

Response to TRAI consultation paper 8/2105 (9th December, 2015)

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

Para 9 the TRAI consultation paper 8/2105 (hereinafter referred to as “the paper”) states the following:

“The Authority monitors the tariff for various services offered in the country through the reporting mechanism put in place. While scrutinizing the tariff proposals, TRAI checks their consistency with various regulatory principles/guidelines, which include the following:

- *Non-Discriminatory*
- *Transparency*
- *Not Anti-competitive*
- *Non-Predatory*
- *Non-Ambiguous*
- *Not Misleading”*

A recently added feature (hereinafter referred to as “the feature”) in Facebook’s (a popular social media platform) mobile app automatically launches and starts playing videos in users’ newsfeeds. The basic problem with the feature is that it is compulsory unless otherwise selected. When people became aware, it was blamed for devouring their mobile phone users’ data and driving up their cellphone bills.

In my humble opinion, the feature is a sham to force users to spend more data than necessary, without giving them a choice to begin with or taking advantage of internet illiteracy of common people of India, thereby being in violation of all regulatory guidelines mentioned above which we will discuss one by one.

1. Non-Discriminatory

The new compulsory feature is discriminatory in nature as it auto-plays only those videos that are uploaded on Facebook. This means that videos getting uploaded elsewhere (namely competitor websites) will never get nearly as many views. The worst part, all this is happening without the consent of the unwitting user. The user has to go to the setting to disable the feature and many user without realizing the increase of data usages or because of net illiteracy to do this leave this matter unattended unaware of the fact they are paying extra. If Facebook or other website has to introduce the feature like this then they should have put this feature in disabled form and it should have been user's choice to start the feature but ironically it's happening otherwise.

2. Transparency

Telecom Regulators are supposed to be prompt on non-transparent practices. With the feature going on for a few months without people realizing that their data is being eaten up, the only beneficiaries are Facebook and the promoters of the videos and the network operators. Why not put up a disclaimer which is bold and highlighted stating that if you would like all videos to be available to you at a scroll, all you do is click this button. In this case, it's the other way around.

3. Anti-competitive

Competition laws take into account any practices that are pertinent to abuse of dominant position. Using a platform like internet bandwidth (which is as public as air) to bully your agenda just because you can is blatantly anti-competitive in nature. The fact that Facebook has so many users and so much popularity among advertisers that no one dared object. Not one mainstream media house or regulator in India has raised their voice on this issue yet. Is there an unholy nexus that we do not know about?

4. Non- Predatory

So we hear that Auto-play videos are eating up 60% more data on some networks. We also hear that Facebook has experienced a sudden surge in revenue since the initiation of the feature. Why you wouldn't if you generate 8 Billion views a day. So quid pro quo theory begs to ask a question – WHO REALLY BENEFITS? Does this also suggest an unholy nexus between the telecom operators, regulators, advertisers and Facebook? Since nothing in life comes for free, we wonder what mutually beneficial arrangements have been made between the above stated parties so that schemes like the feature may continue and flourish. And WHO LOSES OUT? We all know the answer to that is the end user. If it has to left on assumption and connecting dots we can easily come to a conclusion that by doing this Facebook and other social media applications have benefited the network operators apart from the applications itself. In return of this extra benefit by this applications to network operators they have returned favor to Facebook and similar website by including them in the so called "Free Basic Internet "package. As these network operator are making the application free to use to non-data user they are in one way or other are also increasing the number of user on the said or benefited website and these website capitalize the increase

of number of user by relation it to LTV (life time value) of the user and hence increasing their valuation or gaining on stock exchange indirectly.

5. Non-Ambiguous

The feature is as ambiguous as they come. Here is a scenario - the data was seen by me, its costs incurred by me and I wasn't even consulted before all that happened. Is that not an ambiguity which a regulatory authority missed?

6. Non-Misleading

Some of us took longer than others to figure out that the feature is eating up our data quicker as well as increasing our mobile bills. It is pertinent to note that all this is happening without our consent. A large percentage of our population use only the most basic and essential features in phones. Considering the social opportunities offered by them, Facebook is certainly one of them. A large percentage of this population Thus let the feature eat into their data package and increase their mobile bills bills. If Facebook starting the feature without permission was patently misleading then telecom authorities not do anything about was not a regulator not being diligent to horrific proportions.

Given that in countries like Australia, the telecom authorities are obligated to inform the public via warnings or disclaimers if their data is being consumed, the TRAI was a far cry away obligations during the successful activation and continuation of the feature. Further it will continue misleading the general public till it comes with a disclaimer

To top that, Facebook doesn't stop here. Facebook has decided (as Parens Patriae of its users) that its users can spare a few megabytes here and there to boost engagement or appease advertisers. The company announced in August that it was introducing "bandwidth targeting," which would

change the advertisement shown to a user based on the speed of their wireless data connection in "high-growth countries" such as India. Through this system, people with faster data connections might be shown a video while people with slower connections might just see a banner advertisement. The user doesn't have any say in the matter. Facebook has decided that it and its advertisers have a right to use a consumer's wireless data connection as it sees fit, and it doesn't much care what its users think about that.

Now if that is not a violation of net neutrality, then we can't really tell what is. TRAI needs to seriously consider its stand with respect to the general public. It will be interesting to see their response to this comment. It will further be interesting to see if this comment is kept in public domain or not. Till then, we would like to thank TRAI for allowing Facebook to fill its pockets with currency that our masses still does not properly understand – DATA. Thank you TRAI for allowing Facebook to rob us – unwittingly. If actually any of these parties are serious about the free internet and connecting the unconnected then they should simply invest in the infrastructure development of the country and giving funds to the Government which could use these fund impartially for the development of infrastructure so that the neutral internet should reach everyone not by stealing money from people by taking undue advantage of their innocence in terms of data and technology and funding their nexus with this money and try to take credit of being the provider of internet to the last person of our “Poor underdeveloped” or say “developing” INDIA.