

NALSAR University of Law

Telecom Regulatory Authority  
of India (TRAI)

By  
Bangaru Laxmi Jasti

# Scheme of study

- History
- Functions
- Powers
- Activities

# What is TRAI?

- With the entry of private sector in the provision of telecommunication services a need was felt to have an independent regulatory body.
- Accordingly, Telecom Regulatory Authority of India (TRAI) was established in the year 1997 in pursuance of TRAI (Ordinance) 1997, which was later replaced by an Act of Parliament, to regulate the telecommunication services.
- TRAI is an independent statutory body, tasked with protecting the interests of telecom service providers and consumers and promoting the orderly growth of the telecommunication sector.

# History

- The Telecom Regulatory Authority of India (TRAI) was established on 20th February 1997 by an Act of Parliament, called the Telecom Regulatory Authority of India Act, 1997, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

- The TRAI Act was amended by an ordinance, effective from 24 January 2000, establishing a **Telecommunications Dispute Settlement and Appellate Tribunal (TDSAT)** to take over the adjudicatory and disputes functions from TRAI.
- TDSAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI.

# Mission

- to create and nurture conditions for growth of telecommunications in the country in a manner and at a pace which will enable India to play a leading role in emerging global information society.

# Objectives

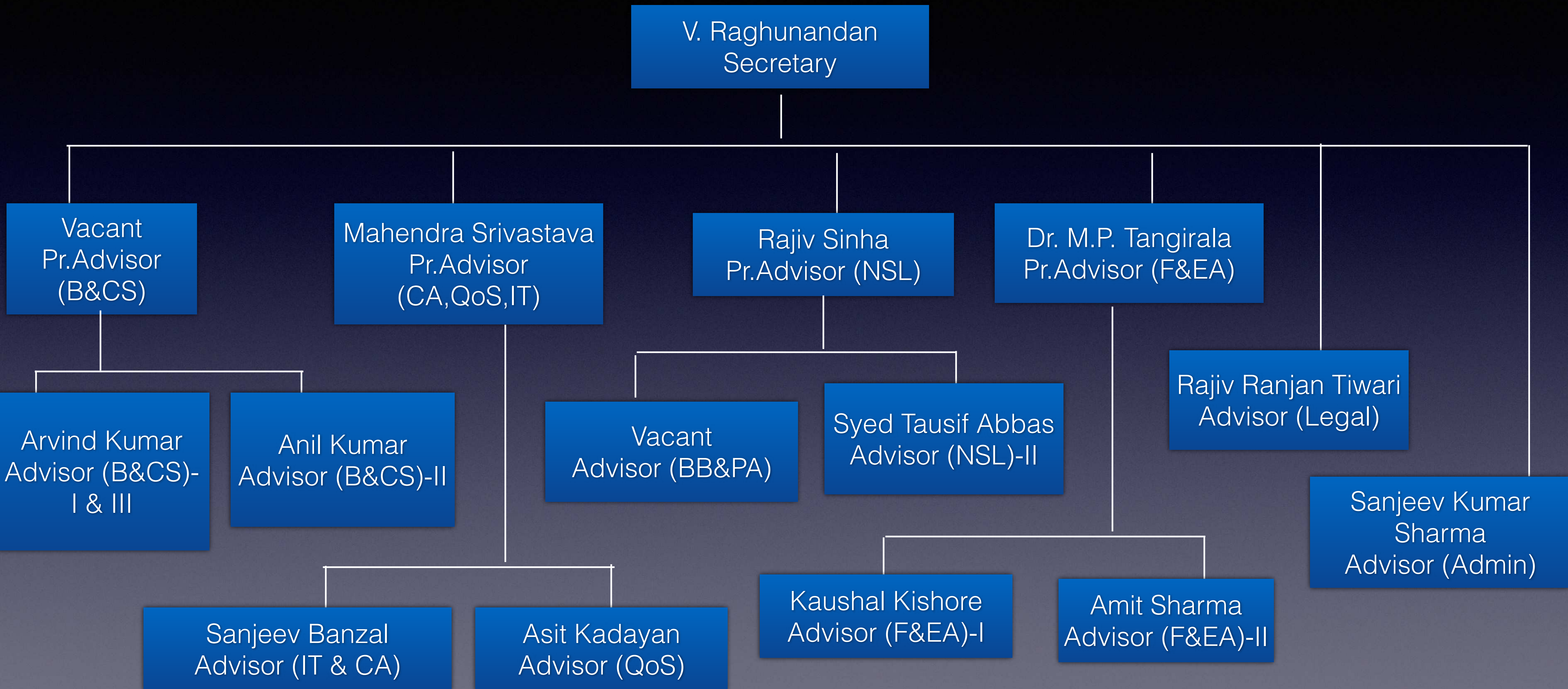
- to provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.
- In pursuance of above objective TRAI has issued from time to time a large number of regulations, orders and directives to deal with issues coming before it and provided the required direction to the evolution of Indian telecom market from a Government owned monopoly to a multi operator multi service open competitive market.

- Some of the major recommendatory, regulatory and tariff setting functions of TRAI are to **make recommendations** on the need and timing for introduction of new service provider, on the terms and conditions of license to a service provider, **ensure compliance** of terms and conditions of license, effective management of spectrum, lay down the standards of quality of service to be provided by the service providers and **ensure the quality** of service and **conduct the periodical survey** of such service provided by the service providers so as to **protect interest** of the consumers of telecommunication service, **ensure effective compliance** of Universal Service Obligations, **notify the rates** at which telecommunication services within India and outside India shall be provided under this Act.

# Composition

- The TRAI (Amendment) Act, 2000 had led to reconstitution of the Authority. It consists of **one Chairperson, two full-time members** and **two part-time members**. The present composition of the Authority is as follows -
- Dr. P. D. Vaghela (Chairperson)
- Ms. Meenakshi Gupta (Full-time Member)
- Vacant (Full-time Member)
- Vacant (Part-time Member)
- Vacant (Part-time Member)

# Organisation Set-up



# Regional Offices

- V. Raghunandan (Secretary)
- Brajendra Kumar (Advisor RO-Bengaluru)
- Shyam Sunder Chandak (Advisor RO-Jaipur)
- Dr. Swadesh Kumar Samanta (Advisor RO-Kolkata)
- Munisekhar Avileli (Advisor RO-Hyderabad)
- Vinod Gupta (Advisor RO-Bhopal)

# Powers and Functions

- The Powers and Functions of TRAI are mainly:
- To recommend the need for and timing of introduction of new service providers and terms and conditions of the license to a service provider;
- To ensure technical compatibility and inter-connect between different service providers and regulate their revenue-sharing arrangements;
- To ensure compliance with terms of license and revaluation of the same for non-compliance;
- To lay down and ensure a time period for providing long-distance and local distance circuits;
- To facilitate competition and promote efficiency in operations to promote the growth of telecom services;
- To protect consumers' interest, monitor quality of services, inspect equipment used in networks and make recommendations about such equipment;
- To maintain a register of interconnect agreements and keep it open for inspection and to settle disputes among the service providers in this respect;
- To give advice to the government on any matter related to the telecom industry. Levy fees and charges for services and, ensure that universal service obligations are complied with; and
- To perform any such other administration and financial function as may be entrusted to it by the Central Government.

# TRAI Acts and Policies

- TRAI Act, 1997
- The Telecom Regulatory Authority of India (Amendment) Act, 2000
- The Telecom Regulatory Authority of India (Amendment) Act, 2014

# Other Acts & Policies

## **Acts**

- Indian Telegraph Act, 1885
- The Indian Wireless Telegraphy Act, 1933
- Cable Television Network Act 1995
- Cable Television Network (Regulation) Amendment Act
- Cable Television Network Rules 1994
- The Cable Television Networks (Regulation) Amendment Act, 2011
- Cable Television Networks (First Amendment) Rules, 2012
- Cable Television Networks (Second Amendment) Rules, 2012

## **Policies**

- National Telecom Policy 1994
- New Telecom Policy 1999
- Broadband Policy 2004
- National Telecom Policy 2012

# TRAI Act, 1997

- Chapter-I: Ss. 1-2 (Preliminary)
- Chapter-II: Ss. 3-10 (Telecom Regulatory Authority of India)
- Chapter-III: Ss. 11-13 (Powers and Functions of the Authority)
- Chapter-IV: Ss. 14-20 (Appellate Tribunal)
- Chapter-V: Ss. 21-24 (Finance, Accounts and Audits)
- Chapter-VI: Ss. 25-40 (Miscellaneous)

# Objective under Act

- The paramount objective of the Act is to institute TRAI and Telecom Dispute Settlement Appellate Tribunal (TDSAT). The Act also seeks to regulate the operation in the telecom industry, settle disputes and preserve the interest of the people.

# Constitution of TRAI

- The TRAI is incorporated as a body corporate having perpetual succession and a common seal, having the power to hold & dispose of property, enter into contracts and the capacity to sue or be sued.
- In pursuance to **Section 3(2)** of the Act, TRAI consists of a Chairperson, not more than 2 whole-time members and not more than 2-time members.
- All these members are appointed by the Central Government and the term of office is either 3 years or till they attain the age of 65 years, whichever is earlier. The Central government can also appoint a Vice-Chairperson if required.

- **Section 4** of the Act states that the chairperson and other members who qualify to occupy this post shall have special knowledge and professional experience in telecommunications, industry, finance, law, accounting, the management of consumer affairs. A government servant cannot hold such a position unless the person has served the government as a Secretary or Additional Secretary for a period of **exceeding three** years.
- The Chairperson or any other member of Trai shall not possess any financial or other interest which might impact his decisions and functions.
- The salaries, allowances and conditions of services shall be prescribed from time to time.
- The Chairperson and other members can be removed from office or can resign from office upon a written notice to be given to the Central Government three months prior to such resignation. However, such a person will become ineligible to be employed by the government, Centre or State, and also cannot be commercially employed for a period of 1 year.

**Section-7** deals with the removal and suspension of members from office.

The central government may remove any member from office if he/she

- Has been adjudged as an insolvent; or
- Has been convicted of an offence which, in opinion of the central government, involves moral turpitude; or
- Has become physically or mentally incapable of acting as a member; or
- Has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- Has so abused his position as to render his continuance in office prejudicial to the public interest.

**Section 8** of the Act deals with meetings in TRAI.

- All the decisions in the meeting are taken by way of a voting system, where the majority of the votes of members who are present and voting are considered.
- In the case where the number of votes is equal, the Chairperson or the person presiding the meeting has a second vote.

TRAI also appoints employees so as to carry out the functions as prescribed by the Act. Presently, the Authority consists of 9 divisions:

- Mobile network division;
- Fixed network division;
- Converged network division;
- Quality of service division;
- Broadcast and cable services division;
- Economic division;
- Financial analysis and internal finance and accounts division;
- Legal division and
- Administration and personnel division.

# Functions of TRAI

**Section 11** of the Act gives the functions performed by TRAI. This Section overrides the Indian Telegraph Act, 1885. The Act was amended in 2000 and the Amendment Act of 2000 gave 4 broad categories on the functions of TRAI:

- Recommendatory functions
- Regulatory functions
- Fixing tariffs for telecom services
- Any other function prescribed by the Central Government

# Recommendatory Functions of TRAI

The Authority has to make recommendations to the licensor either *suo moto* or upon an application of request. The matters on which recommendations are made are:

- Need for the introduction of a new service provider and its timing. Here, TRAI analyses the existing situation of the service in a particular region.
- Terms and Conditions of issuance of a license to a service provider. TRAI furnishes the conditions on which license should be granted to a service provider under Section 4 of the Telegraph Act 1885.
- Revocation of license due to non-compliance of terms and conditions recommended by TRAI. Revocation of a license is a measure of last resort and hence, this function is important for TRAI.
- Steps to be taken to promote healthy competition, efficiency in service and enable the growth of the industry. The motive behind this function of TRAI is to empower the authority to supervise the industry thereby facilitating economic growth and development.

- Technological advancements in providing services. The quality of services enhances with the improvement in the technological aspect of providing services. Moreover, this regulation will aid in keeping the commercial developments in legal bounds.
- Type of equipment used and their inspection. The purpose of this function is to ensure better services by the service providers by making them undergo inspection of the equipment used.
- Measures of the development of technology and matters related to the telecom industry in general. Encouraging research and innovation in the industry is crucial.
- Effective management of the available spectrum. The term 'spectrum' is not defined anywhere in the Act or the Telegraph Act. In general, it means the electromagnetic spectrum in available frequencies.

# Regulatory Functions of TRAI

Regulatory functions performed by TRAI are as follows:

- Ensure compliance of the terms and conditions mentioned in the license. Compliance can be ensured either by the issue of directions or by recommendation of termination of the license on the ground of non-compliance of terms and conditions.
- Fix the terms and conditions of the interconnectivity of service providers.
- Ensure technical harmony and effectiveness in interconnectivity between service providers.
- Direct courses of action among organizations for sharing their income received from providing services.

- Set out the standards of quality of service and conduct surveys periodically to protect the public interest and ensure better service.
- Prescribe the time period for proving local/ long-distance circuits of telecom.
- Maintain a register containing all the interconnection agreements. Any member of the public is free to inspect this register upon payment of the prescribed fee.
- Ensure compliance of universal service obligation. It is not defined under the Act, however, has a mention in the National Telecom Policy, 1999. Universal service obligation refers to making the economic and social opportunities of the telecom sector available to the public at large.

# Other functions of TRAI

- Under **Section 11(1)(c)** of the Act, TRAI is responsible for levying fees and other charges as per the rates determined in the regulations. Sub-clause is a residuary clause which states that the administrative and financial functions prescribed by the Central Government are to be performed by the Authority for the effective implementation of this Act.
- In case the Central Government feels that the recommendation given by the authority requires modification, then such recommendation can be sent back for reconsideration within a period of 15 days.
- The Authority may from time-to-time notify the rates at which telecommunication services within India and outside India shall be provided under this Act, including the rates at which messages will be transmitted to other countries.

- Under **Section 12** of the Act, TRAI has the power to call for documents for the purpose of investigation and inspection. The Authority is obligated to carry out all these functions while keeping in mind transparency of the exercise of its power.
- **Section 13** empowers the Authority to issue directions for carrying out its functions. The Central Government has the authority to prescribe such other functions that are necessary.

# Telecom Disputes Settlement and Appellate Tribunal

In order to bring in functional clarity and strengthen the regulatory framework and the disputes settlement mechanism in the telecommunication sector, the TRAI Act of 1997 was amended in the year 2000 and TDSAT was set up to adjudicate disputes and dispose of appeals with a view to protect the interests of service providers and consumers of the telecom sector and to promote and ensure orderly growth of the telecom sector.

Section-14 empowers the Central government to establish TDSAT to adjudicate disputes between

- Licensor and a licensee
- Two or more service providers
- Service provider and a group of customers

# Composition of TDSAT

- The Tribunal consists of a Chairperson and two Members appointed by the Central Government. The Chairperson should be or should have been a Judge of the Supreme Court or the Chief Justice of a High Court. A Member should have held the post of Secretary to the Government of India or any equivalent post in the Central Government or the State Government for a period of not less than two years or a person who is well versed in the field of technology, telecommunication, industry, commerce or administration.

# Powers and Jurisdiction

- The Tribunal exercises jurisdiction over Telecom, Broadcasting, IT and Airport tariff matters under the TRAI Act, 1997 (as amended), the Information Technology Act, 2008 and the Airport Economic Regulatory Authority of India Act, 2008. The Tribunal exercises original as well as appellate jurisdiction in regard to Telecom, Broadcasting and Airport tariff matters. In regard to Cyber matters the Tribunal exercises only the appellate jurisdiction.

# Procedure

- The Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908;
- It has the power to regulate its own procedure;
- It is to be guided by the principles of natural justice;

Tribunal has the same powers as are vested in a civil court under the CPC in respect of:

- summoning and enforcing the attendance of any person and examining him on oath;
- requiring the discovery and production of documents;
- receiving evidence on affidavits;

- subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document, from any office;
- issuing commissions for the examination of witnesses or documents;
- reviewing its decisions;
- dismissing an application for default or deciding it ex parte;
- setting aside any order of dismissal or any application for default or any order passed by it ex parte; and
- any other matter which may be prescribed.
- In addition, the Tribunal can call for the records relevant to disposing of a Petition or appeal, for the purpose of examining the legality or propriety or correctness of any decision or of any order etc of TRAI.

# Nature of proceedings

- The Tribunal is the Court of first instance except cyber matters.
- Every proceeding before the Tribunal is deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code (45 of 1860);
- The Tribunal is deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)
- Tribunal's Orders are executable as a decree of civil court.

# Appeals

- In respect of Telecom, Broadcasting and Airport tariff matters, the Tribunal's orders can be appealed to the Supreme Court but only on substantial questions of law. However, no appeal lies against an interlocutory order or against any decision or order made by the Tribunal with the consent of the parties. In regard to Cyber matters, the Tribunal's order can be appealed before High Court.

- Under **Section 21** of the Act, the Government is empowered to make such grants to TRAI that are necessary to pay salaries and meet the administrative expenses. The accounts and audit reports of the authority are required to be forwarded to the Central Government annually, for laying before both houses of the Parliament.
- **Section 24** requires the Authority to prepare a report of all the activities carried out in the previous year and to be forwarded to the Central Government.

- The Central Government derives the majority of its powers of control over TRAI from **Section 25** of the Act which deals with the Power of the Central Government to issue directions. The Authority is bound to follow the directions or orders issued by the Central Government for the purpose of security of the State, maintaining foreign relations, public order, integrity and morality. This section ensures finality of the decision taken by the Central Government.
- Another significant provision by which the government exercises control over the authority is **Section 35**, through which the Central Government can make rules for the smooth functioning of the authority and for the implementation of this Act. It also has the power to remove difficulties that arise in the execution of the provisions of this Act.

# TRAI Controversies

## The Jio Controversy

- It is alleged that TRAI has twisted its rules in order to accommodate the needs of Jio, the subsidiary of Reliance Industries Limited. Competitors claim that TRAI has played a significant role in making Jio a market leader of the telecom industry in such a short span of time. Jio was permitted by TRAI to “test” its services for a much longer period and upon a much bigger subscriber base than prescribed as a general industry norm. This was also opposed by the Cellular Operators Association of India. TRAI is accused of bending its definition of ‘significant market power’ to exclude Jio from its ambit, which saved Jio from the strict scrutiny and severe regulations supposed to be imposed by TRAI. People believe that the governmental influence on TRAI is the reason behind making Jio the biggest market player of the industry.

## Predatory Pricing Controversy

- Companies such as Bharti Airtel and Vodafone among many others allege that TRAI's regulations on predatory pricing influence and favour only one company – Reliance Jio. Although TRAI is constantly trying to circumvent this issue and to resolve it, the changes brought about by TRAI and the clarificatory comments given by the officials are not very satisfying to the analysts.