

Differential Pricing for Data Services

Introduction

The internet is at present, a major growth driver for the Indian economy and is a critical tool that leads to proliferation of access to information, knowledge, public records, etc. This, internet, ensures transparency. Our view is that proliferation of internet is something which is kind of given, and the penetration of internet is something which must increase manifold and at a faster rate, both in terms of availability and speeds, in order to meet the key objectives of transparency and dissemination of knowledge at a pace not seen hitherto. For ubiquitous availability of internet with speed and to everyone requires investments, both by Telcos and some investments by the Government of India. The internet has been the gateway for the conduct of commerce, communication, education, entertainment and other valuable forms of engagement with the world at large. Internet for all is in addition to Roti Kapda aur Makan.

When we talk about “broadband highways” as a priority for the new Government, and as has been highlighted in the recent ‘Digital India’ initiative, we mustn’t lose sight of the basic premise on how roads or highways in the traditional sense of the term have been built. Roads can be state roads, state highways or national highways. Depending on the nature of the road, we have the system of toll charges wherein different class of vehicles pay differential toll charges. So, a truck would pay differently vis-a-vis a two-wheeler. Why do we levy such charges? The answer lies in the fact that it is the Government in collaboration with the infrastructure developer that builds these roads. The truckers do not invest in the ‘highways’ or play a part in building these ‘highways’. Similarly, the content service provider does not play a part in the creation of the digital highway infrastructure. The service provider is a mere one user of this highway, amongst many other users.

There has been a lot of noise raised by the internet evangelists, consumer rights and free speech espousers on net neutrality. However, there seems to be a lot of misplaced notions floating around on net neutrality. For example, the idea that absence of net neutrality impedes on the concept of an open internet is misconstrued. In an open internet, the consumer gets to exercise choice over whichever sites and services permitted by law, regulation and security

considerations, etc., he wishes to access. However, this doesn't imply that the same charges are applicable on all types of service used by the consumer.

Network neutrality is not an absolute concept. The regulator should look to regulate, by function, not the type of technology or infrastructure that is being used. Any regulatory framework should follow certain principles that seek to promote transparency, innovation and policy reform.

It should be market specific and not TSP/ISP specific. Zero rating should be allowed with some regulation and not only on the content but also on the pipe/download. If the purpose is to promote access, then instead of "zero rating", there should be a more "equal rating" practice wherein certain amount of free data with unrestricted access to any content.

It is laudable for someone other than the ultimate consumer to bear the cost of the data charges in the interest of driving internet penetration to unconnected regions of India. However, that should not impinge upon the consumer choice in limiting what constitutes 'basic internet services'. Basic internet services as a public good cannot be deemed to imply access restricted to entities or websites that have clout or financial power. Access cannot be used to exercise a subversive/unethical practice. For example, a "Zero Rating" plan to drive use of E-Gov services for the benefit of the citizenry in India isn't the same as a zero rating plan that merely facilitates access to a large scale content/social media website. Government can do prioritization of citizen services or zero rating, where the services are free for all users irrespective of the access network used by them.

A selective zero rating system is against the actual notion of what constitutes digital inclusion or digital equality. It is bad for economic inclusion. It is bad for the ability of new entrepreneurs to grow onto the global scale. It is bad for the long term health of the Internet. Should one e-commerce entity be allowed to pay a mobile operator, effectively to gain an advantage over competitors, who might not be able to afford the same fees? This can lead to discrimination within a bandwidth category. Thus, these need to be examined, more on a case-by-case basis.

We can also take the example of airlines charging different fares for different category of seats. However, this doesn't come at the cost of a discriminatory pricing within the category. Legitimate price discrimination is different from an anti-competitive practice or denial of service.

All data is seen to be transmitted at a certain price, now whether that price is "zero" or anything else, consumers must be afforded to choice to pick the content based on the quality of that content, not the financial power and business partnerships of the provider. This way, new entrepreneurs can still reach any and all users on the Internet, even if they are a few people working in a co-working space with no ability to subsidize data charges. Such an 'equal rating' practice has been put in place by Mozilla in tie-up with Orange in several African and Middle Eastern markets. The regulator would be well advised to study these models while determining efficacy and motives behind a subsidized data pack. There are some examples of Bangladesh, Sri Lanka, Philippines where they have achieved this goal by many innovative methods. e.g. voucher system for internet access in Sri Lanka, free wi-fi in Philippines etc.

We cannot lose sight of the fact that TSPs have made investments in establishing networks and providing services to consumers. A tariff design for a data plan isn't shorn of the fundamentals that it compensates a TSP adequately and the consumer doesn't end up paying a price which is unreasonable.

The Regulator must be cognizant of the tariff rebalancing that needs to be looked at vis-à-vis data with a 'same service same rules' principle followed. Tariff plans offered by TSPs/ISPs must conform to the principles of Net Neutrality set forth in guidelines issued by the Government as Licensor. TRAI may examine the tariff filings made by TSPs/ISPs to determine whether the tariff plan conforms to the principles of Net Neutrality.

Issues for Consultation

In light of our views expressed hereinabove, our humble submission to the Regulator on the questions posed by the Regulator are as follows:

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

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

<Combined Answer for 1,2>

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TSPs should be allowed to have differential pricing for data usage plans for use of differing platforms, applications and websites. However, such pricing plans should not be anti-competitive in nature (as per Section 3 (4) of the Competition Act, 2002). Commercial relations between a TSP and content provider should be such so as not to result into a abuse of dominance situation.

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?

You can't have your cake and eat it (too)' – This old adage holds true when we talk about network neutrality, or net neutrality. The end goal that the Government is looking to achieve must not be forgotten by the internet activists who are making a hue and cry over the damage that the absence of net neutrality can cause. Ensuring cheap and quality internet access to maximum number of Indians is of paramount importance to the Government. In this vision, however, it is not the OTT providers that would play a crucial role, but the telecom companies, as they are the infrastructure developers in the true sense. The telecom operators are responsible for paying taxes to the Government, managing an artificially created spectrum scarcity, paying huge sums of money for whatever limited quantum of spectrum is available in the market through an auction driven mechanism and also paying other incidental charges such as the USOF (Universal Services Obligation Fund) contribution.

There are already enough obligations which are placed on TSPs and this should be minimized and replaced with horizontal regulations that apply across the board to all service providers, providing similar services. We recommend that a broad regulatory framework based on the principle of "same service, same rule" for ensuring level playing field. Such framework ensures sustainable competition, safeguard network investments and will enable well balanced regulatory environment for all players in the digital eco system irrespective of what the medium of technology used to deliver content to users is.

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

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- TSPs/ISPs should make adequate disclosures to the users about their traffic management policies, tools and intervention practices to maintain transparency and allow users to make informed choices
- Unreasonable traffic management, exploitative or anti-competitive in nature may not be permitted.
- In general, for legitimate network management, application-agnostic control may be used. However, application-specific control within the "Internet traffic" class may not be permitted.

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