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Subject: Response to the Consultation Paper on Differential Pricing for Data Services

Mr. RS Sharma,
Chairman, TRAI
Ms. Vinod Kotwal
Advisor (F&EA)

Dear Ms. Kotwal and Mr. Sharma,

Once again, thanks for the opportunity to submit counter comments to the submissions on the TRAI Consultation Paper on Differential Pricing. I have been going over various submissions, and I will try and address a few of the points raised. In particular, I wanted to focus on some of the points raised by Prof. Christopher Yoo of the UPenn Law School. Below are my comments on Prof. Yoo's submission.

- *"A more appropriate term would be service differentiation"* Prof. Yoo has indicated his preference to the term service differentiation, and I much prefer that too but that's not what TRAI asked. The questions by TRAI were very specific and asked if differential *pricing* should be allowed, where TSPs provide the same service to the end customers but charge differently based on websites, applications or platforms. When a different question is asked, Prof. Yoo should provide that different answer. Much of the rest of the document goes on about the virtues of service differentiation, and one should just stop reading once the term is introduced, because that's not the issue on the table. However Prof. Yoo brings upon many relevant issues under the guise of service differentiation hence I will address them. Free Basics, for instance, is an example of differential pricing and not service differentiation.
- *"the fact that the majority of non-adopters do not see the value of an Internet connectionby showcasing high value apps that showcase the benefits of adoption"* The issue really is who decides what are high value apps. This gatekeeping function, either by explicitly deciding who enters the platform, or by implicitly deciding via data collection policies that keep competitors out, is not a task that should be assigned to for-profit entities.
- *"Conversely, prohibiting service differentiation would limit the dimensions of competition to price and network size, considerations that tend to favor the largest players."* The evolution of Internet has been in the absence of a *termination charge*, a topic that I am sure TRAI is well versed with. Any application or website in the world can get connected to the Internet, and can get accessed anywhere

else in the world (with the usual caveats about great firewalls etc.). Nobody has to get into agreements of termination charges with ISPs around the world. Termination charge has been an important source of revenue for telcos historically, and something they have lost as data services have largely taken over traditional telephone based communications. On the supply side, differential pricing is a way to extract termination charges from content providers ("you pay us extra to reach our customers"). On the demand side, differential pricing distorts the market. Differential pricing in of itself produces no innovative products nor does it promote competition amongst TSPs. TSPs should compete based on the quality of *Transport* they provide, not pricing innovations. The Internet has provided countless benefits. I cannot name a *single* one that has come about as a result of "pricing innovation".

- *"Service differentiation also responds to the technical realities of mobile broadband by reflecting the fact that certain services can be provided more cost effectively than others as well as how expensive it can be to support every application over every connection."* Again, the gatekeeping function of private entities makes it very problematic.
- *"As a result, service-specific plans are becoming increasingly common in India and other countries around the world."* Prof. Yoo is contradicting himself here. All service-specific plans promote dominant players ("Facebook pack" or "WhatsApp pack"). How does that help new entrants to come in and compete?
- *"Only one of the providers operating in the UK offers unmanaged access to the Internet. All of the others engage in some form of application- specific management"* This is dated information. A more accurate reflection of the status in the UK is available here: `https://recombu.com/digital/article/isp-traffic-management-bt-sky-virgin-media-ee-talktalk_M11045.html`. The situation is most of the dominant ISPs do not engage in traffic management, and even those that do, discrimination within a class of applications is not done, i.e. no provider specific traffic management.
- *"The ability to use service differentiation to target subsegments is illustrated nicely by T- Mobile. Zero rating streaming music (Music Freedom) and streaming video (Binge On) has tremendous appeal to younger customers."* Again, an inaccurate representation of the reality on the ground by Prof. Yoo. At the time of his submission, T-Mobile was already mired in controversy over the implementation of Binge On, the use of traffic throttling beyond reasonable management and the exclusion of YouTube from its Binge On platform. The Electronic Frontier Foundation has raised many questions about Binge On, and they are available here: `https://www.eff.org/deeplinks/2016/01/binge-lite-ask-truth-about-t-mobile-video-throttling`
- *"A familiar example is that Internet access on airplanes and trains often do not support all applications, because a small number of users running video would rapidly exhaust all of the available capacity."* Agreed, and that's exactly why programs like Binge On are problematic because they do not provide the *same* treatment to *all* video providers. I am puzzled why Prof. Yoo does not address that issue.
- *"U.S. regulators have not brought an enforcement action against any form of zero rating, and they certainly have not adopted any categorical prohibition of the practice."* True, and it must be noted that the Net Neutrality controversy in the US (which FCC addressed with the Open Internet Order) was primarily one over wired broadband access, and at the center of it was Netflix. Wired broadband in the US is almost universally flat rate unlimited, and hence (differential) pricing hasn't been an issue. Zero Rating comes in when consumers pay per byte, and at the time of the Open Internet Order there were no specific cases for the FCC to look at. Now the FCC is paying close attention as noted by Prof.

Yoo and one should reserve judgment on the stance of the FCC on the issue of Zero Rating. It should also be noted that the Open Internet Order of the FCC came with applying common carriage rules to the Internet, and that changes the context completely. Selectively reading and interpreting the order confuses issues.

- *"The weight of the evidence thus suggests that vertical restraints are likely to be benign or welfare enhancing,"* Prof. Yoo is a legal scholar, I can never hope to match the breath of his knowledge on these issues. However, when advocating that vertical integration is beneficial to customers, the silence of Prof. Yoo on the mother of all anti-trust cases, DoJ vs MSFT, is deafening. The issue in that case really was of vertical restraint with the Microsoft provided application, Internet Explorer on the dominant operating system, Microsoft Windows. The world is a very different place today from when IBM owned the hardware, software and applications running on computers. The decoupling of ownerships and the openness of the platforms (hardware and software) has created breathtaking innovations, and I find it hard to believe the arguments that vertical integration is pro-consumer. The Internet is a platform, and the ISP is the one that provides it for consumers. It should be kept open for all application developers to come in and create new experiences, opportunities and spread the power of knowledge to benefit *everyone*.

Best regards,

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