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TRAI Consultation Paper No. 8 / 2015 on Differential Pricing for Data Services, dated 09 December 2015

Response by IPRG - ICT Policy & Research Group

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

Answer by IPRG - ICT Policy & Research Group to TRAI's Question 1:

Yes, differential pricing for data usage for accessing different websites, applications or

platforms should be permitted. Differential data pricing and /or Zero Rating schemes have numerous benefits for consumers, telecom operators, and content providers.

Differential Data Pricing and Zero Rating schemes permit optimization of scarce resources and greater consumer choice, especially for consumers at the “Bottom of the Pyramid”. Zero Rating schemes are especially beneficial in “Connecting the Unconnected”, and getting non-users to try out the internet without incurring costs or getting bound in long-term contracts.

There are numerous Differential Pricing / Zero Rating Schemes in operation in the world, with approximately 45% of telecom operators / internet service providers worldwide offering one or more Zero Rated schemes. Several African operators have been offering such schemes since 2010. In the U.S., T-Mobile offers its data plan subscribers zero-rated access to more than 25 online music services, including iHeartRadio, Pandora and Spotify.

Most European countries do not prohibit Differential Pricing or Zero Rating Schemes; the only exceptions being Netherlands, Finland, and Slovenia. The European Union voted on this issue in October 2015, and resolved not to prohibit Zero Rating schemes. USA does not prohibit Zero Rating schemes, but examines them on a case-by-case basis.

There is a lot of misconception among the public about Zero Rating schemes. In economic theory parlance, these are not Zero Sum Games, but instead, are complex games in Multi-Player Optimization in Dual Markets or in Multiple Markets.

There are three classes of players in this complex Multi Player Optimization Game:

1) Access (Telecom) Service Providers / Internet Service Providers. {Such as, but not limited to, Airtel, Vodafone, Idea, Reliance, Tata, Aircel, BSNL, MTNL, etc.}

2) Consumers, who access the internet via the Telecom Service Providers. These consumers can again be subdivided into (i) high data users, (ii) low data users, and (iii) those who do not yet have access to the internet. This last category could be brought online through suitable incentives such as zero rated schemes.

3) Content providers {Such as, but not limited to, Social Networking sites such as Facebook, Google+, Twitter, YouTube; Email service providers and search engines such as Yahoo, Hotmail, Google; E-Commerce sites such as Amazon, Flipkart, Snapdeal; Messenger Services such as WhatsApp; Yahoo Messenger; websites of newspapers, etc.}

The consumers pay subscription fees (such as per MB or per GB, pre-paid or post-paid, under various data pack schemes) to the telecom access providers in order to access content provided by the Content providers.

The content providers earn their revenues from advertisements and / or from subscription fees.

The content providers may - or may not - enter into commercial arrangements with the Telecom Service Providers.

A further complication is that content providers, in some cases, deal directly with end customers, such as by offering them coupons for discounted or free products or services.

In multiple-player games / markets, it is often in the interest of one category of players to either partially or wholly subsidize another category of players.

Consider the analogy of a newspaper, its readers, and its advertisers, which is a Dual Market.

Readers purchase the newspaper, paying a price to the newspaper.

Advertisers advertise in the newspaper, paying an advertisement fee to the newspaper.

Thus, the newspaper collects revenues from both readers and advertisers. But the demand / price elasticities of these vary greatly.

The advertisement rates are determined by the number of readers, as well as by the quality of the readership.

In almost all instances, the larger the number of readers, the higher are the advertisement fees that the newspaper can command from its advertisers.

In almost all instances, the larger the number of readers, the greater is the benefit to the advertisers.

The newspaper can increase its number of readers by lowering its subscription price, or even giving it away for free (Analogous to Zero Rating).

The increase in the number of readers enables the newspaper to command a higher advertisement fee from its advertisers.

Even though the advertisers pay more to the newspaper, the benefits they obtain from reaching a larger audience far outweigh the increased advertising fees they pay to the newspaper.

The question that can be raised is that if a particular newspaper can give its copies away for free, that it may succeed in driving other newspapers out of the market, who may not be able to match its free offer. However, in a competitive market such as India, with ease of entry, this would not be a major consideration. There is nothing to prevent other competing newspapers from following the same strategy.

The benefits / value to society as a whole would be maximized by having:

A large number of newspapers, each with a large number of subscribers, who pay little to nothing.

A large number of advertisers, advertising in numerous newspapers.

Low barriers to entry for starting a newspaper, and free competition among newspapers.

Few to no restrictions by a newspaper that an advertiser can advertise only in it, and not in competing newspapers.

Few to no restrictions that a newspaper can reject an advertiser who is willing to pay the advertising fees it demands.

Advertising rates to be determined by market forces.

The questions posed in this TRAI Consultation paper are analogous to the above newspaper-reader-advertiser analogy.

Zero Rating Schemes

IPRG believes that zero rating programmes offer efficient means of enhancing the economic well being of consumers in the telecom and information technology markets. These help expand the market, and are particularly beneficial in emerging markets and low penetration markets where there is a large population of uninitiated and new users. Therefore, while regulators should monitor market practices, it is important to realize the any broad bans or restrictions on zero rating schemes are quite likely to harm consumer welfare significantly.

It is further to be noted that the banning of zero rating would result in the poor and developing nations blocking sure avenues of growth and prosperity. The people and businesses who need the internet the most would be the greatest sufferers as they would be prevented from harnessing the internet. Telecom and IT are well established to have very high power of externalities and for providing connectivity-derived benefits through multiplier effects, greatly lowering transaction costs and transaction times, and increasing the velocity of business.

IPRG recommends that Indian content providers be provided incentives to develop Zero Rated public service content in local Indian languages, such as health information, agricultural information, legal information, etc.

The above views held by IPRG have also been expressed by Jeffrey A. Eisenach, NERA

Economic Consulting, USA, as well as by Diana Carew, The Progressive Policy Institute (PPI), USA.

Reference: The Economics of Zero Rating, by Jeffrey A. Eisenach, NERA Economic Consulting, National Economic Research Associates Inc., USA, March 2015.

Reference: Zero-Rating: Kick-Starting Internet Ecosystems in Developing Countries, by Diana Carew, The Progressive Policy Institute (PPI), Washington, DC, USA, March 2015.

TRAI 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?

Answer by IPRG - ICT Policy & Research Group to TRAI's Question 2:

The IPRG believes that all consumers should have the ability to access any lawful content they desire, without any restrictions or hindrances. Operators should not be permitted to deliberately prevent access to any lawful content, nor to intentionally throttle access speeds of content they 'dislike'.

IPRG recommends that operators should be required to submit to TRAI their consumer tariff schemes as well as their arrangements / contracts with content providers. TRAI should monitor tariff plans to ensure that consumer interest is kept paramount, and that dominant platforms do not unduly take advantage of their dominant market share, and / or their gatekeeper status.

Even though courts in several countries have held in numerous instances that exclusive commercial arrangements or differential pricing are not necessarily illegal or discriminatory, IPRG recommends that exclusive agreements between operators and content providers should be scrutinized carefully by TRAI. This oversight is especially required in the case of content belonging to or created by the telecom operator / ISP.

IPRG recommends that telecom operators / ISPs be strongly encouraged to zero rate government services, public interest services, health services, weather information, disaster information, etc.

IPRG recommends that Affirmative Action Incentives could also be provided for development of zero rated content from India, in local Indian languages, or those developed by disadvantaged members of society.

In the event that there is prima facie evidence that dominant platforms or operators are taking undue advantage of their gatekeeper status or dominant market position, the matter can be examined by the Competition Commission of India.

At present, there is not enough empirical evidence from anywhere in the world that operators are abusing their “gatekeeper” positions to the detriment of either consumers or of competing platforms.

TRAI 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?

No Response

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

Answer by IPRG - ICT Policy & Research Group to TRAI's Question 4:

The focus of the government should be to bring as many Indian citizens online at as low a tariff as possible. According to a World Bank study (which has been endorsed by ICRIER), a 10% increase in broadband penetration will lead to a 1.5% increase in GDP.

The Indian government should concentrate on building infrastructure, encouraging

the rollout of mobile broadband networks, and on providing government services, public interest services, health information, disaster relief information, weather information, etc. These should be provided at zero cost by operators to the public at large.

The issues of tariffs, especially Zero Rating Schemes, are best left to market forces.

If there is prima facie evidence that an operator is taking advantage of its dominant market power, the matter can be examined by the Competition Commission of India.

Concerns have been raised among the public and in the media that Zero Rating schemes will restrict freedom of expression in that people will believe that a few sites constitute the entire internet. Also, there has been speculation in the media that Zero Rating schemes would not allow small Indian online start ups to compete with corporations who are on Zero Rating platforms.

IPRG believes that both these concerns are totally misplaced. The Indian market is characterized by a large number of telecom operators / ISPs, and is arguably one of the most fiercely competitive in the world. Further, there are numerous sources of information, news, views, and opinions easily accessible in India in terms of websites, television channels, newspapers, magazines, etc.

In fact, in numerous countries, Zero Rating schemes have enhanced freedom of expression rather than curtailed it. The most popular Zero Rated content tend to be social networking platforms (such as, but not limited to, Facebook, Twitter, Wikipedia, YouTube, etc.) where subscribers are also content creators simultaneously. The evidence from political movements in several countries (such as Arab Spring) is that zero rating of social media platforms greatly expands freedom of expression and political freedom.

These above viewpoints of IPRG have also been expressed by Jeffrey A. Eisenach, NERA Economic Consulting, USA.

References

1) Zero-Rating: Kick-Starting Internet Ecosystems in Developing Countries, by Diana Carew, The Progressive Policy Institute (PPI), Washington, DC, USA, March 2015.

2) The Economics of Zero Rating, by Jeffrey A. Eisenach, NERA Economic Consulting, National Economic Research Associates Inc., USA, March 2015.

3) ZERO RATING - Do hard rules protect or harm consumers and competition? Evidence from Chile, Netherlands and Slovenia, by Roslyn Layton, Center for Communication Media and Information Technologies, Aalborg University, Copenhagen, Denmark, and Silvia Elaluf Calderwood, London School of Economics, UK. August 15, 2015.

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ICT Policy and Research Group consists of professional technologists with several decades of

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