

Telecom Hotline

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TRAI'S RECOMMENDATIONS ON ENCOURAGING INTERNET USAGE GIVES THUMBS UP TO FREE DATA SCHEMES

TRAI's recommendations on free data discuss the following:

- The importance and the role of third party aggregators in providing non-discriminatory free data to users.
- Various models for provisioning of free data – reward model, toll free model, and direct money transfer model.
- Government incentivized schemes wherein reasonable amount of data is made available to rural users for free. The cost of implementation may be met from the USOF.

BACKGROUND

The Telecommunications Regulatory Authority of India (“TRAI”) published its “Recommendations on Encouraging data usage in Rural Areas through Provisioning of Free Data”¹ (“Free Data Recommendations”) recently. The Free Data Recommendations follow from the consultation process initiated regarding Free Data in India.

The digital divide cannot be denied in India, especially in the rural areas. The Free Data Recommendations itself states that, “Our performance of 7% penetration of broadband is well below the world average of 46%”. Internet access has been a topic of heated discussion in India over the past couple of years. One of the most significant developments in this area was the TRAI regulation on “Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016” (“Discriminatory Tariff Regulation”), which prohibited the discriminatory pricing for data services based on content².

Given the state of affairs, the industry has been contemplating how to develop business models, which encourage internet usage while complying with the law. The Free Data Recommendations evaluates models for provision of free data in the context of the Discriminatory Tariff Regulation.

The Free Data Recommendations provide that the free Data schemes are seen as one of the most effective ways of ensuring wider adoption of the internet. It is believed that by removing or reducing the cost of accessing content or services consumed over the Internet, more consumers would be able to access the internet. Further, consumers who are introduced to the Internet through subsidised content, are expected to become paying users in the future. Lastly, Free Data Recommendations mentions that it has been widely observed that there is a well-established link between increased access to the Internet and economic improvement both at personal and macro level.

RECOMMENDATIONS AND ANALYSIS

Some of the key aspects of the Free Data Recommendations are analysed below.

1. Aggregators

The TRAI has recommended that in order to incentivize participations of various stakeholders looking to participate in the provisioning of free data, **third party aggregators may be one of the most beneficial ways of providing free data**. The rationale behind such a recommendation seems to be that aggregators would enable (i) transparency and consistency of pricing and (ii) encourage various content providers and service providers to participate.

It has been clarified that **any scheme for free data must be TSP-agnostic and there should be no arrangement between the content provider/aggregator and the TSP**. Additionally, it has been highlighted that in order to ensure proper penetration of free data schemes, no TSP or ISP should be preferred by the third party aggregator.

The TRAI has also recommended that **the aggregators will need to register with DoT. The registrant must be a company registered under Indian Companies Act, 1956. The validity of registration shall be 5 years. The registrant shall not either directly or indirectly, assign or transfer the Registration in any manner whatsoever to a third party either in whole or in part.**

The Recommendations examines the various models which would be followed by the aggregators:

1. Reward Model

Under this model, a data reward may be given for various internet related actions such as downloading an app, or visiting a particular website. Content providers may also be able to reward their users with recharge packs to be used for unrestricted mobile data.

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Since the acquisition of data packs in bulk by the aggregator without any arrangement with any TSP, the TRAI has cleared this model of not being in violation of the Regulation.

2. Toll Free Model

In mechanism similar to the reward model, under this model, access to certain websites etc. is on a “no charge basis” as opposed to a reward model, wherein some action is required before the reward.

This model, since it effectively provides free access to certain websites and requires an arrangement between the content provider and the ISP, was evaluated to be in violation of the Regulation.

3. Direct Money Transfer Model

Under this model, direct money would be transferred to the account of the users. The TRAI without commenting on the net neutrality aspect of this model, has highlighted operational and privacy concerns, as this model may require sharing of user information with third parties.

The TRAI has taken a significantly positive step by looking into free data models which can be developed by the industry. However, the requirement of registration of aggregators is onerous.

Requirement of registration would bring with it 2 primary concerns:

- 1. Registration requirements add to redtapism and dissuade businesses from entering into the domain.*
- 2. With the registration, there would also be terms of registration. These terms may restrict the contours within which the business would be able to run and innovate. Free Data models must be allowed to be dynamic, and registration requirements may only stifle emerging business models.*

As discussed by the TRAI, the main concern regarding free data schemes is net neutrality. Concerns regarding privacy and net neutrality should be addressed through the existing regulations. For instance, net neutrality issues are already dealt with by the Unified License and the Discriminatory Tariff Regulation. If the need for additional policy is felt, it should be directed towards these regulations. Aggregators in compliance with such regulations should be allowed to dynamically function, without burdensome regulatory compliance.

Additionally, the restrictions on TSPs from functioning as aggregators in the context of free data schemes must be done away with. As in the case of a reward model, if an aggregator is allowed to provide recharge for usage of certain websites, the TSP should too be allowed to provide such rewards directly to its subscribers. The effect in both the cases with respect to net neutrality would be the same.

2. Government Incentivized Models

In order to provide higher data penetration, the primary issues of availability and affordability are sought to be addressed through **government schemes wherein certain amount of free data would be provided to rural subscribers**. This amount would be arrived at through evaluation of the requirements of an average rural consumer for availing access to necessary services. The Free Data Recommendations discuss a CISCO report from 2015, wherein the average data consumption per subscriber was calculated at about 150 MB/ month. The Free Data Recommendations provide that for rural subscribers the average data consumption would be much less, and proposed a fair estimation at 100 MB/month.

It has been recommended that such a scheme should be only for a definitive period and is not envisaged as a permanent scheme. It is also envisaged that infrastructure would also be developed in areas where internet connectivity is not provided. Additionally, it is envisaged that through schemes such as community—shared devices, internet enabled devices will be provided to sections of the population, who do not have such devices .

The funds for providing such services shall be taken from the Universal Service Obligation Fund (USOF).

The recommendation regarding government schemes which would (i) provide free data, (ii) develop infrastructure for connectivity and (iii) provide access to devices to the population, is very well intentioned. This scheme would be important in achieving the stated goals such as digital inclusion, innovation in content services and government schemes.

It is imperative that the industry be involved while finalizing the modalities of such a scheme, to ensure that the scheme is brought forth, is acceptable and workable with the existing stakeholders. Additionally, the scheme should incentivize the participation of various stakeholders in the industry to use their expertise in the provisioning of this scheme.

Resources contributed into the USOF would be well used for the implementation of this scheme. The TSP should be made an active stakeholder in the scheme funded by the USOF which is capitalized through their contributions.

CONCLUSION

The fate of these recommendations now depends on the Department of Telecommunications (“DoT”). It is pertinent to note that the DoT is not bound to accept these Free Data Recommendations. While these Free Data Recommendations provide insight into the thought of the TRAI and have strong persuasive value with the DoT, it is in the sole discretion of the DoT to regulate this space. Any impacting change in this regard would flow from the DoT.

The TRAI has released a Consultation Paper on “Net Neutrality” on January 4, 2017. We are in the process of analysing the paper and its impact along with the Free Data Recommendations.

— Naman Mukul Aggarwal, Rakhi Jindal & Gowree Gokhale
You can direct your queries or comments to the authors

¹ http://www.trai.gov.in/WriteReadData/Recommendation/Documents/Recommendations_19122016.pdf

² Please see the article authored by firm members on the issue of differential pricing: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Articles/ECLP_March_2016_pg_6-8.pdf

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