



CCI Workshop on Competition Issues in the Telecom Sector in India

FEBRUARY 05, 2021

SUMMARY OF WORKSHOP PROCEEDINGS

Competition Commission of India

9th Floor, Office Block - 1, Kidwai Nagar (East), New Delhi - 110023, India.

I. INAUGURAL SESSION

Welcome Address

Shri S. Ghosh Dastidar, Secretary, CCI

Secretary, CCI in his Welcome Address said that the mandate of the Commission is to protect and promote competition and fair play in markets through its two instruments of enforcement and advocacy. The Commission has been undertaking market studies in various sectors to develop better understanding of market conditions and business practices as well as to reach out to stakeholders for consultations on various aspects. He stated that market studies inform and complement the Commission's enforcement actions and advocacy efforts and that the telecom market study allowed such an opportunity.

He emphasized the importance of a sector regulator and a competition regulator's role in regulating network industries such as telecommunication. He stated that a sector regulator is often considered as an ex-ante regulator of market power, via price, revenue and investment oversight. A competition authority is considered the ex-post controller of anti-competitive conduct, via its enforcement functions related to abuse of dominance, cartelisation and an ex-ante regulator of combinations. He also pointed out that though, the lines do blur sometimes and thus it is important that the lines of communication always remain open in the pursuit of a common goal of competition.

He said that the aim of the workshop is to bring together all relevant stakeholders on a platform to deliberate on the issues emerging in the telecom sector that have a bearing on competition.

Address

Shri Ashok Kumar Gupta, Chairperson, CCI

Chairperson, CCI in his address said that the workshop is an attempt to bring all stakeholders together on a platform to reflect on the country's evolving telecom landscape and deliberate on issues that are relevant for regulation and competition law enforcement.

He briefly highlighted the key findings and observations of the '**Market Study on the Telecom Sector in India**' and underlined the centrality of competition in enabling favourable market outcomes for consumers and sustainable growth for the sector, premised on strong fundamentals. The key findings/issues relate to parameters of competition, vertical integration, infrastructure sharing, unbundling of infrastructure and services, traffic management, spectrum acquisition and collection of data among other issues impacting competition.

Further, he stated that the market study helped to gather useful insights on key features of the telecom sector in India, and issues that may, directly or indirectly, have a bearing on competition. He pointed out that the prevailing market structure in the telecom sector validates the empirical finding of the rule of three, which predicts that network markets normally support three main competitors, while others who survive, are usually niche players limited to the fringes. There has also been a noticeable change in the demand in favour of Quality of Service and bundled offerings (which include, inter alia, voice, data, SMS, and content). The latter will be the focus of differentiation among service providers with service bouquets to be the likely choice for improving customer retention. It was also stated that engagements between telcos and Internet-based services companies have moved beyond contractual agreements to other forms of strategic transactions.

He stated that the technology-led convergence has made services less distinguishable, raising new challenges in defining relevant markets. He also said given network effects, access to data has the potential to become a significant barrier to entry and the CCI can examine whether such collection of 'excessive' amount of data can be anti-competitive and thus scrutinise such conducts on a case-by-case basis. He pointed out that privacy can be a parameter of non-price competition. Lower data protection can also lead to the standard legal category of exclusionary behaviour, which undermines the competitive process. He stated that the anti-trust law framework is broad enough to address the exploitative and exclusionary behaviour arising out of privacy standards, of entities commanding market power.

He mentioned that while overlapping jurisdiction between institutions cannot be eliminated, he said, it ought to be harmonised through better regulatory design and improved lines of communication. He stressed the need for a harmonious regulatory environment, focusing on strengthening cooperation among Department of Telecom (DoT), Telecom Regulatory Authority of India (TRAI) and CCI.

Keynote Address

Shri Anshu Prakash, Chairman, Digital Communications Commission (DCC) & Secretary, Department of Telecommunications

Shri Anshu Prakash in his Keynote Address congratulated CCI for carrying out the Market Study on Telecom Sector in India, underscoring the need for evidence-based policymaking that would require research. He spoke about the dynamic nature of the industry and constantly evolving business interactions that have led to new competition issues. He also emphasized on the non-price factors driving competition that reflect maturing of competition and perhaps in part the limits to price-based competition. He highlighted how factors such as quality of services (QoS), data speed, call drops, network coverage, and bundled offerings influence consumer choice.

He said that telecommunication sector is a vibrant sector, and at present, mobile communications in particular and telecommunication service in general have become a basic human need. He said that telecom is a unique class of products since the entry barrier in the form of high investment encourages oligopoly and it is difficult to be a niche player surviving in the industry.

He said that consumers now have options never seen before and with the rapidly changing technology in the sector, role of entrepreneur gains importance. The telecom sector has traversed a long way from being a state-owned monopoly to a multi-player industry to an era of consolidation and at present to a 3 + 1 market structure. The issue of net neutrality compounded by convergence and the existence of a symbiotic or a competitive interface between OTTs and TSPs are certain other aspects which any regulator has to consider, he asserted. Further, with 5G around the corner, the financial capability issue of the TSPs will be crucial.

Further, he stressed the need for regulators to be proactive, given the constantly evolving dynamic nature of technology in the sector. He concluded by stating the need for ongoing communication between the DOT, regulators, Ministry of I&B and other government bodies, so that the objective of a digital India can be achieved in synchronization with each other and synergies can be derived from roles and responsibilities that each one has.

Vote of Thanks

Ms. Payal Malik, Adviser, CCI

Ms. Malik thanked Shri Anshu Prakash for his valuable and insightful address. She pointed out that the policy-driven liberalization spearheaded by policy instruments of tariff has enhanced competition, while expanding network and services. Drawing from the Keynote, she emphasized on policy regimes such as auctions, change in license regime, and spectrum harmonization that has spurred competition and efficiencies. She stated that policy making is a complex exercise with many competing objectives and trade-offs, with competition being just one of them. Meeting these objectives essentially requires prioritization that may at times go beyond sectoral concerns and meet certain macro objectives. However, in this tight rope walk competition and efficiency are important objectives for growth, innovation and access. Further, she said that the enabling regulatory levers and mechanisms that are catalysts for growth and efficiencies and competition challenges to the ecosystem are the focus of the Study and the Workshop. Going forward the policy tool of net neutrality would be central in establishing a competitive market in the sector.

The Inaugural Session was followed by panel discussions that brought together stakeholders and industry perspective on understanding competition related issues and their potential impact on

industry outcomes. The panels comprising, representatives of TSPs, ISPs, OTTs, TAIPA, think tanks, academicians, senior government officials, extensively deliberated on forward looking policy and regulatory measures that could push the industry towards faster adoption of new technologies such as 5G. The second panel discussion focused on understanding new business models and regulatory challenges in the era of convergence. Panelists focused on key policy enablers and the role of competition in securing sustainable growth for the industry.

II. SESSION I: STAKEHOLDER/ INDUSTRY PERSPECTIVE

Moderator	Dr. Rajat Kathuria, Director & Chief Executive, ICRIER
Panelists	Mr. Rahul Vatts, Chief Regulatory Officer, Bharti Airtel
	Mr. Balaji P, Chief Regulatory and Corporate Affairs Officer, Vodafone Idea Ltd.
	Ms. Vishakha Saigal, Vice President and Head – Strategic Initiatives, Regulatory Policy & Research, Reliance Jio
	Mr. Aman Jain, Head, Government Affairs and Public Policy, Google India
	Mr. Parag Kar, Vice President, Government Affairs, Qualcomm Inc.
	Ms. Kalyani Singh, Public Policy Manager, Facebook
	Mr. T.V. Ramachandran, President, Broadband India Forum
	Mr. T.R. Dua, Director General, TAIPA
	Mr. Brajesh Jain, DGM Regulatory and Compliance, Shyam Spectra Pvt. Ltd.

Dr. Kathuria began the session by highlighting the necessity of the competition in the sector as the telecom sector has transformed significantly over the years not only in India but across the globe compared to any other sector. It has now become an enabling sector for other sectors and therefore, the competition issues have also become more complex. The issues around competition are no longer just related to market structure or pricing but include aspects like content, data privacy, how partnerships are evolving, net neutrality, etc.

Mr. Rahul Vatts, on being asked about the existing and potential threats to competition and tariff structure in the telecom, emphasized that competition issues highlighted in the study are critical and prevalent. He added that while the sector is now a core player telecom market with 3 + 1 structure, but the continuity and survival of the players is critical. He highlighted five issues that need to be addressed by the regulators: comparative industry structure, financial health of sector, new strain of anti-competitive behaviour resulting from the evolution of technology, level playing field, and unbundling of licenses.

He emphasized that adequate competition is needed to provide enough choices to consumers. The 3 + 1 structure, as highlighted in the report, gives sufficient choice to the consumers. He also cited example of Mexico wherein the regulator intervened to ensure competitive industry structure. In relation to the financial health of the industry, he emphasized the strained industry

cash flow which would in turn have an effect on the competitiveness of the sector. The recommendation in this regard by the sectoral regulator like reduction of license fees, removal of regulatory levy on GST, USO levies, etc. need to be addressed immediately.

He also stated the need for regulators to monitor and intervene in new patterns of behaviour such as leveraging the power of the state to allow quicker access to a single operator in the form of right of way, Government land, rolling out networks, etc. Other examples cited by Mr. Vatts include creating walled gardens of software and hardware platforms, exclusive contract with vendors, conduct of vertically integrated players, lack of level playing field between OTTs and TSPs etc. He pointed out that OTTs are not subjected to the same rules as TSPs, TSP should be provided with such flexibility. He further added that while unbundling of licenses has already happened, TSPs still require certainty in licensing regime.

Mr. P. Balaji, stressed that the financial health of the TSPs is critical. Sector revenues have dropped by about 20% compared to what was observed five years ago. This is at the time when investment cycle is up. India has one of the highest tax rates which is further adding to the financial stress. He emphasized that National Digital Communication Policy envisages about 100 billion dollars' investment to create 1 trillion-dollar economy. When the investment cycle, debt levels and financial stress is high, there is a need to put more money in the hands of operators of industry to ensure they can invest more. He further added that Government should rationalise levies/ taxes and undertake tariff consultation. Such relaxation is required to achieve 5G installation, to catalyze industry 4.0 and to ensure that there is return on investment in the long term.

Mr. Aman Jain, underlined that the competitive dynamics in the telecom sector in India are quite different from the rest of the world. Having open source software platform has helped in reducing cost of smartphones, a leading example of which is android. It has resulted in exponential growth in the app economy as well as jobs. Growth rate of app downloads in India in 2020 was four times higher than global average.

He pointed out that network effects do not necessarily lead to creation of walled gardens and switching costs in digital markets are negligible. Many of the digital firms have taken over from the incumbents. In relation to data privacy, he stressed that it should be addressed by other proposed laws. Two different regulators could lead to different standards of compliance and create legal uncertainties.

He shared that Google has announced India Digitisation Fund of 10 billion dollars and it has collaborated with Jio to make affordable smartphones. He stressed that technological collaborations like this will help accelerate growth in the telecom sector. As more people use

smartphones, entire ecosystem of app developers will grow, more jobs would be created, and it will help the economy in general.

Ms. Vishakha Saigal, highlighted the regulatory checks to preserve and enable competition in India. The sector has undergone a complete transformation over last few years from voice centric market to data centric market. This points to a significant shift in user behaviour towards and acceptance of mobile broadband which has been facilitated by multitude of factors viz. healthy competitive environment, high speed and affordable tariff, adoption of more efficient 4G technology, robust expansion of network expansion by TSPs, regulatory environment, etc. These factors have been instrumental in shaping competition in the market.

She emphasized that from a regulatory standpoint, there are certain issues that need to be addressed to enable fair competition and growth. These include - predictable and timely availability of spectrum in all bands; transparent and fair allocation of spectrum, reduction in regulatory levies, ensuring of level playing field between OTTs and TSPs, creation of balanced framework for security, data privacy, etc. and institution of an enabling and predictable environment for TSPs.

Mr. Parag Kar, on being asked about the importance of spectrum in the telecom sector, stressed that spectrum has been the anchor point for telecom industry and needs to be properly managed. He added that despite progress in telecommunications, there are certain issues which need to be addressed. As per Mr. Kar, there lies significant quantum of spectrum unutilized in the market. Approximately 50% of the spectrum lies idle which has been put into multiple round of auctions; however, there have been hardly any takers because of high spectrum prices. For consumers, although there is affordable data access, quality of data has deteriorated as the users have increased.

He said that spectrum availability per player is low and spectrum prices act as a great demotivator for players to acquire spectrum and reserve price has been consistently increasing. He pointed out that TRAI simply escalates the spectrum price on the basis of previous auction price without doing any ground evaluation as to the assessment of other factors viz. financial health of the sector, overall state of the economy, etc. leading to spectrum pricing which is not reflective of the true market conditions. Due to this, TSPs fear that if they do not acquire spectrum today, prices will rise further. Mr. Kar emphasized the importance of rationalization of price in every round of auction using ground valuation matrix. Another reason for decrease in competition in the market is the high spectrum prices as it creates barriers to entry and also weakens TSPs ability to invest in rural areas.

Ms. Kalyani Singh, highlighted that one of the most important observation of the Market Study on the Telecom Sector in India is the dynamic nature of the telecom market in India in terms of

rapid changes in technology and market structure. She underlined how CCI has been looking at digital markets since 2012, and the evidence based approach of the CCI to avoid over-enforcement which could stifle innovation. She stressed that data is an important aspect in the digital markets, and it is non-rivalrous, ubiquitous and replicable. Therefore, creation of entry barriers by data may not happen in general. Similarly, non-price factors of competition need to be considered on a case to case basis. Non-price factor theory is still at a developing stage not only in India but globally. Thus, a clear identification of harm and evidence based approach to enforcement in such cases becomes critical.

On the question about reconsidering the net neutrality framework in line with changing technology, she highlighted that the TRAI has concluded that the current framework is technology neutral.

Mr. T.V. Ramachandran, expressed his views about level playing between TSPs and OTTs. He underlined that the concept of level playing field and fair competition is enshrined in the Constitution of India through Article 14 which guarantees equality before the law or equal protection of law to entities in similar circumstances and Article 19(1) (g) i.e., the Right to do business. He emphasized that unequal's are not only permitted to be treated unequally but they have to be treated as unequal's.

As per Mr. Ramachandran, TSPs are major players and have important rights such as right to own and deploy core infrastructure and provide bouquet of services, but digital content & app providers have no such rights and are niche players. Given the uniqueness, it is naive to think of a level playing between such unequal players. The current licensing regime flows from the Indian Telegraph Act, 1885 which provides for the Central Government to grant license on such conditions as it thinks fit. Since the entities are differently placed, their terms and conditions can and should also be different.

With regard to policy for fast tracking 5G, he emphasized that there is a need for crucial policy steps such as increase availability of fibres, rationalisation of spectrum pricing through review of auction rules, facilitation of private networks for non-telecom verticals, e-band of backhaul, un-licensing of spectrum, proliferation of public WIFI to at least 10 million and leveraging of SATCOM policy.

Mr. T.R. Dua, expressed his views about ways to strengthen the market for infrastructure provider for enabling competition. He pointed out that the fees for registering, sharing and rental is exorbitant despite the existence of ROW rules issued by the Government of India. There are no uniform guidelines in the country, online portals of the state governments are not available and multiple documentation is required. In spite of this, telecom infrastructure continues to grow. The regulator has come up many times with widening the scope of infrastructure provider (such

as passive infrastructure) and infrastructure providers have remained committed towards creation and sharing of infrastructure. All this has brought in competition, reduced entry barriers, reduced delivery time, reduce capital and operational expenditure and provided effective and optimised resources. National Digital Communication Policy, 2018 proposes to allow sharing of active infrastructure. The regulator has also recommended sharing of active infrastructure. Thus, the policies have been a hallmark for competition enhancement.

Mr. Brajesh Jain, in response to a question on institutional changes required for enabling competition, highlighted that there is a gap between the recommendation of TRAI and the policy changes implemented by DOT. He emphasized the need to fill the gap is one of the institutional change requirements. Another institutional change recommended by Mr. Jain was availability of basic inputs such as internet protocol addresses, and domain names which requires capital and deep technical knowledge. He underlined that this is best handled by large corporation or those which are government supported. He also emphasized the need to look at service offering and businesses viability every few years and that same service same rules should be applied to everyone.

Few questions from the attendees were also answered by the panelists.

III. SESSION – II: TELECOM INDUSTRY IN THE ERA OF CONVERGENCE – NEW BUSINESS MODELS AND REGULATORY CHALLENGES

Moderator	Ms. Payal Malik, Adviser (Economics Division), CCI
Panelists	Dr. Rohit Prasad, Professor, Management Development Institute
	Mr. Deepak Maheshwari, Public Policy Consultant and Senior Visiting Fellow, ICRIER
	Mr. Rahul Matthan, Partner, Trilegal
	Dr. Mahesh Uppal, Director, ComFirst
	Ms. Seema Singh, Co-Founder and Editor, The Ken

Ms. Payal Malik began the session by pointing out that communication service provider is in an enviable position and they are trying to carve out new revenue streams and ensure their relevance beyond being a data pipe in a hyper connected economy. She further added that technological convergence has inspired vertical integration leading to strategic partnership between companies. This has led to creation of business eco-systems and these dynamics are in turn raising novel competition concerns. It remains to be seen whether effective competition can exist between these walled gardens or whether the existence of network effects implies winner takes all outcomes. She also highlighted that acquisition of data and cross linking of data across products can give advantage in terms of market power. Lower data privacy in turn can have exclusionary effects which may undermine the competitive process. In this background, she opened up the session to the panelists.

Dr. Mahesh Uppal, expressed his views about regulatory challenges to competition in the era of convergence. He pointed out that although India has a largely competitive telecom market, not all players and all regions are equally competitive. He added that licensing regime is a major barrier to competition. Permission less innovation measures does not exist and it is very difficult to become an ISP in India compared to other countries. There is limited use of cable infrastructure and satellite services because of huge requirements of licensing regime and compliance cost. AGR approach to licensing and levies, penalizes efficiencies and encourages predatory pricing. De-licensing of the sector would result in loss of revenue to the exchequer and to the incumbents.

On net neutrality, he emphasizes that the approach to net neutrality hasn't worked. Huge harm can still be done by companies who control pipes. One size fits all approach to net neutrality may not have the intended effect. In the US net neutrality was introduced and then got discontinued

during the Trump regime. In India, we have net neutrality in terms of ban on differential pricing and there has been very little review of its impact. He stressed on the need to compare the effect in both the countries.

Mr. Deepak Maheshwari, on being asked whether unbundling of licensing would prove antithetical to vertical integration, asserted that unbundling is not a new issue. Some unbundling is already taking place due to the choice of the operator and is based on finding value. He stated that there is still a lack of a regulatory regime that actually unbundles everything. Unbundling of licensing is one aspect, but within it there are multiple layers that can also be unbundled. This would increase competition and would enhance price transparency. He added that vertical integration is bound to happen but unbundling can act as a countervailing force to mitigate harms of vertical integration. He said that some convergence at the level of government and the regulator is needed.

On net neutrality, he highlighted that choking can happen by both OTTs and TSPs. OTTs are developing solution to reach the last mile. They are reaching consumers in terms of content as well as pipes. They are coming up in the telecom space and there is a need to look at this area of convergence as well.

Ms. Seema Singh, emphasized the need to allow more competition and entry of new players. Vertical integration would result in more concentration. In such cases, CCI can be more agile in its intervention.

Dr. Rohit Prasad, stressed that the world is under the grip of digitalization. Jurisdictions thus have to think global and act local. As we move towards a more converged world we need to know where the locus of power lies and where it is shifting. The locus should lie within the country and not from outside. With regard to net neutrality, we have basically focused on telcos, but Google, FB, Amazon are also gateways. We need to find out who are the violators of net neutrality today are. Regulation of digital industry needs to go beyond economic factors like price, quality, growth rate, profits etc. This is because digital industries industry is transforming the social contracts, and lot of people don't tend to read the contracts.

He also expressed his views about auction design given the imminent advent of 5G. He questioned the auction design in a market where telcos are bleeding and the incumbent whose entry led to this disruption is controlled by tech giants. He said that there is a need to move towards a ground up approach for defining the reserve price, each time the spectrum is auctioned. He reasoned that this is not because of the existence of integrated sphere of competition between TSPs and internet companies, but because there is asymmetry of regulation between them. Telcos pay higher levies whereas internet companies don't.

Mr. Rahul Matthan, stressed that in the data driven market, non-price factors are more important and that simply looking at the size of merger and acquisition isn't important but its impact is. He added that locking of data in silos is a route towards harm. Regulation that unlocks data would help in mitigating the bad effects. Data sharing, data porting and building systems that allow data sharing would significantly undo the impact of data silos. India in its privacy policy has provisions to address that. He further said that privacy impinges on the nature of consent and is therefore a domain of privacy regulator and not competition regulator. The competition impact of data exists in terms of behaviour of these entities but privacy issues lies squarely in the domain of privacy regulator.