



TRAI GETS GOVERNMENT NOD TO ACT AS CIVIL COURT

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The Communications Ministry has cleared the proposal to grant more powers to TRAI and enable it to act like a civil court, like Securities Exchange Board of India and Competition Commission of India. This will empower TRAI to summon persons, examine them on oath, demand documents and evidence on affidavits and even call for expert assistance for conducting enquiries. It is expected that the new powers of TRAI will be clearly provided in the National Telecom Policy 2012. The decision on the power to penalize operators is still not clear. TRAI has been recently entrusted with the task of managing spectrum – the radio frequencies on which the mobile communication signal travel.

PSA view – This is a smart move to further empower TRAI. TRAI has been demanding additional powers since 2006 and it is high time that it gets some kind of autonomy so to govern the telecom and growing mobile sphere effectively and efficiently without much interference from other departments.

Telecom department seeks exemption from the Competition Act

TRAI has proposed allowing M&A in the telecommunications sector under the automatic route if the combined market share was less than 35% and on a case by case basis where the market share is between 35% to 60%. This proposal was approved in principle by the Telecom Commission, the highest body under the Department of Telecommunications (“DoT”); however, it has faced opposition from the CCI. The DoT now seeks to make a case before the cabinet that the telecommunications sector already has a regulator, namely the TRAI, and considering the fact that the industry deals with highly specialized and complex issues such as spectrum management, licensing and M&As, it is different from other sectors. This is in tandem with the DoT’s recent endeavors to empower the TRAI with additional powers to act as a civil court and, therefore, puts it at par with the securities market regulator in India. The DoT will thus seek an exemption from the application of the CCI guidelines, considering the fact that this is a specialized industry and already has a regulator.

PSA view – TRAI is completely justified in seeking an industry specific exemption from the applicability of the CCI guidelines. There is a much needed consolidation in the 14 player telecom market, and the TRAI is competent to propose schemes for restricting entry into the telecom sector. That being said, it needs to be seen that the CCI is the regulator for anti-competitive practices. The CCI is well versed with complex competition issues and is adequately equipped to assess whether an arrangement is detrimental to

competition in India, and such information and resources may not be freely available with the TRAI. There needs to be a certain level of co-ordination between the two regulatory bodies; however, effective regulation of a sector should remain with the sector regulator.

Direction given by TRAI on cancellation/withdrawal of MNP request by Donor Operators

TRAI on February 21, 2012 has given direction to the effect that as a donor operator some of the service providers are rejecting the porting request by accepting cancellation request in the form of written request, SMS or voice call from the subscriber. TRAI taking this into account and has clearly stated that there is no provision in the regulations permitting the donor operators to accept withdrawal or cancellation of porting requests received from the subscribers. TRAI, in order to ensure compliance of terms and conditions of license and to protect the interest of consumers, directed all Cellular Mobile Telephone Service Providers and Unified Access Service Providers who are acting as Donor Operators not to entertain any request from the subscriber for cancellation or withdrawal of porting request and not to reject a porting request except on the grounds mentioned under the regulations.

PSA view – This direction of TRAI will reduce the confusion among the consumers with regard to MNP. TRAI has also asked the service providers to submit a compliance report to them. This is a welcome step on the MNP services to the consumers.

TRAI on start up kit and activation of new plan for the consumers

TRAI on March 07, 2012 has published a notification stating that tariff plan may be included as part of the start-up-kit since inclusion of a base plan will not affect transparency in tariff offering by the service providers. However, it has also stated that such plan will cease to apply to a customer upon activating the plan voucher. In the same notification it has also accepted the request of service providers that USSD may be allowed after every call for providing information to the consumers without sending the same as a SMS.

PSA view – This move will provide more transparency to the customers in knowing their tariff offerings by their service providers. Accepting the USSD service by the service providers to the consumers is much advanced step. This provides information relating to the amount deducted or any other information that service provider needs to inform to its customers.

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