

## **Comments on Telecom Regulatory Authority of India (TRAI) “Consultative Document on Differential Pricing for Data Services” dated 9 December 2015**

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It is entirely right that TRAI should explore differential pricing and to ensure that is not used to hurt consumer interest or fair competition in the telecom and internet market. However, there are serious problems with the content of this document and the process being employed in this consultation. I am quoting below from my piece entitled “Fudging Net Neutrality” published in the Financial Express on 28 December 2015 to argue that TRAI’s approach to differential pricing, as evidenced in this document, fudges key issues.

“TRAI’s current approach is a fudge because it deals piecemeal with a part of the net neutrality debate - about which another consultation is already underway - and without reference to the ongoing process or explanation as to why a new consultation was necessary.

The TRAI has an ongoing consultation on a related subject which started in March 2015. In this, it sought views on whether telecom operators - India’s main Internet Service Providers (ISPs) - can charge differential rates for OTT (over-the-top) internet services. It was largely focused on services such as Skype and WhatsApp which offer telephony and messaging, using the internet. The document generated a heated debate and attracted over a million responses, both for and against. The TRAI has yet to complete this consultative process and make recommendations to the government.

TRAI’s new consultation seeks views on whether telecom operators must be allowed to provide subsidized or free access to some websites or services. a practice called zero rating in the context of net neutrality regulation.

Most regulators and activists would see a connection between the two consultations. Both relate to whether an ISP should be allowed to charge a differential price –whether a premium price or zero rating - for accessing any web content. Virtually all commentators, media and players, on either side of the net neutrality debate, see the issues as related.

Surprisingly, TRAI seemed to see it much the same way in the earlier document which mentioned net neutrality and differential pricing explicitly in several places. In fact, a specific question was: “Is there a justification for allowing differential pricing for data access and OTT communication services?” This is not much different from first of the four questions in the new consultation. It asks: “Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platforms?” TRAI has not shared any reasons, rationale or urgency for a new consultation.

TRAI 's new document conspicuously avoids familiar terminology including net neutrality, paid prioritization or zero rating. Again, without explanation. Chairperson RS Sharma was reported by NDTV as saying the issue “may be a part of net neutrality, but the current exercise refers to “a specific problem which has come to the notice of TRAI” (sic). He is presumably referring to the part of the consultative document which says, “some plans [that] have come to notice of TRAI which amount to differential tariff plans of the TSPs who offer zero or discounted tariffs of certain websites/applications/platforms” (sic).

The new document is largely devoid of any relevant data. With barely 21 short paragraphs with 4 questions, it is brief, (interestingly, like the previous consultative document on call drops). TRAI's consultative documents, barring rare exceptions, have traditionally contained significant background information and relevant market data, besides international experience. The current document, on the other hand, lacks even the data that would be expected from TRAI for analyzing the issues on hand. After all, companies are mandated to file all their tariffs with the TRAI. However, there is no information about the number of companies who offer zero rated services, or of tariffs filed, or otherwise reported from the market, to gauge the nature and size of the challenge.

The TRAI document makes several references to discriminatory tariffs and competition. However, there is little analysis - or guidance provided to stakeholders - of the nature and intensity of competition in the telecom market in India. For instance, in a market with 6-10 major players in each service area, can any player perform the kind of *gate keeping* function, that the document suggests?

Absence of quality information and data is a serious handicap in a consultation about a complex and contentious issue like net neutrality. It prevents a proportional response suited to India's specific environment. For instance, India is unique in three important respects: First, that network bandwidth is a serious handicap in India since the network is predominantly wireless. Second, over 80% of its population have no access to the internet. Third, the very high level of competition between mobile operators. This is unlike almost all countries actively engaged with the issue.

Few countries see the zero rating in binary yes/no terms. Over 90% of countries have no rules in place for zero rating. There is significant difference between the dozen odd countries that do have some rules in place to deal with net neutrality or zero rating. The US, for example, has a net neutrality legislation in place but does not ban zero rating outright. It will treat each type of zero rating on a case by case by basis. In the circumstances, it is odd that India is undertaking a separate consultation, almost entirely focused on zero rating and yet with virtually no discussion of its own many facets. This is worrying and defies comprehension.”

## **Answers to question posed in the TRAI consultation paper**

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

Yes, it is important that players can be innovative and flexible in offering internet access. It is particularly useful in a market where affordability and awareness of internet access is low.

Allowing users to ‘sample’ some internet content can help low income users whose decision to access the internet might depend on perceived utility. Price discrimination should be allowed- even encouraged- as a legitimate way to expand internet access.

However, not all differential pricing is pro-consumer. It can hurt consumers if it is applied to distort competitive markets. For instance, zero rating popular video content of any specific player in an intensely competitive market can have hurt consumers.

In general, it is a good idea to allow zero rating of services which do not disproportionately hog scarce bandwidth – i.e. those where there is little incentive to abuse free access or to explore content beyond the free offering. This include life-saving utilities, educational or health material, governance etc. It would be counterproductive to bar an operator who zero rates access such services.

Therefore, regulatory oversight is necessary. It is important to ensure that tariffs are transparent and do not unfairly discriminate against any licensed operator, user or group of users.

### ***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?***

The following measures will go a long way to ensure the above objectives:

1. Allow flexibility to telecom players in fixing internet tariffs under clearly defined regulatory guidelines.
2. Encourage innovation by operators to reduce cost or add value to internet access.
3. Ensure that operators make all web content conveniently available to all subscribers irrespective of whether they subscribe to price differentiation plans.
4. Ensure that no content is available only through a particular price differentiation plan.
5. Regulate by exception. Act if and only if, there is evidence of tangible harm caused by any zero rating practice.
6. Follow principles of competition economics while evaluating potential harm through differential pricing.
7. Bar differential pricing for any websites which account for say, more than 1% of bandwidth.

8. Bar any operator from offering a tariff that unfairly discriminates between any user or group of users.
9. Make it obligatory for every operator to share complete details of all tariff plans in format prescribed by the regulator.
10. Ensure that any user is able to change his/her subscription to any tariff conveniently and cheaply.
11. Define principles of fair competition to be applicable to telecom operators as well as content providers.

***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?***

The issue is not whether other methods exist or not. In an environment of permission-less innovation, operators and content players must be free to explore any method/technology/business model for internet access. The proviso is that any such initiative should not distort current or future competition in the market place.

Operators must be free to use any of the several alternatives. These include, but are not limited to

- free or cheap data for a fixed period,
- free or cheap data for specific set of websites, or using certain technologies or business plans

It has been frequently argued that free data packs, which do not limit access to a specific set of websites or services, are a superior solution encouraging users to explore the wider internet. This may not always be true. Instead of encouraging a user to explore the web, such free packs might, in fact, be welcome subsidy to access just one type of content e.g. popular videos. (This is for example, a major concern when deploying public Wi-Fi.)

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

- The TRAI has shared no evidence of tangible harm to consumers or markets as a consequence of differential pricing. Acting without such evidence is unjustified and risky.
- A blanket bar on differential pricing is illogical. It is not necessarily pro-consumer.
- The goal of permission-less innovation on the internet is compromised if it excludes permission-less innovation in the access segment.
- Differential pricing can be an important way to bring low income users to the internet.
- Expanding access to internet will require tremendous innovation at every level.