

**“Competition Issues
-
Experiences from India”**

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Definition - Markets and Dominance Control

Markets and dominance

DEFINITION:

MARKET: A medium that allows buyers and sellers of a specific good or service to interact in order to facilitate an exchange. The price that individuals pay during the transaction may be determined by a number of factors, but price is often determined by the forces of supply and demand. The market facilitates trade and enables the distribution and allocation of resources in a society.

MARKET DOMINANCE: Dominance is defined as the ability of an enterprise to operate independently of market forces and enables it to affect competitors or consumers or the relevant market in its favor.

Types of Market

❑ **Price Taker Markets (e.g. perfect competition)**

A purely competitive market exists when the following conditions subsist:

- Low entry and exit barriers
- Homogeneity of products
- perfect knowledge about product quality, price and cost.
- No single buyer or seller is large enough to influence the market price.


❑ **Price Searcher Markets (e.g. monopoly, oligopoly, monopolistic competition)**

Price-searcher markets are characterized by:

- Barriers to Entry.
- Firms in the Markets that have Downward-Sloping Demand Curves

Dominance control

- ❑ Market analysis should be undertaken to determine whether an undertaking, acting individually or jointly with others, is dominant in the market.
- ❑ In case market dominance is found, the same can be eliminated/controlled by Government/Regulatory interventions through formulation of Act/Regulations.
- ❑ If dominance is not found, the free play of market forces and demand supply dynamics can be allowed with bare minimum regulatory interventions.



***Ex ante* regulation**
v.
***Ex post* regulation**

Salient features

- ❑ *Ex ante* regulation seeks to identify problems beforehand and shape stakeholder behavior and responses through regulatory intervention
- ❑ *Ex post* regulation pertains to competition issues in the context of a specific market economy

Sector-specific regulators (such as TRAI) deal with the first set while a more generalized competition or antitrust regulatory authority (such as CCI) are tasked with resolving market behavior related problems after they arise

A comparison

	Sector-specific regulation	Competition authority
Primary objective	Orderly growth of sector resulting in consumer welfare	Consumer welfare and curbing monopoly power
Focus	Specific sectors of economy	Entire market economy
Mode	<i>Ex ante</i>	<i>Ex post</i>
Method	Tells businesses ‘what to do’ and ‘how to price products’	Tells businesses ‘what not to do’
Issues handled	Regulating access, prices, reducing barriers to entry, changing market structure, facilitating competition	Affecting conduct of entities, maintaining competition

A comparison..

	Sector-specific regulation	Competition authority
Expertise	Sector-specific expertise	Legal and economy-wide expertise
Involvement	Direct	Largely indirect
Timing	Ability to align incentives <i>ex ante</i>	<i>Ex post</i> enforcement
Penal powers	Limited	More extensive
Transaction costs	Relatively higher	Lower
Consumer welfare	<i>Parens patriae</i> (acts on behalf of consumers)	Private enforcement provisions; ability to claim damages



Merger and Acquisitions

Regulation of M&A

- **M&A** are an exception to the general rule on *ex post* regulation
 - Antitrust (general) regulators intervene/ review mergers prior to event
- At the same time, *ex ante* regulators such as TRAI also have a role to play in M&A
 - To ensure orderly growth of sector
 - To align incentives for producers of goods and services
 - To ensure enhancement of consumer welfare

M&A Regulation: Example

TRAI recommended the following *ex ante* guidelines for M&A in the Indian telecom sector in 2011:

- ❑ Prior approval of the Licensor shall be mandatory for merger of the licence. Merger of licences shall be restricted to the same service area. On merger of licence(s) for access services, the merged licences in all the categories shall be in UASL category only.
- ❑ Where the market share of the Resultant entity in the relevant market is not above 35% of the total subscriber base or the AGR in a licensed service area, the Government may grant permission at its level. However, where, in either of these criteria, it exceeds 35% but is below 60%, Government may decide the case after receipt of recommendations from the TRAI. Cases where the market share is above 60% shall not be considered.
- ❑ Consequent upon the merger of licences in a service area, the total spectrum held by the Resultant entity shall not exceed 25% of the spectrum assigned, by way of auction or otherwise, in the concerned service area in case of 900 and 1800 MHz bands.

M&A Regulation: Example (Cont'd...)

- ❑ The resultant entity shall be entitled to only one block of 6.2 MHz*/ 5MHz* (GSM/CDMA) for the Entry fee paid, either of the parties to the merger should pay the Spectrum price. This shall not apply in case of spectrum obtained through auction, if any.
- ❑ A spectrum transfer charge, @ 5% of the difference between the transaction price between the parties and the total current price, shall be payable before permission is granted.
- ❑ If, as a result of the merger, the total spectrum held by the resultant entity is beyond the limits prescribed, the excess spectrum must be surrendered within one year of the permission being granted.
- ❑ If consequent to merger of licences in a service area, the Resultant entity becomes a “Significant Market Power” (holding market share of 50% or more in terms of Access AGR or Access subscriber), then the extant rules & regulations applicable to SMPs would also apply to the Resultant entity.
- ❑ The substantial equity and cross holding of the Resultant entity shall be in conformity with the provisions of the UAS licence.
- ❑ The duration of licence of the Resultant entity will be equal to the higher of the two periods on the date of merger.

M&A Regulation: Example

Government issued the following guidelines after considering regulator's recommendations:

- ❑ Merger of licenses will be for respective service category.
- ❑ After approval, the scheme of merger should be implemented within one year.
- ❑ Validity of license post merger will be equal to the higher of the two periods of the transferor (acquired) or the transferee (acquiring) company.
- ❑ Validity of spectrum will be unchanged i.e. it will be same as that held by the acquired company
- ❑ No price differential will have to be paid if the spectrum was obtained through auctions conducted from 2010 onwards
- ❑ Spectrum usage charge will be payable on the total spectrum holding of the resultant entity
- ❑ Excess spectrum must be returned within one year

M&A Regulation: Example (Cont'd...)

Government imposed the following conditions for M&A:

Market Cap

- ❑ Market share of the resultant entity post merger can be up to 50% in the service area
- ❑ In case it is more than 50%, it must be reduced to 50% within one year of approval of the scheme
- ❑ Market share shall be determined based on both the subscriber base and Adjusted Gross Revenue of the licensee in the relevant market

Spectrum Cap

- ❑ Post merger, the spectrum held shall not exceed-
 - 25% of total spectrum assigned for access services, and
 - 50% of spectrum assigned in a given band in concerned service area

Post Merger

- ❑ If the resultant entity becomes a Significant Market Power (SMP) then the rules & regulations applicable to SMP would apply
 - ❑ SMP regulation based on *ex post* regulator

M&A Regulation (cont'd...)

Legal Requirements

- ❑ Compromises/arrangements and amalgamations of companies are governed by various provisions of Companies Act 2013
- ❑ The companies need to approach the National Company Law Tribunal (NCLT) for approval
- ❑ DoT (Licensor Department) should also be notified about the proposal



Regulation of Interconnection Charges

Interconnection Charges and their Significance

- ❑ In telecom service industry, interconnection refer to arrangement under which TSP connect their equipment, networks and services to enable their customers communicate with customers of other TSP
- ❑ Interconnections charges are the charges payable by one TSP to other for use of latter network for originating, transiting, carrying or terminating calls

Significance of IUC:

- ❑ Effective interconnection arrangements promotes efficient infrastructure development, providing incentives to TSPs to build networks and use parts of other networks
- ❑ The incumbent and dominant TSP(s) wants to take advantage of their network and market share. They demand higher interconnection charge not merely to earn an excessive profit, but also to reduce competition. Consequence effect on smaller/new TSP(s) is possibility of elimination/weaken financials as they are net payers of interconnection charges
- ❑ Interconnection facilities should be provided on non-discriminatory and cost oriented terms

Principles for fixing Interconnection Charges

Principles followed by TRAI while fixing interconnection charges:

- ❑ Interconnection charges should be fixed on cost basis. TSP whose network has been used for interconnection should be fairly compensated for work done.
- ❑ Interconnection charges should not be perceived as source for earning profit or a means to make competitors' services costly.
- ❑ Effective interconnection regime would create conditions for attracting investment and stimulate infrastructure growth and innovation.
- ❑ Create conditions for fair competition among the incumbent TSP and new entrant

Regulatory Interventions by TRAI in Interconnection Charges

The major regulations issued by TRAI determining various interconnection charges are as under:

- ❑ The Telecommunication Interconnection Usage Charges (Tenth Amendment) regulations, 2009: Voice Termination Charge for domestic and international calls, Transit Carriage Charge.
- ❑ The International Telecommunication Cable Landing Stations Access Facilitation Charges and Co-location Charges Regulations, 2012
- ❑ The Telecommunication Interconnection (Port Charges) (Second Amendment) regulations, 2012
- ❑ The Short Message Services (SMS) Termination Charges Regulations, 2013



Tariff Regulation

Status of Tariff Regulation

- ❑ Tariff Regulation by TRAI initiated through Telecommunication Tariff Order (TTO) 1999
- ❑ Tariff Regulation is a dynamic process – 56 Amendments to the 1999 Tariff Order
- ❑ Telecom Tariff in general is under Forbearance
- ❑ Services for which Tariff remains Regulated:
 - National Roaming Service for Mobile
 - Fixed line Service in rural areas
 - Leased Circuits

Tariff Reporting

- ❑ Retail tariff does not require approval of the regulator
- ❑ Tariff to be reported within seven working days after implementation
- ❑ Self-check by Service providers to ensure consistency with regulatory principles
- ❑ Provision for financial disincentive for delay in reporting

Major Grounds for Tariff Interventions

- ❑ Tariffs exceeding the prescribed ceilings
- ❑ Discriminatory tariffs
- ❑ Anti competitive tariffs
- ❑ Levy of migration charges
- ❑ Provision for financial disincentive for violation of Telecommunication Tariff Order.

Measures to protect customers

- ❑ A tariff plan once offered shall be available to a subscriber for a minimum period of SIX MONTHS from the date of enrolment of the subscriber to that tariff plan
- ❑ No hike in any tariff item permitted for the said six months.
- ❑ No hike in tariff permitted in longer validity (including lifetime validity) plans during the period of promised validity

Emphasis on Transparency

- ❑ Telecom Consumer Protection Regulation mandates service providers to provide information to consumers about tariff plans/ packages enrolled by the subscribers as well as information about usage etc.
- ❑ TCPR also mandates categorization of vouchers as – Plan vouchers, Top up vouchers and Special tariff vouchers and Combo vouchers
- ❑ TCPR also contains provisions relating to de-activation of SIMs due to non-usage
- ❑ Processing Fee on top up vouchers not to exceed 10% of MRP or Rs. 3 whichever is less
- ❑ At least one top up voucher of denomination Rs. 10
- ❑ One tariff plan each for pre-paid and post-paid subscribers with pulse rate of 1 sec.



THANK YOU