



## ERGO

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### TRING TRING! CCI CALLS IN THE MARKET STUDY ON INDIAN TELECOM SECTOR

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On 22 January 2021, the Competition Commission of India (CCI) published its market study on the Indian telecom sector (Market Study). Initiated by the CCI in January 2020 as part of its advocacy measures, the Market Study aims to analyse competition challenges in the wake of technological innovations, and regulatory changes.

The Market Study's key findings and highlights are summarised below:

#### **Parameters of competition - a shift from price to non-price factors**

- While tariffs are the primary competitive factor in the price-sensitive Indian telecom market, there is a marked shift in user behaviour due to the all-pervasive smartphones, which offer a range of Over-the-Top (OTT) services such as, voice, video, chat, social media, banking, entertainment, etc.
- Thus, alongside mobile network and data packages, non-price factors such as, quality of service (QoS), data speeds and bundled offerings (which include, voice, data, SMS, and content) are now key product differentiators among service providers.

#### **Net neutrality at centre stage**

- The principles of: (i) net neutrality which prohibit differential pricing; and (ii) the extant regulations of Telecom Regulatory Authority of India (TRAI) which forbid non-discriminatory treatment based on content, sender / receiver, protocols, or user equipment as per prior arrangements, will continue to gain centre stage to ensure a fair playing field. This is due to an overwhelming increase in: (i) bundled offerings; and (ii) strategic vertical integrations across the value chain (e.g., between telecom service providers (TSPs) and OTT services like, digital content companies, social media platforms, digital payments platforms, etc.).
- Competition vigilance will be required to ensure that: (i) vertically integrated service providers do not act in an anti-competitive manner (e.g., by foreclosing new entrants in the application layer); and (ii) search neutrality is maintained (i.e., search engines remain impartial).
- In case of any conflict of interest, the CCI can probe the conduct of TSPs and OTTs on a case-by-case basis.

### **Managing network traffic and transparent peering**

- Internet service providers (ISPs) are challenged with managing network capacity due to an upsurge in global traffic and data-heavy content. To maximise traffic efficiency, ISPs utilise: (i) public peering (traffic exchange through an internet exchange point); and (ii) private peering (traffic exchange between ISPs at private facilities).
- However, with growing traffic, limited players controlling a significant proportion of internet traffic, and past instances of differential treatment of internet traffic, it is likely that ISPs / TSPs, internet companies, and other content delivery networks may enter anti-competitive arrangements (say, to provide faster speeds to specific services, or to prioritise one's own content over competitors).
- It is, therefore, recommended that peering arrangements and traffic patterns be monitored to ensure adherence to net neutrality principles and maintain fair competition.

### **Infrastructure sharing and unbundling**

- The Unified License regime does not segregate infrastructure, network, and service layers, except for limited unbundling of the infrastructure layer. Consequently, licensees are required to establish and maintain the network, provide services (including, QoS) to customers, and manage traffic, all at the same time.
- To further optimise infrastructure utilisation and in line with the recommendations of the National Digital Communications Policy (2019), it is recommended that a revised differential policy where licenses are unbundled be introduced. To that effect:
  - active infrastructure sharing with minimal regulatory hurdles should be incentivised to improve last-mile connectivity. A policy enabling active infrastructure sharing under a *light-touch* regulatory framework may provide desirable effects; and
  - to aid decongestion of mobile networks, network components should be unbundled. In any case, the launch of 5G services will make unbundling inevitable and create huge potential to hive off and sell parts of licenses as separate services.
- Thus, infrastructure, network, service, and application layers must be completely segregated to induce competition within each layer.

### **Competitive advantage in spectrum ownership and rollout of 5G services**

- Spectrum is a critical input for mobile communication and its ownership grants TSPs a competitive advantage. Access to a larger quantum of the contiguous spectrum also enhances operational efficiency.
- While India has liberalised spectrums, the comparatively high Indian spectrum costs have financially burdened the telecom sector. Moreover, there are limitations on spectrum holding.
- Thus, to enable a successful launch of 5G services in India and ensure competition in the long run, spectrum assignment at reasonable costs, which balances both revenue realisation and industry viability is a must.

## Combined data power as a factor to establish dominance

- Competition assessment of vertically integrated entities in multi-sided markets must consider their *combined data power* for establishing dominance. This is because while access to data can provide competitive advantage and increase efficiencies, it can also hinder entry of new players due to network effects and create high switching costs for consumers.
- While competition tools for new age digital markets are evolving globally, the Competition Act, 2002 (Competition Act) has in-built flexibilities to address these challenges.

## Data privacy and competition

- Data privacy is a non-price competition factor and therefore, degradations in privacy standards or free consent can attract a probe into abuse of dominant behaviour and other exclusionary practices prohibited under the Competition Act.
- To ensure consistent regulatory decisions, formal and informal inter-regulatory consultations between the Department of Telecommunications, the TRAI, the CCI and the envisaged Data Protection Authority will play a crucial role going forward.
- Issues surrounding overlapping regulatory jurisdictions must be harmonised and as far as competition law is concerned, the CCI will continue to enjoy regulatory oversight.

## Comment

*Rapid technological advancements have reshaped dynamics in the Indian telecom sector. With subscriptions multiplying by the day and increasing inter-play between TSPs and content/infrastructure providers, the sector is threatened by multi-sided competition law challenges. As the coronavirus pandemic highlighted the paramount importance of communications and data and the expanding 5G revolution, the CCI's Market Study comes at an opportune time to extensively discuss extant competition in the sector and the challenges arising from vertical consolidation. It also discusses the growing prominence of new age digital markets, need to harmonise overlapping regulatory jurisdictions, and makes succinct recommendations to secure the long-term competition interests in the telecom sector. In a nutshell, telecom remains a priority sector for the CCI and stakeholders are encouraged to introspect their growth strategies and market practices.*

- Anisha Chand (Partner) and Anmol Awasthi (Associate)

For any queries please contact: [editors@khaitanco.com](mailto:editors@khaitanco.com)

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### Mumbai

One Indiabulls Centre, 13<sup>th</sup> Floor  
Tower 1 841, Senapati Bapat Marg  
Mumbai 400 013, India

T: +91 22 6636 5000  
E: [mumbai@khaitanco.com](mailto:mumbai@khaitanco.com)

### New Delhi

Ashoka Estate, 12th Floor  
24 Barakhamba Road  
New Delhi 110 001, India

T: +91 11 4151 5454  
E: [delhi@khaitanco.com](mailto:delhi@khaitanco.com)

### Bengaluru

Simal, 2nd Floor  
7/1, Ulsoor Road  
Bengaluru 560 042, India

T: +91 80 4339 7000  
E: [bengaluru@khaitanco.com](mailto:bengaluru@khaitanco.com)

### Kolkata

Emerald House  
1 B Old Post Office Street  
Kolkata 700 001, India

T: +91 33 2248 7000  
E: [kolkata@khaitanco.com](mailto:kolkata@khaitanco.com)