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D.O.No.17(19)/TRAI/EW/CCU07

13 July, 2007

**Sub: TRAI Consultation Paper on Review of License Terms and Conditions and Capping of Number of Access Providers.**

My dear Nripendra,

Please refer to your d.o. letter No. CP/TRAI/2007 dated 13 June, 2007 inviting comments on the TRAI Consultation Paper dated 12<sup>th</sup> June, 2007 on Review of License Terms and Conditions and Capping of Number of Access Providers.

The Consultation Paper raises a number of important issues having implications for matters concerning competition in the telecom markets. Some of the approaches mentioned in the Consultation Paper are at variance with the Competition Act, 2002 or even with generally accepted elements of competition analysis.

You are aware that the Competition Act, 2002 incorporates what might be called a complete "merger code". It has a broad definition of a "combination" which includes a merger, an amalgamation and an acquisition. It also includes a definition of the relevant market including the relevant product market and the relevant geographic market and sets out the factors for their determination. Further, it specifically lists the factors that will be the basis for deciding whether a combination would have "appreciable adverse effect on competition". The Act also provides for notification to the Competition Commission of India of any proposed combination (above the given thresholds). Presently, prior notification to the Commission is voluntary; however, the Parliamentary Standing Committee on Finance has recommended mandatory prior notification, and this is under the consideration of Government. In case such a change is made in the Act, it would be mandatory for prior notification to be given to the Commission. In inquiring into any combination, the Commission would be bound by the provisions of the Act. The Commission is also in the process of preparing merger regulations. In the light of these facts, the need or desirability of deviating from the provisions of the Competition Act in the above matters has to be seriously reviewed.

It would be noted that "substantial equity holding" may, in certain circumstances, be caught within the definition of "combination" in the Competition Act. In that event, a case of "substantial equity holding" would have

to be inquired into like any other combination. The Consultation Paper in a number of places makes mention of certain thresholds or caps such as 67 per cent market share, a cap on the number of service providers in a service area, and a minimum of three of service providers in a service area. In the light of the provisions of the Competition Act and the current state of telecom markets, it is not clear whether such artificial thresholds/caps are relevant.

One of the core issues in the telecom sector relates to the availability and allocation of spectrum which is scarce resource. The question arises why market based principles cannot be applied to the allocation of spectrum thereby allowing it to find its market value and enable it to be more efficiently used by the service providers. In a similar manner, it is not clear why market principles cannot determine the use of rival technologies instead of this being determined by regulatory policy.

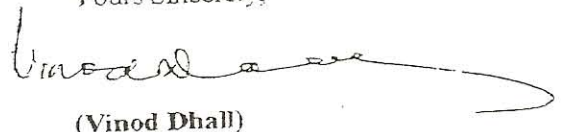
Apart from sharing of infrastructure, number portability is a crucial element for maintaining competition in the telecom markets and reducing the consumer's dependence on his existing service provider. The Consultation Paper does not make clear how number portability is to be made effective.

As stated above, "mergers and acquisitions" and "substantial equity holdings" would be regulated by the Competition Act which covers all sectors of the economy, thereby applying uniform legal and economic competition principles and analysis irrespective of the sector. The Consultation Paper indicates that this is also the position in the countries where a competition law exists. There may, therefore, be no need to introduce a separate regime for the regulation of "mergers and acquisitions" and "substantial equity holdings" in the telecom sector.

You would agree that the Consultation Paper gives rise to some very fundamental issues in relation to competition and these require detailed discussion. I suggest that a discussion between TRAI and the Competition Commission may kindly be arranged at a mutually convenient date before finalizing recommendations on competition related issues.

With regards,

Yours Sincerely,



(Vinod Dhall)

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