

## RESPONSE TO TRAI PAPER

**Question 1: Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platform**

**ANSWER1.**

**The answer is yes.** The following Logic will explain in details:

Under the Act TRAI is mandated to protect the interest of consumers as well as of operators. TRAI has no obligation, rights towards the non licensed telecom entities. Therefore the issue of discrimination need to be seen from the point of view of customer classification and not platform operators classification .

**This essentially means that the question should be whether a TSP can come out with a plan which offers differential tariff to customers for accessing the same platform?**

Discrimination need to be seen from the point of view of customer classification and not platform classification. This is clear from TRAI's own explanation on NON DISCRIMINATION which describes this as under:

“Non discrimination” as defined in Clause 2(k) of the TTO is that service provider shall not, in the matter of application of tariffs, **discriminate between subscribers of the same class and such classification of subscriber shall not be arbitrary.**

From the above there are two ingredients which need to be satisfied :

1. Subscribers should be of the same class
2. Classification should not be arbitrary

Now let us see it in the light of the question raised by TRAI. In the situation mentioned in the question neither the operator is making any discrimination with reference to subscriber of same class nor the classification is arbitrary. The only classification is with regard to portal and not with regard to customer. Therefore, I see no need for TRAI to intervene in any manner in the matter of tariffing in such situations.

Let us now examine para 14 of consultation paper which tries to create a case for intervention on the grounds given below.

### **TRAI Quote**

14. On the other hand, several negative effects might ensue. Differential tariffs results in classification of subscribers based on the content they want to access (those who want to access non-participating content will be charged at a higher rate than those who want to access participating content). This may potentially go against the principle of non-discriminatory tariff....

### **Answer**

TRAI's explanation is fallacious. The question we need to ask is whether all customers wanting to access participating content will be paying the same tariff or not? So long as the answer to this is yes the question of discrimination does not arise. The same will be true for non participating content.

### **TRAI QUOTE**

.....Secondly, differential tariffs arguably disadvantage small content providers who may not be able to participate in such schemes. Such providers may have difficulty in attracting users, if there exist substitutes for free. This may thus, create entry barriers and non-level playing field for these players stifling innovation. Therefore, the tariff offerings have to be studied from the perspective of whether it promotes or harms competition.

### **ANSWER**

This is what exactly I mentioned earlier that TRAI here is trying to fight the case of discrimination between content providers as a class

First ,while these content providers are neither in the scope of telecom laws and nor covered under the TRAI mandate .

Second it is not the regulators job to provide protection to non licences content provider. It is not the entry cost that decide the decision of a customer to visit a specific platform ,but ITVIS the compelling content that forces a customer to take that decision. Tomorrow can it be TRAI's case to suggest free access to a particular platform which has introduced some innovation but not to big as other platform operators in the same domain are and therefore need to be allowed free access to ensure level playing field ?

THEREFORE ,it is clear that by taking shelter under the term "DISCRIMINATION" TRAI is trying to examine the issue of discrimination amongst content providers under the excuse of customers while no discrimination exists in classification of subscribers.

**Question 2: If differential pricing for data usage is permitted, what measures should be adopted to ensure that the principles of non- discrimination, transparency, affordable internet access, competition and market entry and innovation are addressed?**

**ANSWER2.**

TRAI has rightly identified the area where it need to ensure non discriminatory and fair treatment for both of its stakeholders i.e. Customers and operators .These areas are highlighted in the consultation paper itself:

TRAI checks their consistency with various regulatory principles/guidelines, which include the following:

- **Non-Discriminatory**

By ensuring that there is no discrimination allowed between the customers of same class and not to confuse it with different platforms

- **Transparency**

Make sure that the TRAI guidelines on information sharing and publication are fully complied with.

- **Not Anti-competitive**

Anti competitiveness should be ensured with regard to same class of customers and inter- se between operators. TRAI is neither mandated nor required to go into the anticompetitive issue inter-se different platform services which are not in the domain of telecom licensing. . However, in case there is an intention to ensure that anti competitive activities between various platforms are to be regulated then these services should be brought in the scope of telecom licensing . Alternatively let those be looked after by the Competition Commission of India

- **Non-Predator**

- **Non-Ambiguous**

- **Not Misleading**

These are important issues and the current regulations on tariff, consumer protection have enough safeguards to ensure compliance of these requirements. in case a need id felt yo strengthen it further the same should be done after following due process of consultation

**Question 3. Are there alternative methods/technologies/business models, other than differentiated tariff plans, available to achieve the objective of providing free internet access to the consumers? If yes, please suggest/describe these methods/technologies/business models. Also, describe the potential benefits and disadvantages associated with such methods/technologies/business models**

## **ANSWER**

The telecom service providers have set up the telecom networks by investing huge sums of money and on top of that have paid huge sums for acquiring spectrum in auction. Therefore these operators cannot be expected to be providing free access to Internet. However in order to bring down the cost of access Govt can give certain concessions to the operators such as no licence fee on revenue arising from data services, concession is spectrum charge, waiver of USO levy etc. The cost reduction that accrues to the operators as a result of such concessions can be passed on to subscribers.

### **Question-4: Is there any other issue that should be considered in the present consultation on differential pricing for data services**

#### **Answer**

There are several issues which need to be addressed. Some of them are :

1. TRAI should come out with detailed guidelines on net neutrality as is being debated all across the world . However, net neutrality should not be used as via media to allow the un-licensed operators to provide telecom services.
2. Govt should ensure that non discriminatory classification of subscribers is ensured but not to worry and get involved in intra content providers issues.
3. Adopt a light touch approach towards tariffing and allow the market forces to decide tariff and conditions of providing service .it will be wrong to regulate the retail tariffs when the resources for providing services are being allocated through market mechanism. Therefore market mechanism should be allowed for retail tariffing as well
4. Strictly regulate and enforce its founding principles enunciated in the consultation paper to ensure that the practices followed by operators are:

- Non-Discriminatory
- Non Transparency
- Not Anti-competitive
- Non-Predatory
- Non-Ambiguous
- Not Misleading

