

CONSUMER PROTECTION ASSOCIATION
HIMMATNAGAR
DIST. : SABARKANTHA
GUJARAT



COMMENTS ON

Consultation Paper
On

Consultation Paper on Differential Pricing for Data Services

INTRODUCTION :

One of the founding father of the Internet Tim Berners - Lee wrote that " Net Neutrality is also about stopping " Positive Discriminations, such as when one Internet operator favors one particular service over another. If we don't explicitly outlaw this, we hand immense power to Telcos and Online service providers."

The Market dynamism has the regulatory world struggling to keep ahead. Just as one issue has been identified the next came up; a market is finally defined just in time to watch it morphing into something else. The main regulatory challenge is to provide a future proof frame work which maintains its relevance no matter how the market develops. Key words here are technology neutrality and ex-post rather than ex-ante regulation. Alongside facilitating the development

of the communications market to the benefit of the country, the basic rights of individuals and society must also be protected by legal and Regulatory measures.

India is a country with low speeds and price conscious consumers. Price discrimination is a form of positive discrimination and involves making some services comparatively more expensive than other by making some services cheaper.

Where reduced rates are tied to specific content, potentially, both positive and negative effects arise from an economic and regulatory perspective. On the one hand, it appears to make overall internet access more affordable by reducing costs of certain types of content. 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.

The growth of data usage and the manner in which data schemes are being designed by service providers currently, calls for a re-look at the regulatory principles of non-discriminatory tariff and transparency measures in the context of data tariff offers.

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

Comments :

No.

1. This will create a fundamental and permanent shift in the way the internet works by splitting it into free and paid. This will lead to the launch of similar services from all ISPs. This means that each user will get a different experience of websites, and may never know the universe of knowledge outside of this collection of websites. That restricts consumer choice. ISPs favor those services who pay them to be zero rated, Internet.org favors those services which are low bandwidth and allow Facebook to access user data even if Facebook is not being used on Internet.org.

2. Consumption of discriminated services is likely to be higher than that of paid services, and with limited bandwidth and spectrum, there will be a possibility that this will consume more data and leave limited bandwidth for open web access.

3. In social media, users are voluntarily disclosing personal data (Photographs, preferences etc.) which are then mined to serve targeted advertisements. These are concerned about privacy, ownership of data and longevity of data among others. Recent changes by Facebook and Google are examples of such issues - e.g. Google with its latest notification indicates that "it would have the right to use an individual's photographs to endorse a product in advertising to others, if the user has recommended this product elsewhere in their search."

Additional complexity arises from social media players' ever-changing terms of use in tandem with their lock - in effect - which forces many users to continue usage and give up ownership of their content.

4. There may be incentive to ISPs to increase cost of open web access in order to drive both start ups and users to the discriminated platform.

5. Discrimination of routing is a means of instituting a carriage fee for telecom operators. This leaves room for potential abuse like :

- > Manipulation of access speeds
- > Monopolistic hiking of rates like in case of carriage fees in cable T.V. etc.

6. Privacy :

It is nothing but an attempt to buy the de-anonymised packets of the Indian poor at a bulk rate, breaking their security in the process of destroying their privacy. This will offer the right to send all their traffic, tied to their personal identifying data. Through their servers, thus allowing them to spy on all the Internet traffic of millions of consumers.

It is worth noting the relatively low adoption rates for some widely available consumer privacy tools . For example, most Browsers allow users to set policies for accepting different types of cookies used to track their web surfing behavior. While there does not appear to be any systematic study of this behavior, a test by one Internet Service Provider (ISP) found that 96 to 97 percent of its users allow some cookies and 85-90 percent allow third -party

cookies. Similarly, users can opt out of targeted advertising on many web sites by clicking on a small triangular icon but often decline to do so . Privacy advocates suggest that users are unaware of these tools and unaware that, advertisers are gathering and aggregating data about their Internet use. On the other hand, this could be “rational ignorance” on consumers’ part, reflecting a view that the cost of engaging with details of privacy settings outweighs the benefits gained.

The new applications, in term, create new sources and types of data for example, it is now possible to track :

- > A user's location via mapping soft ware
- > Their browsers and search history
- > Whom and what they " like " on social networking like face book.
- > The songs and videos they have streamed
- > Their retail purchase history
- > The contents of their on line review blog posts.

ISPs can also utilize these new types of information to make an educated guess about consumer characteristics. It is considerably easier to track customer behavior on web sites or mobile applications. Many Internet users don't understand how their data are being gathered and used.

7. Ad supported internet business :

The second trend is the growth of the ad supported business model, and the creation of a secondary market in consumer information. Companies like Google and Face book both of which earn much of their revenue by selling

targeted marketing opportunities, demonstrate the commercial potential of ad supported internet platform form.

8. Differential pricing for data usage for accessing different websites, applications or platforms are in violation of the guiding principle of How the Internet should function.

9. It is against the DoT panel who defined the core principle on Net Neutrality as :

The committee says that “content and application providers cannot be permitted to act as gatekeepers” and go against the principles of Net Neutrality. It also notes that very often the content market sees the rise of a leader, and that if these end up directing users to “specific content”, it amounts to a violation of Net Neutrality. Based on what the committee has recommended, Internet.org or even Airtel Zero rating app will be seen as violating the principle of Net Neutrality.

- (a) ' No blocking ' of any lawful content
- (b) ' No degradation ' of Internet traffic based on content, application, services or end users
- (c) ' No paid prioritization ' which creates discrimination.
- (d) Improper (Paid or otherwise) prioritization may not be permitted.
- (e) Tariff plans offered by TSPs/ISPs must conform to the principles of Net Neutrality set forth in guidelines issued by the Government as Licensor.

- (f) The panel says tariff plans offered by TSPs/ISPs must conform to the principles of Net Neutrality, and TRAI will have the power to examine these tariff plans. So a special tariff plan which offers the service for free, could be seen to be in violation of the principle of Net Neutrality.

10. It is Discriminatory, Anticompetitive, Predatory and misleading.

11. This plan may go against the principles of non-discriminatory tariff. It may increase Tariffs. It May put ' prohibitive Tariffs ' for other websites thus restricting internet access.

12. Such tariffs put small content providers at a disadvantage and " creates entry barriers and non level playing field for these players stifling Innovation."

13. It will empower/enables the TSPs to select content providers (either through the platforms or directly) and offer discounted access plans to these websites/applications/platforms.

14. The combination of Big Data and differential pricing does raise serious concerns. For example, big data may facilitate discrimination against protected group and when prices are not transparent, differential pricing could be conducive to fraud or scams that take advantage of unwary consumers.

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?

Differential pricing for data usage should not be permitted.

If permitted :

1. In a competitive market with transparent pricing, value based pricing is unlikely to harm the average consumer, who can easily compare offers and switches ISPs. Usually ISPs uses " Bait & Switch " tactics to attract customers with false promises or bury important details in the small print of complex contracts. Differential pricing can cross the line into fraudulent behavior. In such cases, the Authority should prohibit " deceptive acts or practices. "

2. Free Information for do homework.

3. The ability to work on new models for access.

4. The trend towards differentiated/ tiered service could lead to some internet traffic being neglected completely. It is recommended that the net neutrality guidelines issued in Singapore should be used :

- 1) Operators are *not allowed to block legal content*;
- 2) They must always comply *with competition and interconnection rules*;
- 3) They must *disclose information* to the end-users about their network management practices and typical internet broadband download speeds;
- 4) They must meet *minimum QoS standards* as defined in their licenses; and
- 5) They are allowed to provide niche or *differentiated services*.

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?

Comments :

The billions of people are unconnected. Every one person who get access to the internet gets lifted out of poverty. So in theory going and connecting everyone on the Internet is a large national and even global priority.

1. The ISPs should accept its role and provide internet services to the consumers at minimum price.
2. Previously ISPs has given promotional data for free access the internet, they can introduce a free internet access of around 250 MB to consumers to try services of their own choice. (without government or ISPs selection.) This can be funded by the organization who claims to get more users online.
3. We feel that the TRAI may fix a higher cap on the net usage charges, and leave the discount or free usage etc to the various players in the market, this will keep check on escalating of rates, whereas competition would be there to benefit the ultimate user.

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

1. User's right on the Internet need to be ensured, so that TSPs/ISPs do not restrict the ability of the user to send, receive, display, use, post any legal content, application or service on the Internet or restrict any kind of Lawful Internet activity or use.

2. TSPs/ISPs must make adequate disclosures to users about their traffic management policies. Additionally, traffic management that is “exploitative or anti-competitive” should not be allowed.

3. There are some requirements for Internet services and applications to develop optimally in a society :

(a) Consumer security : Covering :

- Privacy
- Information security
- Intellectual property rights and
- Data portability

(b) National security :

- Information security
- Cyber crime measures

4. > Data consumption is increasing
- > 2 G and 3 G users are increasing
- > Data ARPU is increasing
- > Average revenue per MB is increasing

And there are adequate incentive for ISPs to invest in mobile internet infrastructure. ISPs should not discriminate the prices.

5. Implement research to assess the *economic demand for broadband*, including differentiation for different qualities of service. Such research must combine existing data concerning use of broadband and consumer/business research to assess how much users would be willing to pay for capacity and quality and their elasticity of demand with increasing or decreasing tariffs.

In short :

1. Value based pricing generally benefits ISPs as well as customers also.
2. Competition, Collecting purchasing and arbitrage can all limit ISPs ability to implement differential pricing.
3. Concern with differential pricing are often entangled with related concern about competition or consumer privacy. In many cases, policy should be able to address these issues individually. In particular, where differential pricing harms a protected group or crosses the line into fraudulent behavior, our competition, Consumer Protection and other laws provide a variety of tools to correct the problem.
4. However, the speed at which both, the Technology and business practices are evolving, this deserve ongoing scrutiny, particularly where ISPs may be using sensitive information in ways that are not transparent to users and fall outside the boundaries of existing regulatory frame works.