – trial period or commercial launch. Therefore, there is no question of any level playing field having been tilted in favour of one operator and against the other. The dvoika enjoys 76.58 per cent revenue market share as shown in the following table: -

AGR for QE March 2017 (in Rs crore)					
Sl	Telcos	CMTS	UASL	Total	%
1	Vodafone	-	5,727	5,727	41.30
2	Idea	5,036	1,365	6,401	
3	Airtel	164	10,198	10,362	35.28
4	BSNL	1,967	-	1,967	6.70
5	Tata	-	1,877	1,877	6.39
6	Aircel	537	824	1,361	4.63
7	RCom	-	733	733	2.50
8	Telenor	-	651	651	2.22
9	MTNL	126	-	126	0.43
10	Sistema	-	158	158	0.54
11	Videocon			-	0.00
12	Quadrant	-	4	4	0.01
	Total			29,367	100
	R-Jio	(1,179)			

R-Jio's AGR is in negative, because it pays MTC to the incumbents, which is not fully recovered through its promotional tariff. In the QE Dec 2016 it was (-) Rs 336 crore, and in QE Sep 2016, it was Rs 23 crore.

The past behavior of the dvoika clearly establishes that they do not reduce the tariff on their own and cartelise. They have reduced the tariff only when they face competition from the new entrant. This has happened repeatedly in the past. In 2000 & 2001, when MTNL & BSNL came with the mobile services, the tariff came down. During 2008 to 2011, when new operators were licensed and started providing services, the tariff came down. But, after the cancellation of 122 licenses by the Hon'ble Supreme Court in the 2G Scam matter, the dvoika again increased the tariff. Now, in 2016, when they faced competition from R-Jio, they had to slash the tariff.

Trai should let the benefit of the latest technology at affordable rates reach the common people irrespective of their financial status. This has happened now with stiff competition from R-Jio. This is contrary to the earlier position in 1994/95, when 2G services were launched with high cost of handsets and usage, as a result of which, the poor sections remained deprived for a very long period of time.

In India, broadband penetration is extremely low because of high prices of services, poor quality of download speed, and high cost of handsets. The incumbent dvoika - Bharti Airtel, Vodafone-Idea - had cartelized and never reduced the data tariff in three years 2013, 2014 & 2015. Their 3G data download was consistently priced at about Rs 250 for 1 GB in all these three years.

Let us see their original marketing posters. In March-2013, Idea charged Rs 249 for 1GB valid for 30 days, Airtel's poster of September 2014 shows Rs 255 for 1GB valid for four weeks, while Vodafone's poster of February 2015 shows Rs 255 for 1GB valid for 28 days. They have minted money, fleeced the customers while Trai as well as DoT did not intervene at all. The consumers were at their mercy.



3G पैक्स		
रीचार्ज	लाभ	वैधता
11	25MB	1 दिन
49	150MB	1 हफ्ता
99	300MB	2 हफ्ते
149	500MB	4 हफ्ते
255	1GB	4 हफ्ते
355	1.5GB	4 हफ्ते
455	2GB	4 हफ्ते
655	3GB अनलिमिटेड	4 हफ्ते
755	4GB अनलिमिटेड	4 हफ्ते
955	6GB अनलिमिटेड	4 हफ्ते
1255	9GB अनलिमिटेड	4 हफ्ते
1555	12GB अनलिमिटेड	4 हफ्ते

सेल्फ रीचार्ज *121*11#

अनलिमिटेड प्लान में फ्री GB डाटा के बाद स्पीड throttled होगा.

ऑफर 01-09-14 तक अपडेटेड है ऑफर पूरा सूचना के बिना परिवर्तित किए जा सकते हैं.
अधिक जानकारी के लिए WWW.AIRTEL.IN पर लॉग-ऑन करें.

1. डाटा रीचार्ज			
3G इंटरनेट पैक्स			
मूल्य (₹)	फ़ायदे	वैलिडिटी (दिन)	एक्टिवेशन कोड
11	50 MB	1	*444*11#
65	200 MB	7	*444*65#
95	300 MB	21	*444*95#
147	500 MB	28	*444*147#
255	1 GB	28	*444*255#
455	2 GB	28	*444*455#
655	अनलिमिटेड, 3GB यूसेज के बाद डाउनलोड स्पीड @ 64 Kbps	28	*444*655#
855	अनलिमिटेड, 5GB यूसेज के बाद डाउनलोड स्पीड @ 64 Kbps	28	*444*855#
955	अनलिमिटेड, 6GB यूसेज के बाद डाउनलोड स्पीड @ 64 Kbps	28	*444*955#
1255	अनलिमिटेड, 10GB यूसेज के बाद डाउनलोड स्पीड @ 64 Kbps	28	*444*1255#

फरवरी 2015

• 2G और 3G डाटा बोनस कार्ड पर फ्री यूसेज से अधिक यूसेज पर चार्ज @ 4 वै/10Kb • दिए र को लागू • उल्लिखित दरों में समय-समय पर परिवर्तन हो सकता है • नई कॉल दरों और टैरिफ प्लान सर्विस लाइसेंस अवधि के तहत, फिलहाल दिल्ली और पुन.सी.आर. सर्किल के लिए 29 नवंबर 2034 और नेशनल SMS भेजे जा सकते हैं



होली के रंग, आइडिया के संग



3G @ 3G इंटरनेट पैक्स	7	1	20 मि. मुफ्त इंटरनेट उपयोग	मोबाइल
	26	3	100 MB	
	44	7	150 MB	
	102	30	300 MB	
	198	30	600 MB	
	249	30	1 GB	मोबाइल और नेट सेटर
	455	30	2 GB	
	655	30	3GB असीमित* इंटरनेट	
	955	30	6GB असीमित* इंटरनेट	

But after the aggressive launch of 4G services by R-Jio, the situation has changed completely. Now, the operators, who were earlier charging very high tariff for data, have substantially lowered their tariff. For example, now a subscriber of Bharti can download 1GB per day for 70 days at a cost of Rs 399, which means a total of 70 GB at Rs 399, which is Rs 5.70 per GB, as shown in the following table: -

Tariff Plans by dvoika / troika			
Items	Airtel	Vodafone	Idea
Unlimited (Own Net)	244 (1 GB/day for 70 days)	-	244 (1 GB/day for 70 days)
Unlimited (Other Net)	399 (1 GB/day for 70 days)	352 (1 GB/day for 28 days)	346 (1 GB/day for 28 days)
Rate Cutter	8 (all calls 30p/m for 56 days)	24 (all calls 40p/m for 90 days)	67 (all calls 30p/m for 90 days)
Data	148 (3 GB for 28 days)	96 (1 GB for 28 days)	97 (6 GB for 28 days)
Talktime	80 (80)	160 (160)	70 (70)

This situation is a good experience for the consumers and must not be disturbed under the garb of any regulatory measures.

Circumventing regulation? In this answer we will cover forbearance of tariff related regulatory issues only. For the other regulatory issues, please see our answers to Q5 & Q6.

It is submitted that a new entrant plays a significant role in developing and changing the competitive dynamics of any industry within a competitive environment. The new entrant invests heavily in creating a product with newer and unique features and benefits that surpass those offered by the incumbents. In addition, it has to put strong efforts to break existing brand loyalties and shift them to a new untested company. A new entrant requires huge capital investments at the onset. Only those will attempt to enter the competitive fray, who have the resources to make this high initial investment.

In view of the above limitations of the new entrant, Trai should not create unnecessary regulatory obstacles for the new entrant. The incumbents must be encouraged to engage with their customers so that they do not leave their networks. They can achieve this through creation of strong brand loyalty, special benefits or promotions, or some form of memberships or contracts with their subscribers. These strategies may warrant price drops or special offers which will be at the cost of profit margins. But, they should be encouraged to face competition and stay relevant and competitive. Please remember, anything that prevents entry when entry is socially beneficial, is called anti-competitive behavior and Trai should not allow this to happen.

In our view, a new operator will not find its operation viable if it aims to get only 5 to 10 per cent of market share that too over five year period. He has to quickly capture the already saturated market. For that, it has to offer attractive tariffs or even free services for some time, which must be allowed.

Therefore, a new entrant should be given freedom of offering free or lower tariff for a certain period, say two or three years from the date of launch, or till it achieves a minimum number of subscriber base, whichever is earlier.

Q3. Do you agree that the provisions discussed in Para 1.13 viz. information to the subscribers about test SIM being temporary etc., should be put in place for the TSP testing its network involving test users / subscribers? Please suggest other provisions which should be mandated during test phase?

A4. In this question, Trai has suggested that after the trial period, test users / subscribers should be deactivated. In view of our detailed response against other questions, this is not a desirable idea. A TSP should have the choice of continuing with the same SIMs even after the trial period is over.

Q4. Is there a need to have a defined timeline for testing phase ie period beyond which a TSP should start offering commercial services? If yes, what should be the timeline? Please justify your response.

A4. Trai has put the above question in the background of the fact that certain operators misuse the definition of commercial launch / rollout specified in the license condition, by technically commissioning a few BTS across the service areas, but they do not start commercial rollouts. In this regard it is submitted that timeline for completion of testing phase beyond which a TSP must start offering commercial services cannot be fixed. But, the definition of rollout must be reviewed and made stringent so that the operators cannot misuse it.

Q5. In case enrolling of subscribers as test users before commercial launch is allowed, whether subscriber related conditions and regulatory reporting requirements laid down in the license, be imposed for the test subscribers enrolled before commercial launch? Please provide justification to your response.

Q6. Should test users / subscribers of such licensees be given the facility of MNP? Please justify your answer.

A5 & A6. Certain provisions, like the following ones, of the license conditions must be adhered to during the trial period for all the enrolled subscribers: -

37.4 The Licensee shall, prior to commencement of Service, confirm in writing to the Licensor that the Licensee has taken all necessary steps to ensure that it and its employees shall observe confidentiality of customer information.

39.17(i)The Licensee shall ensure adequate verification of each and every customer before enrolling him as a subscriber; instructions issued by the Licensor in this regard from time to time shall be scrupulously followed. The Licensee shall make it clear to the subscriber that the subscriber will be responsible for proper and bonafide use of the service.

39.18 The complete list of subscribers shall be made available by the Licensee on their website (having password controlled access), so that designated Security Agencies are able to obtain the subscriber list at any time, as per their convenience with the help of the password. The list should be updated on regular basis. Hard copy as and when required by security agencies shall also be furnished.

However, in respect of condition No. 1.17 (given below), a new entrant must be allowed certain flexibility in terms of allowing him to offer tariff at zero level (free) or nominal charges. All the other conditions of No.1.17 such as transparent publication, reporting requirement, etc., shall be mandatory. The reason for this has been explained in detail in the answers to earlier questions.

17.1 The Licensee will charge the tariffs for the Service as per the Tariff orders / regulations / directions / decisions issued by TRAI from time to time. The Licensee shall also fulfill requirements regarding publication of tariffs, notifications and provision of information as directed by TRAI through its orders / regulations / directions issued from time to time as per the provisions of TRAI Act, 1997 as amended from time to time.

Q7. If there are any other issues / suggestions relevant to the subject, stakeholders may submit the same, with proper explanation and justification?

A7a. MTC should be abolished: Presently, Fixed Termination Charge (FTC) is nil, and Mobile Termination Charge (MTC) is 14 paisa per minute. This means, fixed line operators are under Bill And Keep (BAK) regime. The last revision of these charges was carried out on 23.02.2015, which became effective from 01.03.2015. Fixed line operation was moved to BAK regime (ie FTC was made nil from 20 paisa per minute), and MTC was reduced to 14 paisa per minute from 20 paisa. Carriage Charges for all domestic long distance calls were also reduced from 65 paisa to 35 paisa per minute. However, the TC for international incoming calls was increased from 40 paisa to 53 paisa per minute, but this would mean higher revenue for operators without impacting the local consumers. A historical view of TC is given in the following table: -

IUC from time to time (in paisa per minute)				
Network	Call direction	01.03.2015	01.04.2009	Before 01.04.2009
Local & NLD	Mobile > Mobile	14	20	30
	Mobile > Fixed	0	20	30
	Fixed > Mobile	0	20	30
	Fixed > Fixed	0	20	30
Any	Carriage	35	65	65
Any	Transit	15	15	20
Local	ILD – incoming	53	40	30

Besides the above charges, an operator has to pay 2 paisa for each SMS between person to person and 7 paisa on promotional messages.

All the above charges are payable, even during the period when trials are being conducted. Therefore, an operator need not be concerned whether its competing network is under trial or commercially launched.

However, retaining MTC after 2014 is nothing but a theft committed on consumers. In an affidavit filed by Trai on 31.10.2011 (IA No. 12-22 of 2011 in Civil Appeal No. 271-281 of 2011) in the Supreme Court, Trai had affirmed that in 2013 the TC for ‘calls’ will be reduced from 20 paisa to 10 paisa per minute, which will be further reduced to ‘0’ paisa from 2014 onwards, thus moving all the networks to BAK mode.

But retaining MTC at 14 paisa per min was a u-turn by Trai. Who were its beneficiaries? The benefit of this, are operators who have the biggest mobile shares – Dvoika (Bharti Airtel and Vodafone-Idea). Because of their huge mobile market share, they are the net recipient of the MTC. In response to an earlier consultation process, 45 comments were received from various NGOs, individuals, Trusts, and many telcos, etc., had suggested BAK regime for mobile. Only the dvoika (then troika) wanted to continue with the MTC regime. Trai obliged them ignoring its own affidavit to the Supreme Court. MTC & TC for SMS must be abolished.

Spectrum Cost impact is only 6p/min: Another interesting aspect emerged from that TC consultation process about the impact of spectrum cost on tariff. Late Shri JS Sarma, predecessor of Shri Khullar, had stated in his calculations that the impact on tariff, even for substantial payments on spectrum acquisition, is not significant. This was formally reconfirmed by none other than Bharti Airtel itself.

In its letter dated 11.12.2014 to Trai, Bharti had clubbed all the cost of recent spectrum auctions held during Nov-2012 to Mar-2015, and had stated that it would have an impact on tariff only by 6.22 paisa per minute.

Bharti Airtel had stated, “The spectrum cost paid by operators during the last three auctions in Nov-2012, Mar-2013, Feb-2014 and a conservative estimate of spectrum cost in the forthcoming auction in early 2015, is estimated to have an impact of at least 6.22 paisa per MOU (Minutes of Usage).” To substantiate this they had given detailed calculations in a table form, which has been reproduced in the table given below:

Bharti Airtel's response dated 11.12.2014 to Trai's consultation on IUC	
Auction	Spectrum auctioned (in Rs cr)
Nov, 12 Auction	9,407.64
Mar, 13 Auction	3,639.48
Feb, 14 Auction	61,162.22
Proposed Feb 2015 Auction *1800 & 900 MHz	** 42,254.60
Proposed Feb, 15 Auction ^ 800 MHz	# 6,631.25
Total Auction Proceeds	123,095.19
Per Year Cost @ 17% (5% Amortization & 15% WACC)	24,619.04
Total MOUs industry (2013-14) in Crs.##	395,990
Spectrum Cost per MOU (in paisa)	6.22 paisa
* 184 MHz of spectrum in 900 MHz band & 104 MHz of spectrum in 1800 MHz band	
** 1800 MHz & 900 MHz price as per the reserve price vide Trai's recommendations of Oct 2014	
^ 800 MHz considered as spectrum left unsold in Mar 2013 auction	
# 800 MHz as per the reserve price recommended by Trai reference back to DoT of Nov 2014	
## Industry MOUs as per MOU/per subs/ per month for GSM & CDMA as per Trai quarterly reports for FY 13-14	

Therefore, any operator, who claims that it has paid huge spectrum cost, must be shown these calculations.

A7b: Promotional offers are beneficial to the consumers and must be allowed without any restrictions. Facing competition from dvoika, who enjoy 76.58 per cent of revenue market share, is not an easy job for any new entrant. Dvoika is talking about predatory pricing, which is generally referred 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. SMP has been defined as a Service Provider holding a share of at least 30 per cent of total activity in a licensed telecom service area.

However, in the present context, there is a difference between 'driving out the competitors from the market', and 'getting a foothold' in the market by a new player. The issues raised in this paper are not relevant in the present context. R-Jio is a new entrant and therefore does not enjoy SMP status. It was seeking a foothold, while the three leading incumbents had ganged up to delay its commercial launch. They have a history of cartelized operation. They did not provide the EIs despite knowing the requirement well in advance as far back as 21.06.2016. These incumbent operators wanted to starve R-Jio of EIs. This is not in the interest of the consumers.

The right question: Instead of framing the above stated set of issues or questions, Trai should have asked a very simple question, which is, "Should the new entrants be given an opportunity to gain a minimum level of market share before they are subjected to regulatory requirement on tariff matters?"

We do hope that Trai will not frame any regulation at the behest of dvoika which will be detrimental to the interest of the consumers. Let dvoika face real competition.

Thanking you

Yours sincerely

For Telecom Watchdog



Anil Kumar

Secretary

Mobile: 81-301-67111

e-mail: TelecomWatchdog@gmail.com