

TELECOM WATCHDOG

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Nothing should be stopped which is offered free to consumers

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New Delhi

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Kind attn: Ms Vinod Kotwal

Response to Consultation Paper dated 09.12.2015 on “Differential Pricing for Data Services”

What is free should be promoted, not demoted. FB Free Basics is Public Purpose Data Access. Trai’s Differential Pricing consultation is a ploy to finish Net-Neutrality & make OTT expensive

Madam

In response to the above referred consultation paper, at the outset we would like to state that Trai should not reject any proposal that offers free services to general public including the one being offered by Facebook under the brand “Free Basics”. In case the need arises, issues regarding any discriminatory behavior can be tackled through Model Standard Interconnect Agreement, which has been a common practice in Trai in such situations. So far, from the consultation paper it appears that no such incidence has come across. There may be some vested interests who are opposed to any move of providing anything free to the consumers. Our detailed response given below revolves around this idea that nothing should be stopped that is offered by Operators as free to consumers.

Welcoming their new born daughter, the Facebook CEO Mark Zuckerberg, 31, and his wife, Priscilla Chan, wrote a letter to her pledging 99 per cent of Mr Zuckerberg's Facebook Inc shares into a new philanthropy project focusing on human potential and equality.

Though these shares presently are worth over \$45 billion (Rs 3 lakh crore), but he, with his modesty, termed it a small contribution. *“We know this is a small contribution compared to all the resources and talents of those already working on these issues. But we want to do what we can, working alongside many others,”* said the couple in the letter to their baby.

It is not a mere statement, but detailed plans were disclosed in couple’s letter of December 1, 2015 to their beloved baby named Max. Mr Zuckerberg posted the letter on his Facebook page.

Now, this great innovator-businessman of our times, who has donated 99 per cent of his shares, is suspected of motives when he launched “Free Basics” in India.

So much so, that Trai, in order to stop such free services, issued a special consultation paper on December 9, 2015 inviting suggestions of all the stakeholders. Calling it “discriminatory”, Trai reportedly even issued direction to Reliance Communications to stop such free services, with which Facebook has non-exclusive tie up for “Free Basics.”

Trai must have been swayed by a lot of uninformed noise that passes as television debate and stories in the mainstream media. Most of them had reported the issue of Free Basics to be

opposed to net-neutrality. The most common phrases used while opposing the Free Basics are:

- **Critics' views:** Free Basics is discriminatory and will lead to elimination of start-up companies or kill competition or it is anti-internet growth.

Our views: So far no such events have been reported – neither in the media nor by Trai in its consultation paper. But even to remove any possibility of this happening in future, Trai can introduce a “Model Standard Interconnection Agreement” which can be made mandatory for providing free internet access to ensure transparency. Trai has been successfully using this tool to eliminate discrimination. Trai has never stopped any services / interconnections in the past.

Moreover, such so called discriminations, based on the end-usage of services, already prevail. For example, termination charges payable for SMS is into three categories: It is 2 paisa per SMS if it is used for normal communication by individuals and government agencies. It is 7 paisa, if SMS is sent for commercial purposes. So, the SMS charges depend upon the usage. For non-commercial use, it is 2 paisa, and for commercial use it is 7 paisa.

Another example is of Doordarshan. Many of the Doordarshan channels must be shown free to viewers, whereas most of the other channels are paid. Thus, there exists a system of free to air channels because, the government wants to reach out to even those people who cannot afford to pay to watch such channels.

- **Critics' views:** If Facebook is so concerned about spread of internet, why do not they offer free services to all, to begin with few hundreds of MBs every month.

Our views: The concept of targeted subsidy already prevails. For example, under Universal Service Obligation (USO) Fund subsidized services are provided in rural or non-profitable areas.

Also, the government has recently changed the policy of providing subsidy for domestic gas cylinders. Now, only the needy are provided with subsidized cylinders.

Also, we can see individuals donating “blankets” during winter season to the poor and indigent. We don't tell them to donate blankets to everyone or that instead of blankets they should donate “cash”. The donors should have the right to decide how their donations are to be used in a targeted manner and what specific purposes are to be achieved.

The regulator should interfere only in case it is notified of any alarming situation of anti-competitive behaviour.

Trai should have framed enabling questions

The government is using USO Fund for providing subsidy for increasing access to various telecommunication services. Free Basics from Facebook is a great example of enlightened action by a Technology company to contribute and reduce load on the USO Fund. The government should encourage this.

There must be some operators who are opposed to the very idea of providing anything free to the consumers and they are the ones who have launched the anti-campaign.

In order to clear the air, Mr Zuckerberg came to India and had open discussions with the youth explaining them the need for such services. The same objectives can be seen in the couple's letter to their baby.

Facebook also launched a special media advertisement campaign trying to tell the public the advantages of the Free Basics during their short launch with Reliance Communications. Trai should have analysed such claims and included it in its consultation paper so that the respondents had the required authentic information while giving their responses.

In our view, Trai should have framed the questions for consultations in an internet friendly manner. The right questions should have been:

- (i) Should Trai define some categories of web sites the access to which can be provided free by all the operators?
- (ii) Should there be some more companies besides Facebook, who should be encouraged to provide access to certain web sites free?
- (iii) What should be the maximum tariff chargeable for certain categories of web sites?

In any case, our specific responses to Trai's questions are as follows: -

Q1: Should the TSPs be allowed to have differential pricing for data usage for accessing different websites, applications or platforms?

A1: Trai should never deny free access of telecommunication services to consumers. Framing of questions by Trai in this manner is not a correct approach. Strangely, Trai has given extremely wide meaning to differential pricing. Trai must recognize the fact that what is being offered under Free Basics by Facebook is absolutely free and by no stretch of imagination it can come under the purview of "differential pricing". So far there has been no misuse by providers in any part of the world. In India, people who are opposing such a move are doing so under the presumption that in future the providers may misuse it. But, free access provided in a transparent manner cannot be stopped on mere apprehensions.

Q2: 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?

A2: At the outset we would state that under the guise of permitting "differential pricing," the OTT services should not be made costlier. Free is to be treated as absolutely free. It is not priced. So the question of this being termed under "differential pricing" does not arise.

On March 27, 2015, Trai (under its highly anti-consumer former chairman Rahul Khullar) had come out with a consultation paper that was titled as "*Regulatory Framework for Over-The-Top (OTT) Services.*" We had opposed it vehemently because it intended to make certain apps, accessible over internet, costlier for the consumers.

Incidentally, this time Trai's consultation paper has been titled as "*Differential Pricing for Data Services.*" If Trai has put the "**old wine in a new bottle**", then we suspect that Trai even under its new chairman, knowingly or unknowingly, continues to play into the hands of certain class of operators who had been fleecing customers, right since beginning. We strongly oppose this.

Neither does allowing unrestricted access to services such as Free Basics mean that regulations are framed in a manner that automatically allow discriminatory data tariff as that would mean making OTT services expensive. Therefore, under the guise of allowing Free

Basics, Trai should not frame such Regulations which can be exploited by certain operators to charge a higher tariff for certain types of OTT services. Allowing Free Basics and OTT services in the prevailing affordable form should co-exist as there is no inherent contradiction.

Trai should come out with a “**free access web register**” and any company such as Facebook or an operator should be able to provide free access to such web sites through a transparent arrangement.

To bring a transparent regime in Free Basics like services, we suggest Trai may introduce a Model Standard Interconnect Agreement where anyone and everyone can come and provide free data / internet services. Trai has achieved the specified goals of non-discrimination and transparency in the past on number of occasions.

Q3: 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?

A4: Nandan Nilekani & one Viral Shah in an article published in The Times of India have suggested crediting the accounts of all the users with certain MBs of data usage every month free by the government from the USO Fund on the same pattern like what is being done by the government under Direct Benefit Transfer (DBT) schemes.

This is not at all a wise and practical idea. Certain class of people in society download & view indecent content from the web sites and it will be difficult to block such sites on daily basis. Every day hundreds of new such webs will appear if contents are provided free.

Moreover, crediting a fixed amount monthly would mean undue enrichment of the operators from the government funds especially when there are companies who are willing to provide such services free. Besides, monitoring of actual usage claimed by operators will be a big issue.

Therefore, let the system work for sometime in the present form. In case it requires any regulatory intervention at a later stage, Trai has all the powers to set right the misuse.

Q4: Is there any other issue that should be considered in the present consultation on differential pricing for data services?

A4: Though this Consultation Paper purportedly has been issued to protect the interest of the consumers, but in the absence of any specific complaints of misuse, we suspect a hidden hand behind this. It appears that the aim is to primarily make OTT apps / services expensive for the consumers. Trai’s new chairman RS Sharma should be cautious of officers, who are already there at senior positions in Trai, who are bent upon barring free services to favour incumbent operators.

The present issue on the pricing of data services can be traced back to Trai’s anti-consumer move of levying Termination Charges (TC) on SMS. In 2013, moving SMS from Bill-And-Keep (BAK) to TC regime was unwarranted and anti-consumer that has made the SMS costlier for the consumers, which was earlier used freely by banks, schools, etc. After that, the operators tried to make SMS expensive on apps such as WhatsApp, etc., through Trai’s

March 2015 OTT consultation Paper. A strong opposition by consumers across the country stopped it.

It is important to highlight here that in an affidavit dated October 31, 2011 filed before the Supreme Court, Trai had declared that it would move away from TC regime to BAK regime even for mobile to mobile calls by 2014, but Trai took u-turn on this pro-consumer issue and it has not implemented this so far. Also, unrestricted Voice over Internet Protocol (VoIP) is a long pending issue of the consumers, but somehow the operators had been successful in keeping it in abeyance. These are the issues, which must be addressed by Trai's new leadership.

Conclusion

The new chairperson of Trai Ram Sewak Sharma has accorded centrality to consumer interests. The current consultations should embody that principle. We hope the decision will be taken in favour of consumers without denying them free access to services wherever available. Already consumers are burdened with heavy charges on using data services.

Recently, we have seen Mr Sharma taking tough stand against the operators on issues like "call drop" while also countering them on their false claims of "huge impact" on their revenues because of the penalty levied for call drops. Trai had levied Rs 1 as penalty for every call drop subject to a cap of Rs 3 per day.

Our answer to Trai's question is not to stop any service that is offered free. Model Standard Interconnect Agreement is the answer to any abuse of dominance and discriminatory behaviour.

Thanking you

Yours sincerely

For Telecom Watchdog



Anil Kumar

Secretary

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