Additional counter comment submission to TRAI for the Consultation on Differential Pricing

Ms Vinod Kotwal,
Advisor (F&EA), Telecom Regulatory Authority of India

Dear Ms Kotwal,

During the discussions at the TRAI Open House on 21 January 2016 and in the preceding period, representatives of telecom companies made the following claims:

1. There is no evidence of harm caused by zero rating
2. The concept of “same service, same rules” must apply to OTT services

On behalf of the SaveTheInternet.in Coalition, we’d like to address these concerns in this additional counter comment submission.

Evidence of harm in zero rating

Research has shown that differential pricing schemes like zero rating and fast lanes or throttling can both be linked to insufficient competition among telecom operators within the same theoretical framework.[1]

Viewed through an economic lens, the propensity of zero rating schemes towards market capture can be assessed by the additional **utility** consumers gain from switching to such a scheme. This utility is proportional to the price saved by switching to zero rating; thus, zero rating presents telcos with the incentive to collusively lower data caps and increase data rates so as to funnel users to their **vertically integrated** ‘VAS’ content. In simpler language, to graduate from a zero rated content to the open internet, first-time users need a prepaid data plan. The funneling effect is only present when

A. data plans are largely **limited**, ie they’re ‘prepaid’ with data caps; and
B. data rates are uniformly high, so the effect is also dependent upon **insufficient competition** among telcos.

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[1] “Interconnecting Eyeballs to Content: A Shapley Value Perspective on ISP Peering and Settlement” by Richard Ma et al, http://dna-pubs.cs.columbia.edu/citation/paperfile/167/NetEcon08.pdf

Vertical integration

In situations where two logically separate resources can be coordinated to improve the effectiveness of the whole – like Apple (the computer and phone company) being able to choose the hardware best suited to work with their software stack (or vice versa), this joint ownership and 'tweaking' of one to match the other – called 'vertical integration' – can have benefits. But when it comes to telcos giving preferential access or pricing to affiliated content or services, the sum is not greater than its parts. As Columbia University's Vishal Misra puts it, "If ISPs Zero Rate content, somebody has to pay for the bandwidth."[2]

Vertical integration presents a clear conflict of interest to telcos, as increasing the price of access for the open internet would funnel consumers to their offerings in the lucrative content market.

The Indian context

Unlike the Indian shampoo industry, telcos don't offer sachet pricing to lure new customers into using their product; the "on ramp" is steep. It is even steeper outside a separately purchased data plan, where the internet can still be accessed but data rates can be several thousand times the cost of data on a plan. Relatively low average income rates and Purchasing Power Parity of the Rupee results in most data connections in India being limited.

But evidence from Europe indicates that the presence of zero rated services is correlated to more than just a steeper on-ramp – data rates for accessing the open internet are also uniformly higher.

The evidence from Europe

Our source: Rewheel is a Finland based independent mobile data strategy and network economics consultancy which has been quoted by The Financial Times, The Economist, the NYT, the WSJ, Reuters and others on mobile data economics and net neutrality. Its clients and subscribers, apart from telecom groups, include a number of EU telecom and media regulators.

Rewheel's December 2014 Digital Fuel Monitor research note (7 pages, in public domain) asserted that vertical price discrimination (differential pricing in TRAI's terminology) is about the price of open internet access. The research includes non-official transcripts of an European Union Council meeting where the government representatives of the Netherlands, Slovenia,

[2] "The Business of Zero Rating", http://peerunreviewed.blogspot.in/2015/12/the-business-of-zerorating.html

Hungary, Poland, Greece, Slovakia, Luxembourg and Bulgaria asked for an explicit ban of price discrimination.[3]

Rewheel's February 2015 Digital Fuel Monitor research note (3 pages, in public domain) showed that since zero rating has been banned in the Netherlands, mobile operators had to significantly increase open internet volume allowances on their smartphone tariff plans in order to "encourage carefree usage" of their own internet video services.[4]

Rewheel's 2015 submission to the FCC provides a timeline of the global net neutrality debate shifting towards differential pricing.[5]

Rewheel's latest comprehensive Digital Fuel Monitor study (122 pages, subscription required) titled *"Tight oligopoly mobile markets in EU28 in 2015"* released in January 2016 found for the first time compelling systematic evidence that zero-rating causes consumer and competitive harm. The study has found that European Union mobile operators that zero-rate video charge on average 2 times more for mobile internet access plans and offer for affordable prices very restrictive gigabyte caps (2 times less) than European Union operators that do not.[6]

Conclusion

Zero rating not only harms competition but keeps data prices artificially high. In the absence of Zero rating, there is downward pressure on telcos to reduce data prices to increase usage and adoption of higher bandwidth services. With zero rating, this pressure disappears and may even reverse. Thus, contrary to the public claims, Zero rating in fact harms access in the medium to long term by making data services less affordable.

Same service, same rules

A recurring telco refrain in the past year has been that the "same service" should have the "same rules" applied to it, indicating that OTT services such as messaging and VoIP should be subject to the same regulations as TSP services. This is disingenuous at best, outright harmful at worst.

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[3] "Net neutrality is about the price (and usage caps) of open internet access, more and more EU governments realize" by Rewheel, http://dfmonitor.eu/insights/2014_dec_premium_EU_price_discrimination/
[4] "The Netherlands - Competitiveness snapshot from a market with real net neutrality" by Rewheel, http://dfmonitor.eu/insights/2015_feb_kpn_volume_caps/
[5] "The real threat to the open internet is zero rated content" by Antonios Drossos, http://apps.fcc.gov/ecfs/document/view?id=60001030549
[6] "Tight oligopoly mobile markets in EU28 in 2015" by Rewheel, http://dfmonitor.eu/insights/2016_jan_premium_tightoligopoly_eu28/

One could argue that sending an SMS is the “same service” as sending a postcard via the post, because it transmits a short message from sender to recipient. The absurdity of such a comparison is instantly obvious: these are two clearly distinct services on different media, involving entirely different transports and offering different guarantees of timeliness and reliability, *but both serving the same human need,* of communication.

Similarly, an SMS and a WhatsApp message operate on entirely different technologies and transports. A WhatsApp transmission can use no TSP spectrum infrastructure whatsoever if both sender and receiver are on a WiFi network with a wired line.

The fact that they can be confused with each other represents a clever innovation on behalf of WhatsApp and similar messaging apps, mimicking a mechanism users are already familiar with while using modern technology that makes it possible to communicate at far lower cost, in a seamless manner across the world.

There is no reason for such innovation to be burdened with regulation that is meant for scarce resources like spectrum, or to protect the business interests of TSPs, especially when the same TSPs want regulations to apply to others but not to themselves.