

Banded Forbearance: A New Approach to Price Regulation

Rohan Samarajiva, LIRNEasia, samarajiva@lirne.net

Fast growing telecom markets, especially in the developing world, are attracting new types of users, especially those at the Bottom of the Pyramid. Innovative pricing is needed to respond to this increasingly heterogeneous demand. However, many regulators still try to regulate prices using methods from the monopoly era, despite lacking capacity to effectively regulate the burgeoning number of tariff plans.

One response has been asymmetric regulation/forbearance, wherein the regulator determines that certain operators do not have significant market power (SMP) and frees them from regulatory burdens, including, in many cases tariff regulation. This still leaves a few operators (possibly one each in different markets such as fixed, mobile, and broadband) under tariff regulation. They are required to file tariffs, and if not go through formal proceedings, at least go through a staff review. Given the leakiness of most regulatory agencies, this puts them at a significant disadvantage because their competitors can prepare precisely targeted and timed responses, unencumbered by regulation.

Forbearance was included in the 1997 legislation that created the Telecom Regulatory Authority of India (TRAI) (prior to the EU asymmetrical regulation model being fully developed). Possibly as a result, TRAI did not forbear from tariff regulation on the basis of SMP: all tariffs in urban areas were forborne, with some limited regulatory authority retained in rural areas. The results were some of the lowest tariffs in the world (resulting also in massive take-up of services) and very high scores on the tariff regulation dimension of the recently concluded Telecom Regulatory Environment (TRE) assessment. Complete forbearance yielded both low prices and high satisfaction among stakeholders.

Based on this lesson, it is proposed that “banded forbearance” be introduced, even in countries with far fewer competitors than in the Indian metro markets. In this form of benchmark regulation, the regulator will

- Define a benchmarking methodology such as an adaptation of the OECD basket methodology, including peer countries and weights;
- Define a band of allowed variance above and below, what is likely to be a moving benchmark (driven by prices changes and exchange-rate movements), within which prices will be fully forborne; and
- Specify competition-related criteria that will be used to evaluate price movements above the upper band and below the lower band (e.g., limited to tests on predation and price squeeze). Time limits and default outcomes can also be specified.

The introduction of bands and specified criteria will allow operators to use innovative marketing strategies, while retaining safeguards that may be important in markets with few competitors and possibly significant control over essential facilities by incumbents. It will also result in refocusing regulatory energies on creating the conditions for competition rather than sterile calculations of the X in RPI-X. The production and timely dissemination of standard price, minutes-of-use, and call-distribution data needed for OECD type benchmarking will also result in reducing the opacity of pricing for consumers, thus sharpening competitive pressures and improving the customer experience.

Bio

Rohan Samarajiva is Executive Director of LIRNE*asia*, an ICT policy and regulation think tank based in Colombo but active across South and Southeast Asia. He was Director General of Telecommunications in Sri Lanka (1998-99), Visiting Professor at the Delft University of Technology (2000-03) and Associate Professor at the Ohio State University (1987-2000).