



Vodafone's Counter to TRAI's Consultation Paper on 'Free Data' dated 19 May 2016

1. We have gone through the response of various stakeholders on the above consultation initiated by the Authority and would like to make the following submissions in this regard.
2. We note that several of the stakeholders do not agree with the Authority's proposal for a TSP Agnostic Platform. In this regard stakeholders have
 - a. Pointed out that the proposal is in conflict with the Authority's own Regulation of 8 February 2016
 - b. Questioned the need for added layer of cost in the form of a platform that will act as a broker
 - c. Questioned the Authority's jurisdiction in the matter
 - d. Questioned how such a platform will ensure non-discrimination or that anti-competitive harms are eliminated
3. The few stakeholders that have supported the proposal have not addressed /gone into the above relevant issues.
4. Some responses from potential platform operators are seeking to ensure a viable business case protected by Regulation, seeking
 - a. connection of all data networks to a centralized aggregated platform
 - b. requiring TSP to provide data at TRAI regulated "Fair Price" , etc
5. It is also surprising that stakeholders that are of the view that data tariffs of TSPs cannot be differentiated based on access to content, now seek to differentiate their content on the basis of the data tariffs of TSPs. Counter to the specific comments of some stakeholders is as below:
 - a. We do not agree with the inputs of one stakeholder that such TSP agnostic platforms that provide reimbursements by websites to consumers will ensure the twin objectives of net neutrality (no gatekeeping by Telcos) and increased affordability. It is not clear on what basis, such a statement is being made.
 - b. The suggestion that the Platforms should be permitted to enter into commercial agreements with only websites that are being promoted and/or consumers or providing access the internet free of charge through watching ads, etc are in effect influencing consumer choice as per the principles laid down by the Authority in its differential tariff regulation.
 - c. Comments by one stakeholder that data can be awarded to users by any player in the market except the TSP and that platforms should not be regulated and the free market should be allowed to rule, demonstrates an inherent duplicity in the approach of content players that do not want the TSP to leverage the content on the internet on the grounds



of net neutrality, but are desirous of / have no qualms on wanting to leverage the data services of the TSPs to promote their own content.

- d. Suggestions by a stakeholder that the reward offered by the website/content owner should not dictate the use of the reward by the consumer or that there should be no conditions attached to the use of the reward disregards that the very fact of visiting a website or accessing content in order to receive the reward, would [as per TRAI] influence consumer choice. The suggestion of rewards of data based on activities –fails to appreciate that whether the content is zero rated before or after [through a reward], the end effect is exactly the same.
- e. **Suggestion by a stakeholder that the platform owner ties up with TSPs and take free data from multiple TSPs fails to appreciate that partnerships with TSPs directly or indirectly, are prohibited under the Differential Tariff Regulation of TRAI;** In fact the said stakeholder is also recognizing that rewards can be offered only through the TSP – which, is not permitted.
- f. Comment of one stakeholder that TRAI needs to ensure that platforms which are used to provide data are truly agnostic – also recognizes the challenges in this proposition, pointing out that the challenges noted by TRAI, are as applicable to telecom operator agnostic platforms as they are to telecom operators.
- g. Suggestions that the Authority should mandate telecom operators not to discriminate between subscribers of their data services, whether they are end users or platforms which purchase data recharges from them for rewarding customers, appear to be seeking a regulatory mandate for a feasible/profitable business case for a platform owner.
- h. Suggestion by stakeholders supporting a TSP agnostic platform as it will allow start-ups to purchase data in bulk or that a platform owner pick data recharge from many TSPs, fails to appreciate that data recharges acquired from a TSP can only be used if there is an arrangement with the TSP – which is not permissible under present regulatory regime.
- i. One of the stakeholders is suggesting a subsidized data platform – where it appears to be recommending data rewards and direct money transfers by the app providers themselves. In this regard, it is once again reiterated that the data reward by an app provider would have the same effect of influencing consumer choice and requiring an arrangement with the TSPs, which has been held to be non-permissible by the Authority. As regards direct money transfer, there is no prohibition on the same as the content providers do not fall within the jurisdiction of the Authority; however it may be mentioned that the same would be I contravention of the principles adopted by the Authority while framing the differential tariff regulations.



- j. In fact rewards based models have been proposed by several stakeholders with elaborate justifications to distinguish it from zero rating; however as submitted above and also noted by few stakeholders, the end effect is exactly the same. Whether the reward to visit a site is given before [zero rating] or after, is immaterial.
 - k. Detailed structures of terms and conditions attached to such rewards, upper limits, caps, not available for repeated use, limited to certain users, available only in micro rewards, etc, only serve to suggest an extremely complex system, where a commercial and competitive advantage is being sought to be attained by either the content providers or potential platform owners.
6. As submitted earlier there are several inter dependent components in the internet eco-system – where it is our view that no component can drive /restrict customer choice and that innovation and flexibility needs to be allowed across all components.
7. It may also be noted that India has very ambitious broadband objectives that will require:
 - a. huge investments
 - b. Innovative and new business models that cater to the individual choices of customers;
 - c. Strategies to connect the unconnected and encourage internet take up and use by the under connectedand it is our submission that the regulatory framework should facilitate and enable the achievement of the above objectives.
8. We would therefore like to once again reiterate our submissions that there is a strong case for a review of the Regulation dated 8 February 2016 and that companies should be free to pursue commercial agreements which offer consumers innovative new content and services underpinned by new business models.
9. In fact, several stakeholders have acknowledged the benefits of Free data as a way to improve internet penetration; hence the Authority must consider the possible ways to achieve this in a fair, transparent and non-discriminatory manner.
10. Any net neutrality concerns that the Authority may have, can be addressed once Net Neutrality has been defined by the Government post the recommendations of the Authority. Any concerns on anti-competitive behavior can be taken up on a case to case basis based on the facts and circumstances of each case.
11. If however, it is the view of the Authority that differential tariff based on content cannot be permitted then such a restriction ought to apply to all entities that may directly or indirectly seek to differentiate content on the basis of data tariffs and/or vice versa.

New Delhi, 14 July 2016