**UNINOR RESPONSE TO THE CONSULTATION PAPER ON REVIEW OF POLICY OF FOREBEARANCE IN TELECOM TARIFFS**

**24TH OF FEBRUARY 2012.**

## 1. General preamble

A well structured telecommunication sector will ensure healthy competition based upon the principle of a level playing field on all levels of the value chain. As the TRAI consultation document rightly points out, the telecommunication sector is an extremely important driver of the overall economy and brings great benefits to the consumers when it is structured correctly. The following extract from the consultation paper gives a very good overview of the overriding benefits of an efficient sector and provides the basic starting point for our response to this important issue:

"*Economic regulation is generally used to promote prices that reflect efficient costs and promote universal access to basic services. An efficient regulatory framework assists in the development of a telecommunication infrastructure that allows the consumers of telecommunication services, ubiquitous and affordable access to an increasing range of competitively provided basic and advanced products and services. Telecommunication services are vital for overall economic development. The sector has significance both as a direct independent economic activity in itself and also as a major means of facilitating and enhancing the activities in almost all other economic and social sectors. The cost of telecommunication services is an input for other economic activities. It therefore, holds significance for all consumers, individual or collective.*"

India has witnessed a tremendous growth in mobile subscribers over the last few years and intense competition between operators driving down the price level to one of the lowest in the world. Consumers have benefitted from this development and new innovative services have been introduced to the market. In such a situation Uninor believes regulation of end-user tariffs – generally speaking – cannot be justified.

**Efficient wholesale regulation is needed to ensure competition at retail level**

Any requirement for the introduction of retail price ceilings is a clear sign that the basic competitive elements are not functioning optimally. In this regard, Uninor has previously expressed our view on the following issues which has a significant impact on the ability for smaller operators to compete effectively:

- Pricing of wholesale voice termination above cost,
- Pricing of wholesale sms termination above cost,
- Pricing of on-net origination and termination voice/sms for own retail customers below the wholesale rates offered to other operators,
- Terms and conditions for POI establishment.

Competition in the Indian market has over the past few years been performed on a very uneven playing field, with a number of very small start up operators trying to gain market share against well entrenched incumbent operators dictating terms and conditions for permitting voice and sms termination, POI connectivity and other essential services which would be required by such start up entities. Most of these services would normally be classed as inter-operator wholesale services which are essential building blocks in order to create an effective competitive environment. As this Consultation is focused upon the creation of prices which reflects efficient costs, one must also take into consideration the inter-operator pricing levels which would form the basis for retail tariffs. Thus, we would urge TRAI to carefully examine the lack of an efficient and cost oriented wholesale market rather than introducing regulation of retail prices. This is also in line with the basic principles in the EU regulatory framework – often regarded as a best-practice approach internationally – where the Commission has explicitly stated that regulation of retail services is the last resort. One example is to be found in the Explanatory Note[1] to the Commission (revised) recommendation on relevant product and service markets, page 19:

*"NRAs (National Regulatory Authorities)[2] have powers as a last resort and after due consideration to impose retail regulation on an undertaking with significant market power. However, regulatory controls on retail services should only be imposed where NRAs consider that relevant wholesale or related measures would fail to achieve the objective of ensuring effective competition."*

Uninor strongly believe that Indian consumers will benefit from TRAI taking the same approach going forward.

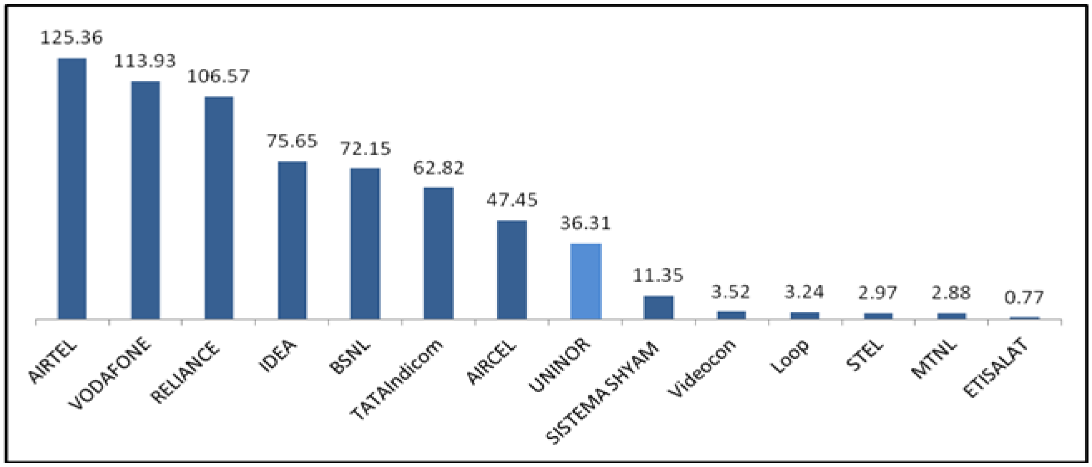
The following is an extract from the Consultation document:

*"After entry of new operators, in the year 2008, the market witnessed competition in the form of reduced tariff, including introduction of innovative tariff plans such as per second billing, both from new entrants and old operators; from the former with a view to attract customers including from the incumbent operators and from the latter to retain their customer base. This phenomenon continued for few years. However, despite existence of the new entrants, by the end of December 2011, it is seen that the subscriber base of new operators remains less than 7.5% and the top six incumbent operators enjoy the market share of more than 80% in terms of subscriber base. This indicates absence of effective competition despite presence of multiple operators in each service area."*

[1] See the following link:
http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/exp_note_markets_en.pdf

[2] National Regulatory Authorities

Uninor does not subscribe to the view that the market shares referred above indicates absence of effective competition in the retail market. We would rather underline that it is very difficult for new entrants to compete on par due to unbalanced terms and conditions at wholesale level. However, it is worth noting that although a number of new entrants were introduced in 2008, the effective operative dates of these operators would have been at least 1 year later, and taking due account of this extremely short timeframe, the lack of any competitive safeguards, and incumbent margin squeeze on IUC, the market share and impact of new competition is extremely impressive. The following chart, pertaining to the 13 circles that Uninor is commercially most active in, illustrates the impact of the new competitors;




Total subscriber base in 13 circles in Dec, 2011

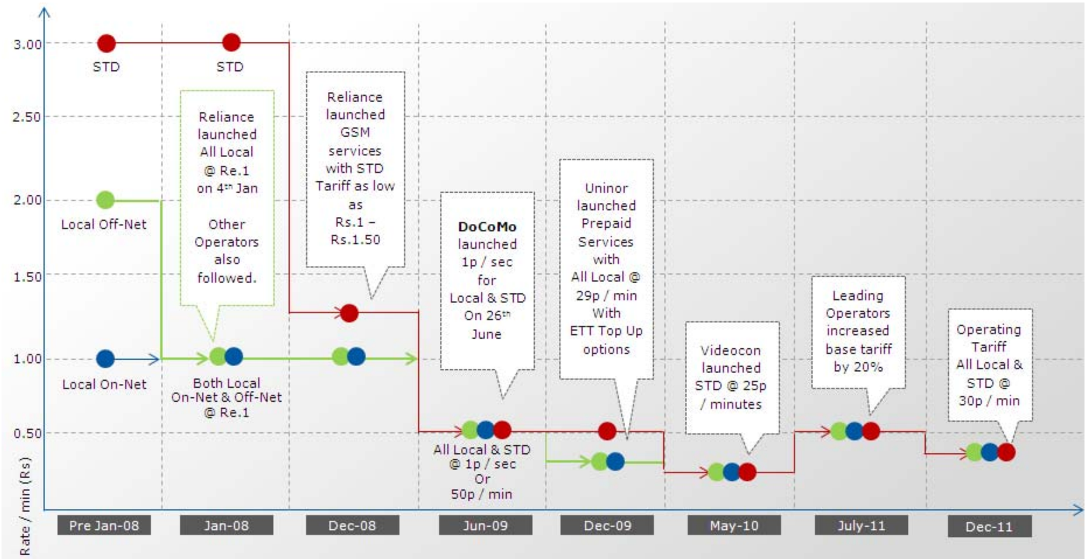
It should be noted that such growth has been achieved through extremely efficient utilization of the allocated start up spectrum. Further, the amount of capital, human and organizational resources expended to achieve this position has been significant, and made even more difficult due to the anti competitive positions taken by the incumbents on critical issues such as termination rates, below termination rate on-net tariffs and in some instances reluctance to increase the interconnection capacity. We note the TRAI position taken on the IUC case currently pending in the Supreme Court, and see this as a very important step towards achieving a fair and efficient competitive market.

As outlined in our submission on the 2G Auction pre-consultation, the purpose of the 2008 licensing process was to facilitate increased competition and to grow mobile penetration. Uninor has answered this call and been successful in broadening the playing field, lowering the tariffs and growing the mobile penetration significantly with more than 37 million customers since services were launched in December 2009, on top of which significant employment opportunities have been generated directly and indirectly through service partners. Till December 2011 Uninor has contributed approximately Rs. 4000 crores to the public exchequer by way of taxes, license fee, spectrum charges etc. We sincerely believe that had there been adequate competitive safeguards for smaller operators during the past few years, the competitive impact of the new operators on the market would have been significantly greater than what it is today.

As outlined above, any requirement of regulation of retail tariffs is only required when there is not enough competition in the market. In India, retail competition is high, but most of the competitive pressure comes from new operators.. However, to ensure the continuity and sustainability of such competitiveness of new operators at the retail end, it becomes very important to address the skewed playing field that the new operators are facing viz-a-viz the incumbents, in terms of spectral efficiency and wholesale costs. The incumbent operators are offering extremely low on-net tariffs to their own consumers where we see clear signs of both margin squeeze and below cost on-net selling in order to block the smaller competitors. Smaller operators are not in a position to offer similar on-net volumes due to the very limited amount of spectrum allocated whereas the incumbent operators have clear spectrum / network effect advantages which can be used to offer sub - cost predatory prices and packages Furthermore, for smaller operators a larger share of the total traffic will be off-net. Consequently, the relatively high termination rate serves as a barrier for competing with attractive offers introduced by incumbent operators without taking significant losses, i.e. cross-subsidizing these traffic volumes.

We have noted a significant effort by vested interests to claim that competition is very high in the Indian market, but the same parties omit to outline that such competition is neither between equally placed parties nor on a level playing field. It is clear that competition has indeed intensified over the past years and driven retail tariffs down significantly but as we have argued above, such competitive pressure has come from new operators, rather than the incumbent, despite the new operators being faced with significant wholesale challenges.

The following *(next page)* is an overview of tariff decreases over the past years, clearly showing the positive impact of increased competition:




**<u>Operating Tariff Comparison between Delhi and Mumbai and Impact of New Operators</u>**

- Launch of services by new operators in fast growing Indian telecom market, has resulted into a huge saving for the customers, both for obtaining a new connection & in terms of the running cost.
- Comparison of two Metro Circles, Mumbai & Delhi:

Number of Operators – 9 in Delhi vs. 12 in Mumbai – Uninor not operational in Delhi

| Delhi Vs Mumbai Product Benchmarking | | Delhi | | Mumbai | |
|---|---|---|---|---|---|
| | | Incumbent 1 | Incumbent 2 | Incumbent 1 | Incumbent 2 |
| New Connection | | Rs.80 (Talktime Rs.90) | Rs.80 (Talktime Rs.90) | Rs.5 (Talktime Rs.30) | Rs.50 (Talktime Rs.95) |
| Operating Tariff | On Net Tariff | 60p/min 1.2p/sec | 60p/min 1.2p/sec | 10p/min | 10p/min |
| | Off Net Tariff | 60p/min 1.2p/Sec | 60p/min 1.2p/sec | 30p/min | 30p/min |
| | STD Tariff | 40p/min | 60p/min 1.2p/sec | 30p/min | 30p/min |
| Talktime | Smallest FTT | Rs.51 | Rs.351 | Rs.10 | Rs.33 |
| TT in Rs.10 | TT in Rs.10 | Rs.7 | Rs.6.07 | Rs.10 | Rs.6 |

Taking due account of the COAI/Incumbent operators view that the IUC level is too low at

20p, the on-net tariffs above clearly show that their Mumbai off-net tariffs incorporate the current IUC of 20p/minute outlining a basic cost (including profit) for the provision of services well below their requested rate.

For any new operator the access to fair and cost oriented termination rates for both voice and data is of paramount importance due to the traffic imbalance during the formative period of the operator. Taking due account of that many other markets impose asymmetric termination rate policies specifically to balance out some of the disadvantages faced by start-up operators, the current stand of some well entrenched Indian operators of increasing the already high termination rates can only be seen as an attempt at stifling competition and preventing new and innovative operators from effectively penetrating the market. Our stand has always been that services rendered between operators should be provided on a cost oriented basis, and we cannot see from above example how a reasonable argument can be made to increase such rates.

**The following is our response to the Authority's questions:**

1. **Do you perceive any need for a change in present regulatory framework for telecom tariff fixation?**

   As outlined above, we do not view the regulation of retail tariffs as required, subject to an effective supervision and prevention of anti-competitive activities by the large incumbent operators.
   - Pricing of wholesale voice termination above cost,
   - Pricing of wholesale sms termination above cost,
   - Pricing of on-net origination and termination voice/sms for own retail customers below the wholesale rates offered to other operators,
   - Non-reciprocal terms and conditions for POI establishment.
   - Abuse of dominant position

   In this regard, the provisions of the Indian Competition Act should apply.

2. **Should TRAI withdraw from the policy of forbearance?**
   In our view, although TRAI should maintain the policy of forbearance on retail tariffs but at the same time ensure that adequate safeguards are instituted against predatory retail pricing and competitive distortions of wholesale services.

3. **If yes, what should be the basis of tariff regulation? Should it be by way of specifying a standard tariff package or by way of fixing tariff as a ceiling for individual charging components such as calls, SMS, etc? Please also suggest the methodology.**

On retail, we do not believe that there should be any tariff regulation. However, on wholesale, as pointed above in Point no. 2, the services should be provided on a non-discriminatory, cost-oriented and unbundled basis.

4. **Would tariff regulation affect the ability of the telecom service providers to introduce innovative tariff plans?**

   We believe, retail tariff regulation would affect the ability of operators to offer innovative tariffs. Hence, we are not in favor of withdrawal of forbearance for retail tariffs.

5. **What would be the best method of managing the telecom tariffs so as to protect consumer interest even while affording the telecom service providers the necessary flexibility?**

   The overall interest of the consumers would be met most effectively if efficient wholesale regulation is enhanced and at the same time the policy of forbearance on retail tariffs continues. The move would ensure that healthy competition continues in the industry.