

COUNTER COMMENTS ON TRAI'S  
CONSULTATION PAPER ON FREE DATA

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Below are our counter-comments on specific comments submitted by various organisations, associations & individuals on TRAI's consultation paper on Free Data.

S. No	Comments	Counter Comments of Digismart Digital Media Pvt Ltd
1	<ul style="list-style-type: none"> <li>• It is important to ensure that any arrangement looking to reimburse data as a reward, ensure that the privacy of the user is protected. Specifically, during the re-imbursement the telecom operator does not provide any more information than that provided by the internet protocol, data consumed by an IP address and the ISP/TSP of the end user which is billing to the website. In particular, the user's data or service consumption patterns or telephone number must not be made available to the website.</li> <li>• Further state that the model of aggregation platform carries high inherent risk of misuse of user information (risk of privacy and security of individual's information) while TSPs are bound by stringent conditions with regard to privacy and confidentiality.</li> </ul>	<ul style="list-style-type: none"> <li>• TSP Agnostic platforms don't capture any personally identifiable information and comply with privacy and security provisions mentioned under Information Technology Act &amp; relevant rules for the same.</li> <li>• Also under IT Act, there are stringent provisions with respect to collection, usage and sharing of personal information about the users and to comply with the security procedures.</li> <li>• Further, Government has authority to check any breach of this user privacy. Therefore, in our view, the submission does not hold much merit.</li> <li>• Even organizations such as Google &amp; Microsoft utilize specific information assets from macro &amp; micro attributes to help improve the quality of service being offered. This information is what powers the internet in a big way.</li> <li>• For eg: TSP/ ISP platforms customize the cost of data plans and even create customized plans for customers; They also suggest type of additional service to their users based on this information like -- 3G/ 4G internet and higher internet speed on broadband for their customers. All this is based upon Macro and Micro insights available to TSPs &amp; ISPs about their users.</li> <li>• <u>Ultimate aim of the arrangement and processes should be to ensure that no information about a user should be personally identifiable</u></li> </ul>
2	<ul style="list-style-type: none"> <li>• Award in the form of free data can be used to replicate the effect of zero cost of access for selected sites, an outcome that is against the principle of Net Neutrality.</li> <li>• Reward should be given in a neutral currency. We wish to propose cash as an incentive mechanism because it is the most neutral currency.</li> </ul>	<ul style="list-style-type: none"> <li>• If rewarded data has unrestricted access, then this issue doesn't arise.</li> <li>• Such platforms are not offering any data services nor charging any fees for data.</li> <li>• Cash as incentive doesn't serve the purpose here as the overall goal is to make data access affordable by rewarding data or reimbursing a part of data but certainly not by making it a money making scheme.</li> </ul>

3	<ul style="list-style-type: none"> <li>Does not favour TSP agnostic platform for extension of free data and to meet the objective of taking Internet to the unconnected. Instead of relying on TSP agnostic platforms to deliver free data, the TRAI can at best, frame new policies to regulate TSPs' platforms for providing free data so that its espoused principles are met.</li> </ul>	<ul style="list-style-type: none"> <li>Currently a TSP agnostic reward based platform is best suited to connect the un-connected and increase data usage for the under-connected because: <ul style="list-style-type: none"> <li>a) It makes data affordable</li> <li>b) Encourages less active users to consumes more data with data rewards.</li> </ul> </li> <li>Additionally, a TSP may act as a gatekeeper as they have total control over the infrastructure and services being utilized by the user. TSP can even control the content access and the speed of access for users; 2 primary factors of internet economy In the past too, similar attempts have been made by the TSPs to favour certain content providers. TSPs run various content applications/website either directly or through their subsidiaries, which may stifle the competing applications/websites. TSPs are at no loss as they are owners of data and have the power/ means to grant unlimited free data to their user (self-owned applications/websites).</li> <li>With these points TSPs shall easily be able to bypass TRAI's guidelines on Net Neutrality and differential pricing</li> <li>Also, TSP should not be allowed to promote their own OTT platforms (whether majority or minority owned) in the form of free-data-rewards.</li> </ul>
4	<ul style="list-style-type: none"> <li>It is submitted that free data is also a form of differential tariffs and a prohibition on differential tariffs cannot go hand in hand with permitting free data.</li> <li>If Free Data can be offered by a non-TSP, then there is no basis or rationale for the Authority to exclude the TSP.</li> </ul>	<ul style="list-style-type: none"> <li>There is a great deal of difference between free data and data reimbursement. Data is only reimbursed to users on reward based platforms when users spends its own data in the first place. It is very different from offering free data first and then user accessing the service.</li> <li>TSP aren't suitable solely because they control the mobile data infrastructure and have all the power to swing it in their favour. With content access in their control and along with internet speed at their helm, they would be able to dodge the guidelines on Net Neutrality and Differential pricing</li> </ul>

5	<ul style="list-style-type: none"> <li>• Objected the TSP agnostic platform and said TSPs should be permitted to offer Free Data</li> <li>• It should be left to TSPs to decide whether they want to enter into arrangements with the content providers or not basis their business case and requirement of technical development.</li> </ul>	<ul style="list-style-type: none"> <li>• The initial consultation paper by TRAI clearly states and specifies that the model “should not allow any TSP or large company playing a gatekeeper or biased role. The model should use the principles of open, transparent and equal access to consumer services by all consumers and all businesses.”</li> <li>• If a TSP decides to enter into an arrangement with content provider. It can lead to differential experience on internet for the end-user, because TSPs can alter the browsing speed and other factors of internet for the user or for specific contents for which TSP has / does-not has an agreement.</li> </ul>
6	<ul style="list-style-type: none"> <li>• No ex-ante regulation is required since the market is vibrant enough. On ex- post basis, TRAI can examine tariff plans on a case by case basis after giving a reasonable opportunity to the operators of being heard</li> </ul>	<ul style="list-style-type: none"> <li>• While we agree that no regulation is required since the market is vibrant and spurring with innovation.</li> <li>• We believe it is not practically possible to examine tariff plans on a case by case basis by TRAI specially when these plans can be changed at any point by the TSP.</li> <li>• On the other side TSP agnostic platforms such as reward based platforms follow the primary mandates of net neutrality and do not have any scope to charge discriminatory tariffs for mobile internet being ultimately offered to users.</li> <li>• Even the tariff plans being provided via these TSP-agnostic platforms are restricted to actual plans that have been created by TSPs for its users.</li> <li>• Thus, it will be too soon to regulate this segment further as it may act as a deterrent for new players/start-ups to enter &amp; bring in more innovative solutions to achieve better internet access and usage patterns.</li> </ul>
7	<ul style="list-style-type: none"> <li>• Free data rewards by TSP agnostic platform is against Discriminatory Tariff Regulation</li> <li>• A TSP/ISP agnostic platform to deliver free Internet for some sites, apps &amp; services can possibly lead to the content/platform owner and provider acting as a 'Gatekeeper' who could operate in a completely uncontrolled/unregulated manner and thus carry far higher</li> </ul>	<ul style="list-style-type: none"> <li>• We disagree with these two points. Free data rewards by TSP agnostic platforms cannot be against Discriminatory Tariff Regulation. A TSP/ISP agnostic platforms is not delivering free internet for some sites, apps and services.</li> <li>• As per the model they are only incentivizing the user or refunding part of 'data packs' used for certain action on 3rd party content/ platform. These refunds can then be used to recharge tariff plans that each TSP/ ISP</li> </ul>

	<p>possibilities of misuse of market power and/or anti-competitive behaviour</p>	<p>has created for their users and can be used on any content/ service that the user likes since it is unrestricted.</p> <ul style="list-style-type: none"> <li>• Neither is user restricted only to use a specific set of services nor is the internet access restricted or experience differential for specific set of services.</li> <li>• Moreover, these platforms have the capacity to create the most level playing field in the Indian internet industry with their access not being restricted to any specific set of users/ users of specific TSPs; additionally, due to the aura around them for free providing incentivized rewards they can also lead in new users to access internet and existing users to be more active on internet by reducing their actual cost of internet access via rewards and refunds</li> </ul>
8	<ul style="list-style-type: none"> <li>• TSP agnostic platform is outside the jurisdiction of TRAI. TRAI does not have any jurisdiction on regulating any platform which is not owned by the licensed TSPs. TRAI can only regulate the TSPs. Presently in India, the control on content providers can be exercised only through the IT Act, and that too, on limited grounds. Moreover, the content providers whose infrastructure is hosted outside India are governed by the laws of that country itself. TRAI cannot regulate / interfere with the relationship between TSPs and content providers under the scheme of the TRAI Act.</li> </ul>	<ul style="list-style-type: none"> <li>• Taking from a point discussed in the document, currently the regulation on discussed TSP-agnostic models is not required. Bringing rules and regulations will not only deter new break-through innovations that have the capacity to get un-connected population get on the internet.</li> <li>• We believe, for the time it is essential to have these TSP agnostic platforms prosper so that they can usher in a new wave of internet users for India and help the digital economy. Only if in case at a later stage, TRAI deems it fit to have regulatory framework around TSP-agnostic platforms while making sure the core purpose of facilitating the un-connected and under-connected consumer stays intact, TRAI can then suggest regulation updates on an optional basis to the IT Act.</li> <li>• Additionally, we can also ensure that these platforms are allowed and restricted to provide service only by Indian organizations.</li> </ul>

We would also like to highlight some issues and loopholes in the Prohibition of Discriminatory Tariff for Data Services Regulation, 2016 introduced by TRAI.

Regulation prohibits TSPs & ISPs to charge different (higher / lower) tariffs for data services on the basis of content being accessed by the user. Thus user should be charged the same tariff for any content that user accesses.

This regulation however can govern only services/ content accessed on the internet, the regulation does not provide clarification for services / content accessed on the intranet / CECN (Closed electronic communication network). Which in-turn can defeat the purpose of the regulation unless it can be ensured that TSPs do not misuse intranet / CECN to provide alternatives to the same content available on internet by renaming the services.

Also at a consumer level this may not help because an average user cannot differentiate internet & intranet/CECN. Thus, TRAI shall need to also provide some guidelines around use of intranet/ CECN by TSPs & ISPs which should clarify and ensure that intranet may only be used for product related informative services and should definitely not repackage internet content and services on intranet/ CECN and also not provide any third party services over intranet/CECN even via integration with service providers.