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Telecom Update: TDSAT dismisses TRAI's regulations on predatory pricing

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In a recent notification, Telecom Disputes Settlement and Appellate Tribunal (TDSAT) dismissed the regulations with respect to predatory pricing and reporting of segmented offers that were issued by Telecom Regulatory Authority of India (TRAI) in February 2018. TRAI had amended the regulatory principles of tariff assessment to ensure transparency, non-discrimination and non-predation in telecommunication services. The amendments however did not go well with TDSAT and thus it asked TRAI to reconsider these provisions preferably within 6 months. In April 2016, TDSAT had issued an interim stay order on these amendments of TRAI.

Some of the key takeaways stated by TDSAT in the notification are mentioned below:

Segmented offers

The TDSAT said that segmented offers are always in the nature of beneficial schemes and discounts for a well-defined segment. Thus such discounts or concessions when forced to come within a limit of 25 tariff plans affects the interest of consumers. Besides, reporting of such requirements will only help rival telcos and which is not the purpose of regulation under the TRAI Act. However, TRAI has the authority to ask for reporting of segmented offers in case it finds the offers discriminatory.

Significant Market Power (SMP)

The authority is not satisfied with the definition of SMP issued by TRAI in February 2018 which narrowed the definition of significant market power to consider only subscriber base and gross revenue with a threshold limit of 30%. Prior to this, any telco had a significant market power if it held a share of 30% of total activity in a telecom circle. The term total activity included subscriber base, turnover, switching capacity and volume of traffic.

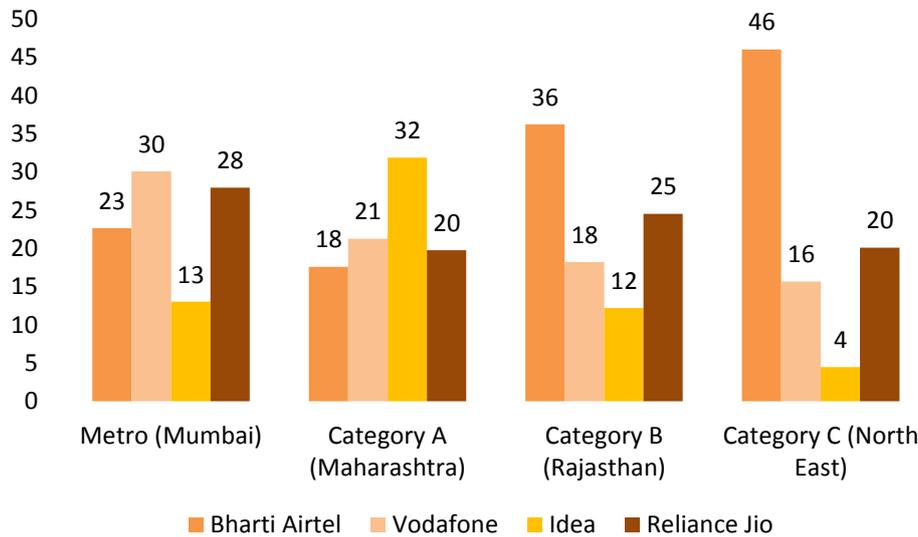
Predatory pricing

The TDSAT also did not consent with the thought that only a significant market power telco who has reached the threshold limit of 30% of total activity alone is capable of predation. The authority said that TRAI has exceeded its role and powers which it enjoys under the TRAI Act and thus mentions the role of Competition Commission of India.

How a change in definition of SMP will help a telecom service provider?

It can be seen from the above chart that the incumbents have already crossed the threshold limit of 30% which had restricted them from reacting rapidly to competition.

Chart 1: Indicative category-wise share of telcos for wireless segment as on September 2018 (in %)



Source: CMIE

Note: The circles mentioned above are considered to be representatives of the respective categories.

Nevertheless, revising definition of SMP and not only restricting price predation to telcos that have reached the threshold limit of 30% will help the incumbents to compete more effectively.

Concluding remarks

The revision in definition of predatory pricing, significant market power and reporting of segmented offers will encourage the incumbents to compete effectively as it will provide an opportunity to the incumbents to be treated at par with the latest entrant with respect to pricing and reporting of segmented offers. This, in turn, will aid the incumbents to act proactively in relation to pricing and other strategies implemented by the new entrant. Also, TDSAT indicated that the regulations announced by TRAI were not so beneficial for the incumbents.

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