

Taking On Big Telecom

Here's how the net neutrality fight was won, but the battle's not over yet

Derek O'Brien

A few days ago, the telecom regulatory Authority of India (Trai) formally rejected Facebook's 'Free Basics' scheme. But if anybody believes that the battle is over and the issue is settled, she is clearly wrong. The issue is not just Facebook. The issue is freedom of the internet and how differential pricing is trying to interrupt that freedom.

It's also about the risks posed by Big Telecom, which is seeking to restrict consumer options. I have been making that point since I raised the first calling attention motion on net neutrality, on behalf of Trinamool Congress, in the Rajya Sabha on May 6, 2015. Let us not miss that larger point in an immediate news environment. This is a warning to telecom companies that we consumers are watching them.

On social media, some enthusiastic people have put out colourful analogies with the East India Company and Colonialism. Such analogies are momentarily exciting. But they hide the fact that the danger to net neutrality comes not just from California-based Facebook but also from large telecom companies headquartered in India and run and owned by Indians. They have been carrying out a far more insidious campaign for differential pricing. It is important to figure out what differential pricing seeks to do. It offers free or speeded up net access if the user goes to partner sites. So if you want to book an air ticket, such a scheme will offer you a fast and free connection to website X but a slower and paid connection to website Y.

In time you will find that website X is charging more per ticket than website Y and sharing its profit with Free Basics or a similar scheme. The so-called "access" to poor consumers will end up hurting consumers and restricting their choice.

In the real, brick- and mortar world, such practices would invite outrage about restrictive trade. There would be arguments before the Competition commission. Let me give you an

example. Indian Railways offers free long – distance destination city, but fully – paid tickets if you stay in any other hotel.

How would you respond? It would smell of scandal. Some have spoken of companies combining offers in a package deal – buy toothpaste X, get tooth brush Y free. Is differential pricing comparable? I beg to differ.

Discount schemes for commodities where near infinite choice is available are different from basic infrastructure roads, power utilities, ports and now the internet. Would it be okay if Indian ports got together and said they would not charge landing fees. For ships importing goods from China but would charge for the same goods imported from any other country? Yet that is what telecom companies are arguing for.

Consider another emotive example. *If a big corporate house offered to pay your Child's school fees but only if you forced the child to use textbooks published by that corporate house, how would you feel about it? In a nutshell that is what differential pricing could do to the internet* Child's school fees but only if you forced the child to use textbooks published by that corporate house and no other textbooks, HOW WOULD YOU FEEL ABOUT IT? In a nutshell that is what differential pricing could do to the internet.

The danger to net neutrality is from the risks of cartelization as described above. I got a sense of this last summer. After my calling attention motion, the telecom minister told Parliament that the government unequivocally supported net neutrality. He stopped short of details but assured the House of his commitment. That calmed down the mood.

But only a fortnight later, on May 21, 2015, something strange happened. The Parliament standing committee on IT and telecom, of which I am a member, decided to further examine the issue of net neutrality. When the agenda of the committee meeting was shared,

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it was found that the issue of call drops had been combined with net neutrality. This was surprising as the two are completely unrelated.

Parliamentary standing committees are allowed to invite outside experts for consultation and to brief members on a subject. The idea is to expose the committee to a diversity of views. The choice of stakeholders to be invited is usually left to the chairperson's discretion.

When the committee met on May 21, we found “independent voice” had been invited to brief us on net neutrality. The three were representatives of Airtel, Vodafone, Idea (Reliance too though they didn't turn up). That's it. There was nobody else – No consumers, lawyer, civil society groups, economists, OTT service providers, on one.

While not at liberty to share the

proceedings, I can reveal my Trinamool colleague and I protested and refused to let the meeting go on. Eventually we won the day, finding support from other committee members – including, to be fair, party colleagues of the chairperson. On May 28, I wrote to the chairperson with a list of 18 names across different sectors who could be invited before the committee for a broader, balance view. In coming days, he graciously acceded to my request. That incident confirmed to me that net neutrality was about much more than Facebook. The hidden persuaders and lobbyists, the big India telecom companies, are still around. They will come back with another attempt to contaminate net neutrality. We must maintain our vigil.

(The writer is parliamentary party leader, Trinamool Congress Rajya Sabha).

Impossible is Truly Nothing? Clarify, TRAI

Lift concerns over misuse of intranet exemption

One can't believe impossible things, said Alice, only to be ticked off by the Red Queen for not practicing the Task—the Queen in her childhood, used to practice for half an hour a day, and sometimes believed six impossible things before breakfast. That was in Wonderland. In India, we take impossible things almost for granted. Which is why an exemption provided in the telecom regulator's net neutrality regulation is stirring up concern. The telecom regulator's prohibition of discriminatory tariffs based on content exempts data services over a closed electronic network. This has raised concerns that network providers might use this exemption to host services of their own for free, treating its community of subscribers as a closed network.

The regulator thinks this impossible. The exception to this exemption—“unless such tariffs are offered or charged by the service provider for the purpose of evading the prohibition in this regulation”—Will kick in, it feels. But it might not be for it to make that interpretation. A court might interpret it differently. The entire intent

and purpose of the Industries (development and Regulation) Act 1951 is to license and regulate all Industry established after the Act comes into force. Section 29B of the Act permits the government to exempt certain industries from the ambit of the Act. The liberalization of 1991 used this exemption Provision to exclude most industries from licensing. Whether this is valid or if excluding most industries from the Act's main intent of licensing all industry via an exemption provision meant for special cases amounts to abuse of the exemption provision is a matter of interpretation. Let us not leave net neutrality to the mercy of an untender interpretation of the TRAI regulation.

TRAI should bring in supplementary regulation clarifying that discriminatory tariffs will cover throttling, paid privileging and blocking of site and explaining what is meant by use of the exemption to subvert the main purpose of the regulation. That would leave genuine intranet business outside net neutrality's ambit.