

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI

Dated 26th September, 2011

Petition No.169 of 2010
(With M.A. Nos. 294, 295, 296 & 297 of 2010)

Telecom Users Group of India
Vs. Petitioner

Telecom Regulatory Authority of India and Ors. Respondents

Petition No.359 of 2010
(With M.A. Nos. 314 & 353 of 2010)

Col. S.N. Aggarwal (Veteran), Noida & Ors.
Vs. Petitioners

Telecom Regulatory Authority of India and Ors. Respondents

BEFORE:

HON'BLE MR.JUSTICE S.B.SINHA, CHAIRPERSON

For Petitioner in : Mr. Tejveer Singh Bhatia, Advocate
Petition No. 169 of (Amicus Curiae)
2010

For Petitioner in P. No. : Ms. Poli Katakai, Advocate
359 of 2010 Mr. Vasav Anantharam, Advocate

For Respondent (TRAI) : Mr. Saket Singh, Advocate

For Respondent : Mr. Kaushik Mishra, Advocate
(Bharti Airtel)

For Respondent : Mr. Navin Chawla, Advocate
(Vodafone and Reliance Ms. Nidhi Parashar, Advocate
Communication Ltd.)

For Respondent : Mr. Manjul Bajpai, Advocate
(Idea Cellular) Ms. Monika Singhal, Advocate
Ms. Harshita Verma, Advocate
Ms. Nupur Pallavi, Advocate

For Respondent : Mr. Navin Chawla, Advocate
(Reliance) Mr. Jitendra Gaur, Advocate

For Respondent ; Mr. Mansoor Ali Shoket, Advocate
(Tata Tele)

For Respondent : Mrs. Prathiba M. Singh, Advocate
(BSNL) Mr. Vadivelu Deenadayalan, Advocate

For Respondent Nos. : Mr. Ravi S.S. Chauhan, Advocate
9, 11 & 13

J U D G E M E N T

These two petitions, being inter-related, were taken up for hearing together and are being disposed of by this common judgment.

2. The petitioner in the first case is a Member of the Consumer Advocacy Group of the Telecom Regulatory Authority of India (TRAI) constituted under Telecom Regulatory Authority of India Act, 1997 ('The Act').

TRAI is empowered to frame tariffs in exercise of its power conferred on it under Sub-Section 2 of Section 11 of the Act.

It reads as under :-

“(2) Notwithstanding anything contained in the Indian Telegraph Act, 1885, the Authority may, from time to time, by order, notify in the Official Gazette the rates at which the telecommunication services within India and outside India shall be provided under this Act including the rates at which messages shall be transmitted to any country outside India;

Provided that the Authority may notify different rates for different persons or class of persons for similar telecommunication services and where different rates are fixed as aforesaid the Authority shall record the reasons therefor.”

3. Sub-Section 4 of Section 11 envisages transparency on the part of the TRAI while exercising its power and discharging its functions.

In the year 1999, the TRAI made an Order known as Telecommunication Tariff Order, 1999 (TTO for short). It prescribed forbearance so far as the charges for providing telecom services are concerned. However, the TTO envisaged that subscribers should be provided with informations with regard to tariffs including terms & conditions through publication of documents in a specified format.

It was furthermore required that said publication should include a comparison of standards and alternative tariff packages.

4. On or about 01.5.2001, the said Order was amended by 13th Amendment Order, 2002; Clause 2 of Section II whereof dealt with tariff of pre-paid service providing that unused amount in the Sim Card at the end of the validity period should be carried over to the renewed card, if the renewal is done within a reasonable period.

We may notice the relevant provisions thereof.

“2. In Schedule-II (Cellular Mobile Telecom Service) of the Telecommunication Tariff Order, 1999, the existing clause (14.d) and corresponding entries shall be deleted and substituted to read as under: -

Item	Tariff
<i>(14.d) - Tariff for pre-paid service.</i>	<p><i>Forbearance; Provided that -</i></p> <p><i>a) At least one denomination of pre-paid cards offered by every Service Provider must be for an amount of Rs.300.00 or less with a corresponding validity period of at least one month.</i></p> <p><i>b) The charges for replacement of lost/ damaged SIM card shall be based on cost with a reasonable mark-up.</i></p> <p><i>c) If there is any amount that is unused at the end of the validity period, this amount should be carried over to the renewed card, if such renewal is done within a reasonable specified period.</i></p> <p><i>d) In the case of each pre-paid card package, the customer should be prominently and clearly informed of the total amount that is available in the pre-paid card package for making calls, i.e. to pay towards usage.</i></p>

<i>(14.e) - Other matters relevant to tariff including billing cycle.</i>	<i>Forbearance.</i>
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5. By reason of an amendment carried out in the said Tariff Order on 22.01.2002, the following Clause was inserted :-

“(iv) No new tariff plan or any change in the existing tariff for any telecommunication service or part thereof which requires approval of the Authority prior to its implementation, shall be announced through any media prior to approval of that tariff plan or any change in the existing tariff by the Authority.”

6. By reason of the said 2002 Amendment Order, the period of five days has been increased to seven days. Several Sub-Clauses after Clause 7 under Section III had been inserted, which are as under :-

“(v) All service providers shall pay a fee while reporting any new tariff plan or any changes / modifications in the existing tariff plan of any telecommunication service for approval of the Authority as specified in the "TRAI (Levy of fees and other charges for Tariff Plans) Regulation 2002".

However, there shall be no levy of fee on tariff plans in respect of tariffs which have been forborne by the Authority.

- (vi) All approvals for tariff plans if not implemented shall remain valid for a maximum period of six months from the date of the approval by the Authority. If a plan is not implemented within the timeframe of six months as above it would lapse and would need to be reported afresh for approval.*
- (vii) All service providers shall give an advance notice of not less than 30 days to the Authority and subscribers before terminating an existing tariff plan.*
- (viii) At any given point of time not more than 25 plans shall be on offer by a service provider. This includes both post paid and pre paid tariff plans.*
- (viii) All service providers shall comply with the condition of having not more than 25 tariff plans on offer including post-paid and pre-paid within 90 days from the date of publication of this order in the official Gazette with proper and due notice to the Authority and subscribers.”*

7. We may also notice the Explanatory Memorandum appended to the Amending Order No. 5 of 2002.

- “2. In the present framework of tariff reporting, service providers are at liberty to file any number of plans (whether intended to be implemented or not) for approval of the Authority. There is also no time limit within which a service provider has to implement a tariff plan approved by TRAI.*

4. *This Amendment shall be applicable to all telecommunication services which fall under the purview of reporting requirements of TTO, 1999.”*

8. TRAI issued 21st Amendment Order 2002 on or about 13.6.2002 whereby a ceiling of not more than 25 tariff plans including post-paid and pre-paid was fixed.

Yet again, by reason of 24th Amendment Order 2003 issued on 24.01.2003 provisions with regard to the Tariff Order of pre-paid services, as stated in the 13th Amendment Order, was reiterated.

9. On or about 16.01.2004, by reason of Amendment Order No. 2 of 2004 Sub-Clause 1 of clause II, was inserted by 17th Amendment Order dated 21.02.2002, which reads as under :-

“2.1 Under Section II (Definitions) of the Telecommunication Tariff Order, 1999 hereinafter referred to as TTO (as amended by 17th Amendment Order dated 22.01.2002), sub-clause (l) of clause 2 shall stand substituted by the following:

“(l) "Reporting Requirement" means the obligation of a service provider to report to the Authority any new tariff for telecommunication services under this Order and/or any changes therein within SEVEN days from the date of implementation of the

said tariff for information and record of the Authority after conducting a self-check to ensure that the tariff plan(s) is/are consistent with the regulatory principles in all respects which inter-alia include IUC Compliance, Non-discrimination & Non-predation.”

2.2 *Under Section III, Clause 4 (Forbearance) of the TTO (as amended by 21st Amendment to TTO dated 13.06.2002) shall be substituted to read as under:*

Where the Authority has, for the time being, forbore from fixing tariff for any telecommunication service or part thereof, a service provider shall be at liberty to fix any tariff for such telecommunication services;

Provided that service provider shall comply with the reporting requirements in respect of such tariff.”

We may also notice the relevant paragraphs of the Explanatory Memorandum appended thereto :-

“3. The Authority has now notified revised IUC Regulation, 2003 dated 29.10.2003 stipulating cost-based Interconnect usage charges. Furthermore, the price developments of Voice-telephony show that there is intense competition. With a high degree of competition, prior approval of tariffs may not be required as competition replaces regulation by the regulator. The Authority is of the view that current declining tariff environment is an ideal time to switch over from an Ex-ante tariff regulation to Ex-post tariff regulation meaning thereby, complete freedom would be given to operators in the matter of offering tariff plans in the market within the framework of the existing TTO. The Authority has already laid

down broad regulatory principles to determine as to whether a particular manner of pricing service is anti-competitive/discriminatory etc. Further the Authority has forborne with the main tariff items in Cellular and Basic services (except rural subscribers tariff & roaming tariffs). The IUC regime specified by the Authority reflects the underlying costs providing the service. Also the IUC charges as specified will implicitly function as a floor to the retail tariffs and thereby scope for predatory pricing or cross-subsidization is limited.

4. *The Authority is also of the view that the practice of seeking approvals to a large number of plans some of which are not even implemented creates needless pressure on the limited resources of the Authority. Thus the purpose of this amendment to TTO is to avoid undue pressure on regulatory resources as well.*

5. *The Authority has, therefore, decided to allow the flexibility to all telecom service providers to report their tariff plans to the Authority within 7 days from the date of implementation after conducting a Self-check to ensure consistency of the tariffs with the relevant regulatory principles which inter-alia includes Tariffs being IUC Compliant, Non-discriminatory and Non-predatory and hence this amendment.”*

10. Indisputably, Consultation Papers were issued by the TRAI from time to time. Such Consultation Papers were being issued from 2004 onwards. On or about 02.08.2010 it issued consultation papers on “Review of measure to protect the interest of consumers in telecom sector”. We may, however, notice

one of them being Consultation Papers being Consultation Paper No.12 of 2010 related to certain issues relating to Telecom Tariff.

The issues for consultation were as under :-

- “1. What, according to you, are the challenges which Indian telecom subscribers face while understanding and choosing the tariff offers?
2. What according to you are the required measures to further improve transparency in tariff offers and facilitate subscribers to choose a suitable tariff plan?
3. Do you think mandating “One Standard Plan for All Service Providers” particularly for the prepaid subscribers as suggested by some consumer organizations would be relevant in the present scenario of Indian telecom market?
4. Do you think the existence of large number of tariff plans and offers in the market are beneficial for the subscribers?
5. In your opinion is it necessary to revise or reduce the existing cap of 25 on the number of tariff plans on offer? If so, what would be the appropriate number?
6. Should there any limit be prescribed on the rates for premium rate SMS and calls? If so, what should be the norms for prescribing such limit?
7. If not, what further measures do you suggest to improve transparency in provision of the premium rate services to prevent the instances of subscribers availing such services without understanding financial implications thereof?
8. Do you think there is sufficient justification to allow the service providers to realign the ISD tariff in respect of existing lifetime

subscribers in view of the grounds mentioned in their representations?

9. *What measures do you think are necessary to improve transparency and to prevent instances of un-intended recharges by subscribers in situations of cross-restrictions of recharges?*
10. *Considering the nature and structure of the prevailing tariff offerings in the market and advertisements thereof, do you think there is a need for TRAI to issue fresh regulatory guidelines to prevent misleading tariff advertisements?*
11. *Do you agree that the instances of 'misleading' tariff advertisements listed in this paper adequately capture the actual scenario in the market? If not, provide specific details.*

It primarily focused on issues such as effective grievance redressal system, review of consumer centre, quality of service parameters, provision of Value Added Services and providing information to pre-paid consumers.

It is not in dispute that the consultative processes in respect of the said Consultation Papers are over. It is stated by the TRAI that various issues were analysed in depth.

11. With the aforementioned backdrop, we may notice that the Consumer Group sent a letter to this Tribunal on or about 05.4.2010, inter-alia, contending :-

“We have made several representations through our letters and personal meetings, requesting TRAI to intervene in this grave matter, but under the guise of forbearance. TRAI is not taking any action with errant operators.”

It was inter-alia prayed :-

“We humbly pray that TDSAT kindly look into the matter urgently and issue a directive to TRAI to make transparency in pre-paid mobile Tariff by introducing “One Plan for All”.

We also earnestly request for granting a hearing to members of Consumer Advocacy Group (CAG) with TRAI for brief interaction on gravity of the situation at your earliest.”

12. The 2nd Petition was filed on or about 21.10.2010 by Col. S. N. Aggarwal, who represents the interests of the Consumers Group, praying inter-alia for the following reliefs :-

- “(i) Direct TRAI to prepare simple and easily understandable plan for the pre-paid consumers;*
- (ii) Direct TRAI to issue suitable direction to all Service Providers to provide transparently all details of money paid by consumer while re-charging including talk-time, tariff/pulse, Service Tax, Education cess etc.;*
- (iii) Direct TRAI to take action and announce call made to Railway Helpline (139) as Toll Free or Free of Charge Call;*

- (iv) Direct TRAI to issue directions to all Service Providers to make Helpline number as free service;*
- (v) Direct TRAI to formulate Tariff & issue Tariff order for Value Added Services (VAS) such as SMS, MMS, GPRS, Internet, Roaming etc. to be followed by Service Providers;*
- (vi) Issue directive to TRAI to direct the Service Providers to immediately refund the excess charge made to the consumers for charging premium rates in availing services of 139 or any other helpline numbers;*
- (vii) Direct TRAI to conduct a thorough enquiry to find out if there is irregularities committed by the Service Providers in change of plan with migration fee i.e. levy of charge from change of plan from pre-paid to post paid and if it been found punitive measure be initiated against the errant Service Providers;*
- (viii) Direct TRAI to take punitive action against the service providers found to be engaged in fraudulent practices and further direct TRAI to publish public advertisement in order to make the public aware of these fraudulent practices and expose the guilty Service Providers to prevent future occurrence of such fraudulent practices.”*

13. This Tribunal, upon hearing the counsel for the parties, by an order dated 24.3.2011 requested the petitioners to point out the issues which would arise for its consideration vis-à-vis comments on each of them. Respondents were also requested to file a response thereto.

14. The issues, which have been raised, are :-

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- (i) Pre-paid tariff are costlier than post paid.*
- (ii) Anomalies of various pre-paid plans of various operators are of significant value both in absolute and % value.*
- (iii) The mobile pre-paid tariffs are widely varying and are too complex to be understood by a common consumer.*
- (iv) Tariff plans are widely varying in different cities and across the licensed service area/ areas.*
- (v) Tax deduction and undeclared deduction/reductions also vary from operator to operator.*
- (vi) SMS are too costly while these shall be at the best 1 sec 1 paisa call equivalent.*
- (vii) Roaming charge shall also require harmonization and significant reduction or abolition.*

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- (i) Neglect of pre-paid customers.*
- (ii) Mode of imposition of tax on the existing tariff.*
- (iii) Lack of transparency.*
- (iv) Electronic (verbal) recharge.*
- (v) Excess charge on calls.*
- (vi) Installation charges.*

- (vii) No tariff/call charge and pulse details on recharge coupon.*
- (viii) Charging of 139 as a premium number.*
- (ix) Levy of calls to customer care.*
- (x) Change of plan with migration fee i.e. levy of charge from change of plans from pre-paid to post paid.*
- (xi) VAS Extortion.*
- (xii) Dubious packages.*
- (xiii) Sale of mobile numbers.*
- (xiv) Absence of clarity in tariff orders.*
- (xv) Non-providing of statement of usage to the consumers.”*

15. It is conceded that Issues Nos. (ii), (iii) and (iv) raised in Petition No. 169 of 2010 and Issue Nos. (ii), (iii), (iv), (vi), (vii), (xii) and (xiii) raised in Petition No. 359 of 2010 need not be pressed having regard to the Consultation Paper No.12 of 2010 issued by the TRAI.

It is also conceded that Issue No. x raised in Petition No. 359 of 2010 has already been decided by TRAI in terms of the 1999 Telecom Tariff Order.

16. Mr. Tejveer Singh Bhatia, learned Amicus Curiae would contend :-

- (i) Having regard to the fact that TRAI permits 25 Tariff Plans for each of the operators, a large number of plans are filed in terms of the reporting requirements under the Tariff Order, but the TRAI has not been performing its statutory obligations to consider and grant approval expressly in respect of each of those plans;
- (ii) There are several complex tariffs containing a large number of packages floated by the service providers, which must be rationalized to a few 'plans' which would go a long way to help the consumers;
- (iii) The SMS tariff framed by the operators provide for a huge amount, although transfer of 100 words by a SMS should be treated equivalent to seconds of voice;
- (iv) The VAS (Internet Data) are not being regulated by the TRAI on the premise that it is being offered and charged under forbearance;
- (v) Electronic (verbal) recharge is devoid of any transparency as the consumers are not informed as to the bill given by them while recharging;
- (vi) No tariff/call charge of re-charged coupon is being provided;

- (vii) The calls to Customer Care are also being levied, which should be toll free. Even Railway Helpline (Telephone No. 139) is being charged.

17. Ms. Katak, learned counsel appearing on behalf of the Petitioner, Col. S. N. Aggarwal, submitted :-

- (a) TRAI, for all intent and purport, having not been monitoring the affairs of the service providers acted contrary to the mandates laid down under the Preamble to the Act;
- (b) TRAI itself has prescribed a format, which categorically goes to show that the service providers are required to justify their plans for approval of the TRAI, which, however, have not been examining the same in details and only on the basis of the 'Deeming provision' clause, the same would come into force, which is not contemplated by the Regulations;
- (c) Even if TRAI is to stick to forbearance, the same should be regulated; and the charges should be fixed keeping in view the actual cost of calls comprising of : (a) cost of origination; (b) cost of carrying (c) cost of termination, which in total would not exceed 40 to 45 paise per call per minute;

- (d) Taking advantage of forbearance, the operators have unjustly made 25% hike in July, 2011;
- (e) The VAS service does not include 'Internet services', 'MMS services' and '3G services';
- (f) Gross SMS charges are collected in excess of the voice calls.

18. Mr. Saket Singh, learned counsel appearing on behalf of the TRAI, on the other hand, submitted :-

- (i) The issues raised in the Petition being taken care of by the TRAI in its Consultation Papers;
- (ii) The TRAI furthermore has issued two draft Regulations; one relates to (i) Telecom Regulation Tariff i.e. One Plan for All dealers taking care of the problems of multiplicity of plans which is being complained about by the respondent, and the other relates to the Consumer's Grievances, and, thus, no issue survives for consideration of this Tribunal;
- (iii) The order of forbearance being not under challenge, these petitions are not maintainable;
- (iv) It is incorrect to contend that TRAI had not been performing its duties in terms of the Tariff Orders or otherwise.

- (v) The reporting requirements provided for in the Tariff Orders although are not mere formalities but what is necessary to be taken into consideration therefor is to see that the plan does not lead to a market failure;
- (vi) So far as latest increase of 20 % hike in the rates is concerned, TRAI has already sought for justifications therefor from the operators;
- (vii) Even in respect of Mobile Number portability, TRAI had seen to it that no rate is charged therefor;
- (viii) No instance has been brought on record to show that there has been a failure on the part of the TRAI in carrying out its statutory functions resulting in prejudice to the group of consumers;
- (ix) Issues are covered by the consultation papers and therefore, the TRAI must be held to be in seisin of the matter;
- (x) So far as a 'complex tariffs' issue is concerned, the numbers of plans are only 27 for GSM operators and 12 for CDMA operators and, thus, it is incorrect to contend that as many as 125 plans are in circulation;

- xi) So far as VAS (Internet tariff) is concerned, TRAI has already issued a direction on 4.7.2011, the relevant portion whereof reads as under :-

“In all cases here the value added services are activated through Out Bound Dialer or service provider initiated call or during pre-call ring-back announcements (both voice as well as automated) and where a consumer dials a specified telephone number or short code or a telephone number providing interactive session for subscribing to a Value Added Service, the service provider shall obtain confirmation from the consumer through consumer originated SMS or e-mail or FAX or in writing within twenty four hours of activation of the value added service and charge the consumer only if the confirmation is received from him for such value added service and shall discontinue such value added service if no confirmation is received from the consumer.”

- (xii) The draft regulations take care of the electronic (verbal) recharge.

The draft regulations also take care of the call charges and/or recharging coupons which have to be voucher specific and color coded.

- (xiii) As regards calls to customer care are concerned, directions have been issued on 05.5.2010 whereby the earlier orders were reiterated and, thus, no charge shall be levied, if the calls are in

respect of essential service or in respect of complaint to the operator to be made.

(xiv) However, so far as Railway Helpline (139) is concerned, views of the DoT have been sought for.

19. Mr. Naveen Chawla, learned counsel appearing for M/s. Vodafone and Reliance Industries would contend that no grievances having been raised against the service providers, no case has been made out for any relief against them.

20. Mr. Shokat Ali took this Tribunal through the reply of TTSL (Maharashtra) Ltd. to contend that it has been providing the cheapest tariff for its consumers.

The other counsel appearing on behalf of the parties adopted submissions of Mr. Singh and Mr. Naveen Chawla.

21. The TTO has been issued and/or amended by the TRAI in exercise of its power conferred upon it under Sub-Section 2 of Section 11 of the 1997 Act.

22. Perusal of the said provision would clearly go to show that a discretionary power has been conferred upon the TRAI thereby. Forbearance simplicitor or forbearance with conditions are part of regulation making process. In a given case, the regulator may prescribe a tariff or may not found it necessary to do so.

23. The term 'Forbearance' has been defined in Clause 2(g) of the Tariff Order to state that the TRAI has not, for the time being, notified any tariff for a particular telecommunications service and the service provider is, thus, free to fix any tariff and/or such service.

Clause 4 provided for 'forbearance'. It reads thus :-

“Where the Authority has, for the time being, forborne from fixing tariff for any telecommunication service or part thereof, a service provider shall be at liberty to fix any tariff for such telecommunication services.”

24. 'Reporting requirements' stood amended by the 2004 Amendment.

25. Clause (iv) of the Tariff Order 1999 provides for transparency and consumer protection.

An Explanatory Memorandum has been appended with the said order, para 2 whereof reads as under :-

“The purpose of this Memorandum is to lend clarity and transparency to this Order and give reasons for decisions taken with regard to tariffs. The Authority wishes to emphasize that this Order is only a first step in the process of tariff reform which is essential to prepare for competition and for introduction of new services. Without such tariff reform, telecom development, in particular for basic services, is not sustainable. The revised tariffs will not only reduce the vulnerability of the incumbent basic service provider (DOT) to competition, but will also provide adequate resources for the DoT to achieve its network expansion. These tariffs will also sustain the viability of the new entrants in different service areas.”

Para 5 of the said Explanatory Memorandum enjoins a duty upon the authority to monitor and assess the situation regarding revenues after implementation of the new tariff regime. In particular, the authority is to follow the situation for basic services and compare the actual revenues with its projections of the revenue implementation of the DOT. If the actual scenario at the end of first year turns out to be significantly different from the one envisaged by the authority, the situation was to be reviewed and necessary corrective measures taken.

26. So far as transparency for the customers is concerned, it was stated:-

“The Order also provides that subscribers (including potential subscribers) are provided information on tariffs (including terms and conditions) through publication of these tariffs in a specified format(s). These publications should also include a comparison of the standard and alternative tariff packages.”

27. By reason of 2001 Amendment Order, pre-paid tariff were foreborn.

28. In the backdrop of the 1999 Tariff Orders and various amending orders, consultation papers have been issued. Two draft Regulations known as ‘Telecom Consumers Protection Regulations, 2011’ and the ‘Telecom Consumers Complete Redressal Regulations, 2011’, specifying measures for protecting the interest of telecom consumers and improvised framework for Redressal of complaints of telecom consumers have also been issued.

The Telecom Consumers Protection Regulations, 2011 provides for three types of vouchers; (i) Plan voucher; (ii) Top-up voucher and (iii) Special voucher. The details of the contents thereof have also been laid down.

29. We may notice as for example in the case of top-up voucher, no restriction on usage on talk time in terms of the validity or usage is to be

provided. Provisions have also been made for colored and paper voucher. It also proposes laying-down of provisions of information to pre-paid consumers relating to usage comprising of the details of calls.

30. 4th August was the date fixed for receipt of the comments of the stakeholders. On or about 4th July, 2011, as noticed heretobefore, a direction has been issued by the TRAI in regard to Value Added Service so as to enable it to streamline the procedure to provide for the same. Most of the concerns of the consumer groups have, thus, been taken care of.

31. There cannot be any doubt or dispute that the procedures adopted by the TRAI for the purpose of framing tariff must be transparent. The Consumer Groups contend that the TRAI should frame tariff. This Tribunal is, however, of the opinion that respondent No.1/TRAI having prescribed forbearance, no direction at this stage should be issued.

32. The jurisdiction of the TRAI would include as to what to regulate and how to regulate, wherefor various aspects of the matter are required to be considered, namely, (i) the paying capacity of the subscribers; (ii) competition amongst the regulators; (iii) the nature of services to be provided; (iv) the

market force operating; (v) the growth of service including the question as to whether the service is of essential nature.

If the TRAI, therefore, in its wisdom thought it fit to opine that anything and everything should not be regulated, no exception thereto, in absence of a proper case having been made out therefor, can be taken

It may, in a given situation, be for the Central Government to ask for its recommendations in respect of the matters specified therefor.

33. Indisputably, the TRAI had been exercising its powers under Sub-Section 2 of Section 11 of the Act; Tariff Orders having been framed and amended from time to time. Neither the Tariff Order nor the amendments are in question before this Tribunal.

What is in question is the so-called inaction on the part of the TRAI to adhere to the reporting requirement issues. The definition of reporting requirements provides for a report to the authority by a service provider upon launching of a new tariff for telecommunication services within the time specified therefor for the information and record of the authority so as to

enable it to ensure that the tariff plans are consistent with the regulatory principles including IUC compliant, non-discriminatory and non-predatory.

34. By reason of a tariff order, thus, the operators are at liberty to fix any tariff for the telecommunication services subject of course to the compliance of the reporting requirements. The 2004 Amending Order has made the legal position in this behalf clear and explicit. The Explanatory Memorandum issued by the TRAI also clarifies this position.

35. Clause 2.3 of Section III of TTO fixes a time limit during which the authority may intervene. If it does not, the plans may be given effect to. The scope and object of interference is specified.

An intervention by the TRAI may be found to be necessary only when it violates any of the tariff orders and/or the regulations.

36. Our attention, however, has been drawn to a RTI query dated 27.4.2010 which is to the following effect:-

“3 *Package/Schemes for PREPAID Subscribers*

For the period 01 April 2009 to 31st March 2010, MONTHWISE list of PACKAGES/schemes received by TRAI from each SERVICE PROVIDER as under :-

- A) Scheme*
- B) Cost*
- C) Service Tax*
- D) Talk time*
- E) Validity- i) Date ii) Duration*
- F) Call Rates – Local, STD, SMS, Roaming, VAS*
- G) Date of receipt*
- H) Date of Scrutiny*
- I) Date of Approval/Rejection with copy of noting.*

5 Packages/Schemes for POSTPAID subscribers

For the period 01 April 2009 to 31 March 2010, MONTHWISE list of PACKAGES/schemes received from each SERVICE PROVIDER as under :-

- A) Scheme*
- B) Cost*
- C) Service Tax*
- D) Talk time*
- E) Validity- i) Date ii) Duration*
- F) Call Rates – Local, STD, SMS, Roaming, VAS*
- G) Date of receipt*

H) Date of Scrutiny

I) Date of Approval/Rejection with copy of noting.

J) Noted Violation of TTO

K) Monitoring Mechanism”

We may notice the reply thereto:-

“1B: Tariffs are reported to TRAI by telecom service providers for information and record, after these are launched in the market. Discrepancies found in the tariff reports vis-à-vis tariff regulatory guidelines are got rectified and clarifications obtained wherever necessary. Service providers are advised to restructure the tariff proposals if there are indications of possible violations. In addition, consumer complaints and other feedback from stake holders containing allegations of violations are examined and remedial action taken wherever necessary.

1C &D: the details of tariff related violations detected during 2009-2010 are given below:

i) The tariff report filed by BSNL, Kolkata in respect of ‘Kolkata 99’ Tariff plan indicated levy of migration fee of Rs.210/- from existing subscribers who are seeking migration to the new plan. The matter was taken up with the service provider and BSNL withdrew the objectionable plan from the market. BSNL was however advised to refund the migration fee already charged from existing subscribers from the date of launch of the plan till the date the plan was withdrawn. As per the compliance report furnished

by BSNL, more than Rs.31.00lakhs were refunded to about 15,000 subscribers from whom such migration fee was levied. BSNL was advised to take suitable steps to avoid recurrence of such lapses in future.

3A to I: Month-wise list of packages/schemes received in TRAI is not maintained in TRAI. Tariff reports for various plans/packages/schemes and revisions thereof are taken in files after scrutinising consistency with regulatory mandates. There are several thousands of such reports received during the year 2009-2010 which have been taken on record. For mobile services alone is having 259 separate files containing tariff reporting in respect of various plans/packages/schemes.”

37. It may be true that the reply by the TRAI could have been a bit more detailed. But the same must be read as a whole. It must be read having regard to the provisions of the existing Tariff Orders. At this stage only on the basis of the said reply, it is not possible for this Tribunal to arrive at finding that TRAI has abandoned or abdicated its functions as submitted by Ms. Kataki.

The grievances raised by the petitioner must be understood keeping in view the affidavits filed before us as also the respective stands taken by the parties.

38. We agree with the learned counsel that reporting requirements are not empty formalities, but then compliance of formalities must be in terms of the regulations and/or tariff orders and not beyond the same. In its additional affidavit, the petitioner has contended that having regard to dynamic and changing market conditions where a large number of operators have been operating, forbearance has lost its relevance. It proposes a regulated forbearance as is said to be prevalent in some developed countries.

The market conditions in a developed country and India may be different. The rate of growth of telecom sector in India is the second largest in the world.

The rates are not only competitive but also cheapest in the world. Market force has, thus, been playing its own role.

39. The petitioners have been basically praying for one Plan. Whether in future the TRAI would make recommendations therefor upon consideration of the view points of all the stakeholders is a matter which would fall for its determination or not cannot be foretold. The view of the TRAI cannot be pre-empted. Keeping in view the fact that the format prescribed by TRAI does not relate to the reporting requirements but merely an advertisement is itself a pointer to show that the justification required to be shown is not meant for an approval or permission of the TRAI. An advertisement should not be a misleading one. A subscriber is entitled to the requisite informations.

Justifications are necessary for the satisfaction of the consumers so as to enable them to choose one plan in preference to the other.

40. It is not a case where the dictionary meaning of approval; namely “to officially accept” should be assigned.

It does not mean a prior approval or a permission. Even it would not mean to ‘confirm authoritatively’ or to adopt.

41. The Tribunal must take notice of the fact that plans are prepared in a broad based manner. It should not violate the provisions of the Tariff Order or the Regulations. So far as compliance to the format for advertisement is concerned, what is necessary is not to justify each and every item of components of the rate.

42. Mr. Bhatia and Ms. Kataki would contend that some system to analyse the plans should be in place.

The question of a system being put in place for analysis of the plans may be necessary where the same is imperative in character. If the job of the Regulator is merely to see that the plans floated by the operators are in

consonance with the Tariff Orders and/or other regulations, the question of analysis thereof *stricto sensu* may not arise.

43. Moreover, the Consumer Groups also in the interest of consumers may analyse the same and bring it to the notice of the TRAI.

44. According to the Regulator, there are only 27 plans for the GSM operators per circle and 12 plans for the CDMA operators.

Moreover, in the event the Regulator determines that there would be only one plan, the scope of multiplicity of plans would become non-existent.

45. We have noticed heretofore that the consultative process is over. It is expected that the TRAI would take a decision one way or the other at an early date and possibly within a month or so.

Only in the event, certain deficiencies are found out, the question of examining the same by this Tribunal would arise. Issuance of the Regulations and/or any direction shall give rise to a fresh cause of action.

This Tribunal is of the opinion that the issues raised by the Consumer Groups, which were relevant for consideration by this Tribunal by and large are

covered by the consultation papers and draft Regulations circulated by the TRAI and, thus, require no further consideration by this Tribunal at this stage.

46. In absence of any material placed before us, it is difficult for this Tribunal to comprehend that the Regulator in framing tariffs for the telecom sector should be directed to carry out any other exercise on the premise that there is a possibility of cartelisation amongst the new operators resulting in high tariffs. If market forces, by and large, have taken care of the ground realities and a strict competition amongst the operators is in place, it is difficult to comprehend that the operators may take recourse to cartelisation resulting in high tariffs.

47. So far as the grievance relating to VAS is concerned, we must also notice that the definition is an inclusive one and not an exhaustive one. If ultimately, the TRAI thinks it fit to make provisions in the Regulations for one plan and, thus, the multiplicity of plan is avoided, the core purpose will be served.

48. So far as the other grievances are concerned, we think that the affidavit of the TRAI and replies filed by the other operators deal with the problems highlighted by the Consumer Groups sufficiently.

49. We have noticed heretofore that the TRAI has been issuing several directions.

Some of the operators have even provided per second tariff.

Some of them have classified tariffs into a number of sub-categories and classes based on their age, profession, location, specific usage requirement like data/SMS voice.

50. Steps have also been taken for launching innovative SMS packs, as for example, 3000 SMS are available merely for a sum of Rs.29/-.

51. I am sure that keeping in view the fact that the market is dynamic, the TRAI shall take suitable steps necessary to keep the market force in place and take adequate steps to safeguard the interest of the consumers and the operators sufficiently.

52. The Tribunal, however, is of the opinion that the TRAI, keeping in view its proposed activities, should undertake more awareness programmes to make the consumer aware of its rights.

53. These petitions are disposed of with the aforementioned observations.

54. Having regard to the facts and circumstances of this case, there shall be no order as to costs.

55. Before parting, however, I must place on record my deep sense of appreciation for Mr. Bhatia for the assistance rendered by him to this Tribunal.

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(S.B. Sinha)
Chairperson

rkc/hkc