



GSM Association
Level-1, Red Fort Capital,
Bhai Veer Singh Marg,
New Delhi-110001, India
Tel: +91 (011) 66782420
Fax: +91 (011) 66782403
Web: www.gsma.com

12th April 2017

Mr. Asit Kadayan,
Advisor (QoS), Telecom Regulatory Authority of India
New Delhi: 110 002

Dear Mr. Kadayan,

Re: Consultation Paper on Net Neutrality

The GSMA welcomes the opportunity to provide its views on the recent *Consultation Paper on Net Neutrality* issued by TRAI to provide its recommendation on this topic. Net neutrality is a complex topic that touches multiple dimensions and requires careful consideration when formulating a policy approach. Preserving an open internet, in the sense of everybody being entitled to distribute and access the content, services and apps of their choice, is an important principle. The GSMA and its members are committed to this principle, but it is also important that operators are allowed the flexibility to differentiate between different types of traffic to ensure that the internet remains open and functional.

Traffic management practices (“TMPs”), the primary focus of TRAI in this consultation, are necessary to maintain satisfactory quality of service commensurate with both consumer expectations and TRAI regulatory standards, to secure the networks, to satisfy legal and consumer demands and to meet any other unexpected network circumstances. Accordingly, the GSMA recommends that the policy approach should allow operators the flexibility to apply TMPs, relying on ex post competition rules to safeguard against potential abuse, rather than overly burden ex ante regulation which would threaten investment in network buildout and innovation. Focusing on consumer choice, effective competition and transparency will most efficiently achieve the goals of inclusiveness and plurality in the digital ecosystem.

In the following pages, we provide our views according to the topics listed by the TRAI, referring to the corresponding questions identified in the consultation. Please do not hesitate to contact us if you have any questions on the above issues.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "Sandeep Karanwal", is positioned above the typed name.

Sandeep Karanwal,
Director, GSMA India



GSMA Views on the TRAI Consultation Paper on Net Neutrality March 2017

A. Traffic management is essential to manage increasing traffic volumes and complexity to ensure an open, functional and innovative internet (Ref Q1, 12, 13)

The strict interpretation of net neutrality that requires treating each bit of data equally ignores the reality of how networks are designed and how consumers use it. Internet Protocol- (“IP-“) based networks have been designed to route IP data packets according to their performance characteristics. Packet delivery needs to take into account multiple characteristics—type of traffic, destination of packet, availability of routing options, network propagation environment, etc. For example, time-sensitive services such as voice calls and video conferencing should be prioritised over delay-tolerant services such as file sharing and emails to meet the consumer expectations of different services and to support critical communication needs.

The DoT Committee report and this consultation paper from TRAI acknowledged a number of circumstances that require traffic management. As TRAI notes, all stakeholders are in agreement that TSPs must have flexibility to manage their networks in an efficient and reasonable manner.¹ As the TRAI importantly points out, “some content (like video) requires high bandwidth whereas some applications (like real-time gaming) have very stringent requirements. The exponential increase in Internet traffic and the evolving nature of the content that constitutes part of this traffic, can therefore lead to the overburdening of networks.”² Traffic management practices (“TMP”) is an essential toolkit for network operators. Traffic management has always been deployed by operators so that the internet can function effectively and efficiently. Traffic management is a discipline in a constant state of innovation. The sophistication of traffic management will evolve as an increasing number of complex applications begin to use mobile networks and a growing number of device types access those applications. A number of approaches, for example caching and Content Delivery Networks (CDNs), are also used across the Internet ecosystem to improve service delivery to end-users.

It is therefore essential to provide operators with flexibility in deploying traffic management measures to manage the growing traffic, to secure their networks, to deliver satisfactory services and to benefit consumers and the broader internet ecosystem.

The digital marketplace has undergone extreme change in the past several years. Mobile network operators no longer compete merely against one another. They face significant competition from firms that operate across the digital ecosystem. And while, as the TRAI notes, some fear “that TMPs may be used as a tool to preserve legacy system at the cost of new technologies that may be able to deliver more useful or affordable solutions for users,”³ the nature of competition in the digital ecosystem makes such practices unsustainable. Consumers simply would not tolerate unacceptable practices, and, considering the significant level of competition faced by each TSP, consumers have the power to act as final arbiters through their purchasing decisions. The concern that TSPs can and will act in such an anti-competitive manner stems from a legacy understanding of the communications

¹ 2017 TRAI Consultation, ¶13.2.1.

² *Id.*, at 12.

³ *Id.* ¶13.2.1.



market. But that legacy environment just does not exist anymore, and no evidence has been shown to support the idea that a TSP may act as a gatekeeper.

Traffic management has not been used anti-competitively by operators in India. The view of TSPs as occupying market power and acting as “gatekeepers” is being replaced by a more sophisticated view of the current, complex, multi-sided, internet ecosystem that acknowledges the role of multiple entities (Content Providers, TSPs / ISPs and the user device OEMs) with interdependent relationships. A recent study published by the GSMA on the internet value chain noted that the interdependencies between segments of the value chain are powerful and complex, and, therefore, decisions based on a narrow view could be seriously flawed, either for a company that may miss broader competitive threats, or for a regulator misjudging the true nature of the competitive dynamics.⁴

The same internet value chain study found that online services captured nearly half of the global internet ecosystem revenues in 2015, while the proportion of value captured by the connectivity segment (includes TSPs) is declining. TSPs now no longer simply compete amongst one another. Accordingly, TSPs should not be considered as gatekeepers to the internet. Perhaps most vividly illustrated by findings in GSMA’s *Mobile Economy India 2016* indicating that 80 percent of adults between 18 and 54 use online communication apps such as Whatsapp and Skype more frequently than they use SMS, the competitive landscape in the communications market has changed completely.⁵

Consumers experience the Internet and services mostly through apps. The control of critical access points, e.g., operating systems, app stores and popular apps, can result in few platforms building powerful market positions and appear as crucial gate-keepers. Consumer experience of the internet is influenced by all these access points. Traffic management and differential pricing practices are deployed across this broader digital ecosystem. Quality and price discrimination, in networks and in the digital ecosystem, can be beneficial and there should be no ex-ante prohibition of such practices. The principles of neutrality in general should apply equally to all entities in the internet eco-system, and should not be undermined through the narrow application of “network neutrality”. Regulatory principles for the digital ecosystem should not single out TSPs by applying stricter requirements and should be based on applying the same principles for the same service, ensuring a single, consistently applied framework is in place covering all competitors regardless of technology or the type of provider.

Market power should be assessed in light of all the competitive constraints faced by a firm rather than a theory that TSPs enjoy market power over other players, some of whom are powerful platforms, in the internet ecosystem. In fact, some of these online platforms have been subject to competition law investigations in a few jurisdictions. Based on the existing trends and evidence, the GSMA submits that **one cannot conclude that as a general proposition that TSPs occupy a position of “gatekeeper” in the internet ecosystem.**

Internet Access Service and Other Data Services (Q1, Q5)

Within a single network, many types of services can co-exist, including internet access services that are delivered on a best effort basis, and other data services that provide assured delivery of certain

⁴ GSMA (2016), *The Internet Value Chain*

⁵ GSMA (2016), 10, available at

<https://www.gsmaintelligence.com/research/?file=134a1688cdaf49cfc73432e2f52b2dbe&download>.



applications and services. These other data services include Virtual Private Networks, Internet-based Video, machine-to-machine communications and a whole range of innovative services for enterprises and consumers such as remote health monitoring, smart homes and connected vehicles. Operators should be free to offer these other services over their networks through various business models and commercial agreements with third parties. The net neutrality debate is focused on the technical and commercial considerations in relation to internet access services, and not these other services.

The open internet rules that apply in EU and USA permit operators to offer other data services without being subject to the same requirements as Internet Access Service. The EU rules provide for the optimisation of network traffic through TMPs “for specific content, applications or services, or a combination thereof, where the optimisation is necessary in order to meet requirements of the content, applications or services for a specific level of quality.”⁶ Recognizing the demand for data services other than public internet access service, the European Parliament further found that “[s]uch specific levels of quality are, for instance, required by some services responding to a public interest or by some new machine-to-machine communications services.”⁷

In relation to Q5, GSMA also submits that there are many instances that require traffic management to be applied to internet access service to protect consumers (e.g. spam-control), to prioritise traffic types (e.g. Voice-over-LTE) and to manage scarce network resources according to varying traffic load. As we note in the following paragraphs, in a fast-changing market, it is essential that operators have the flexibility to manage future traffic scenarios and innovative services rather than being restricted to a narrow set of exceptions.

Some enterprise customers require services other than best-effort internet connection, and the TRAI’s review of traffic management practices should exclude these other data services from the scope under consideration. The consultation document asks whether “internet traffic” should include “certain types of specialized services, enterprise solutions, IoT, etc.” in the scope of its review.⁸ These enterprise class customers require tailor-made connectivity solutions and, therefore, should not be included in net neutrality considerations. These specialized services may include data for connected vehicles, M2M systems, remote healthcare, etc., representing advancements in a highly-connected society, where heightened sensitivities and specific needs may require different treatment than best-effort internet connection services. And so, while these specialized—or “managed”—services operate over TSPs’ networks, traffic management practices, by necessity, may vary widely. To ensure further innovations in the Internet of Things and other data services, TSPs should be left to offer such services and commercial arrangements based on necessary performance attributes and not subject to any principles-based framework for TMPs.

These considerations will become even more critical with the rollout of further 4G networks and especially the launch of 5G services. Innovative approaches to data delivery will be necessary to take full advantage of 5G capabilities such as network slicing, edge computing and quality based prioritisation. As the planning for 5G is still in its infancy, the GSMA urges the TRAI not to hinder the technical innovations associated with emerging 5G thinking through ex ante rules that prohibit such innovations.

⁶ Regulation (EU) 2015/2120 of the European Parliament and of the Council, 25 Nov. 2015, L 310/1, Art. 1, ¶15.

⁷ *Id.* Preamble ¶16.

⁸ 2017 TRAI Consultation §7(Q2).



Reasonableness of traffic management practices (Q2-Q4)

In its previous submission, the GSMA agreed with the broad approach of the DoT Committee's recommendation on this aspect of the debate – allowing reasonable traffic management practices that are transparent and not anti-competitive. This policy principle is also put forward by the TRAI⁹ to find a balance between reasonableness and anti-competitive conduct, as well as recognizing the harmful impact of overregulation on network investment.

The TRAI asks whether it would be preferable, in the Indian context to define what constitutes a reasonable TMP or to draft a list of unreasonable TMPs.¹⁰ Furthermore, it asks how to define reasonable TMPs from a technical point of view¹¹ as well as whether certain reasons should bring such practices into an area of exceptions to the rule.¹²

The TRAI aptly explains that our “understanding of many of the issues as well as that of stakeholders participating in the consultation process may evolve over a period of time on account of development of more context-aware networks; growth of specialized/non-Internet services and any other changes in the nature of traffic flows on the Internet.”¹³ Accordingly, the GSMA encourages the TRAI to consider not only what challenges network providers now face, with respect to network management, but also those unknown and unknowable challenges that they may face.

In a dynamic market, spurred by new technologies and services, resulting in changing consumer demand, operators need the flexibility to adapt their network management practices to evolving circumstances, and such changes will occur more quickly than regulations can anticipate. Traffic management will only increase in relevance and importance as more devices and users connect to and as more services and applications are delivered via the networks. To restrict operators to only a narrow list of traffic management practices, or to prohibit traffic management tools, would not only make network operation costlier and hinder investments, but would also slow speeds, diminish the quality of service and risk delaying infrastructure investments and service innovations to build a digital economy.

Traffic management practices, which must necessarily consider performance characteristics such as type of data, destination, routing options and network environment, allow operators to strive towards delivering a seamless internet experience for all network users and offer content producers optimal conduits to deliver their products to consumers. This requires a vast array of traffic management tools. As the TRAI states, “TMPs are...used to optimize overall network performance and maintain a consistent QoS for users while carrying a diverse variety of traffic over the networks.”¹⁴ Various factors may necessitate the deployment of such tools, for example, to manage dynamic network load and traffic congestion caused by the movement of active users into and out of cell areas, to apply parental control filters or to prioritize latency- and jitter-sensitive traffic, to comply with court orders or other legal requirements, to safeguard against network security threats or to guarantee sufficient network capacity in the event of an emergency, etc.

⁹ *Id.* ¶3.2.5.

¹⁰ *Id.* §7(Q3).

¹¹ *Id.* §7(Q4(a)).

¹² *Id.* §7(Q6).

¹³ *Id.* ¶6.3.8.

¹⁴ *Id.*



The GSMA is of the view, as also proposed by the DoT Committee, that the policy recommendation on TMP should be at the principle level—i.e., ensure transparency and safeguard against anti-competitive behavior. To this end, rather than applying restrictive ex ante regulations that risk deterring investment and innovation, application of existing competition law provides the best approach.

Accordingly, the GSMA encourages the TRAI, in recognition of the policy principle, complexity of traffic types and tools and the evolving nature of TMP, to avoid prescribing a limited list of cases deemed as reasonable TMPs. TMPs that differentiate between different types of traffic should be deemed reasonable as long as they are not deployed anti-competitively to target and to degrade the content or application of a specific provider.

B. Policy principles should focus on promoting commercial flexibility and incentivizing investment to ensure consumers have access to quality service and innovative product offerings

The net neutrality debate and the related policy perspectives have evolved and are evolving over time in recognition of the complexity of this topic and the changing nature of technology and competitive landscape. There is no one-size-fits-all approach. While a handful of countries have adopted regulations related to this topic, a vast majority of countries have considered any intervention to be unnecessary. It is also important to note that the rules in jurisdictions such as the United States of America and the European Union allow a significant degree of flexibility for TSPs to manage traffic and to offer differentiated commercial propositions, subjecting them to ex post case-by-case assessment rather than ex ante prohibition of such practices.

As noted in the consultation paper, the broadband market in India is still at an early stage.¹⁵ At this stage, when the technologies, services and commercial models of the internet ecosystem are evolving, the best way to deal with the debate on net neutrality in India is to let the market find balanced solutions to meet consumer expectations. The existing legal and regulatory framework in India provide authorities adequate safeguards to address potential concerns that may arise.

Principles on non-discriminatory access to content via the internet (Q6)

The GSMA agrees with the open internet principle, and the premise underlying this question from TRAI, that users should have the choice to access a variety of services and content via internet access. Even this simple notion requires complex traffic management practices and, for that matter, is not mutually exclusive to the idea of making available other commercial offerings to consumers. The success of the internet and of the digital ecosystem was and is built upon innovation in technology as well as innovation in business models. Technical and commercial flexibility is an essential principle to deliver the principle of the open internet.

As the DoT first wrote in its 2015 report and recommendations, “[t]he primary goals of public policy in the context of Net Neutrality should be directed towards facilitating ‘Affordable Broadband’,

¹⁵ *Id.* ¶12.2.2.



‘Quality Broadband’ & ‘Universal Broadband’ for its citizens.”¹⁶ The GSMA supports such a framework, as advanced also in its July 2016 response to the TRAI’s pre-consultation on net neutrality, promoting an open internet while encouraging investment and innovation in the marketplace through a flexible, holistic approach to regulation, focusing on the following principles:

1) Facilitate deployment of broadband services to all citizens.

The Digital India initiative makes clear that the country’s top policy concern is connecting all citizens, in all parts of the country, through broadband infrastructure. To help meet this goal, policymakers should permit operators the regulatory and commercial flexibility necessary to manage their networks in the most efficient and effective manners, thereby driving investment and innovation in networks and services. As the DoT committee wrote, the government’s approach should first consider expansion of access to broadband, “[e]ndeavour through Digital India, to bridge the digital divide, promote social inclusion,” and, importantly, “[e]nable investment, directly or indirectly, to facilitate broadband expansion.”¹⁷

2) Promote consumer choice.

A healthy, competitive market focuses on consumer choice. Rather than implementing restrictive, ex ante regulations that limit service offerings and delivery methods, policy should allow consumers the ability to choose the services and products they want. In the highly competitive mobile market in India, TSPs endeavor to satisfy those consumer demands. As far as the GSMA is aware, no cases in India have arisen in which consumers have been denied access to the content of their choice due to any actions taken by TSPs.

3) Allow operators flexibility in implementing traffic management practices to secure their networks, ensure optimal capacity and deliver a high quality of service to consumers.

As the TRAI appreciate, as evidenced in the consultation document, TMPs serve a multitude of not only legitimate, but critically important purposes to deliver quality service to customers. From securing the network to guaranteeing seamless streaming to ensuring sufficient capacity in times of emergency, TSPs constantly face new challenges in maximizing the utility of their limited capacity and resources for consumer and societal benefit. Policies should allow network administrators and engineers the flexibility necessary to adapt to ever-changing scenarios and network and consumer demands.

4) Allow TSPs commercial flexibility to offer various innovative services and packages.

TSPs must be allowed to innovate through a variety of commercial propositions, including the offering of specialized services and differential pricing. Policy should “[s]upport the Investment-Innovation Virtuous Cycle and development of applications relevant and customized for users.”¹⁸ Enterprise customers’ needs often require traffic management solutions that vary from traditional, best-effort internet services, and so TMP standards should not apply to those offerings. Additionally, open internet policies should recognize the role of differential pricing in

¹⁶ See DoT Committee Report, ¶6.14.

¹⁷ *Id.*

¹⁸ *Id.*



encouraging investment and the deployment of innovative services, particularly given their positive impact on competition in the industry and the number of choices available to consumers. In view of this, we request that TRAI should review its position on discriminatory data tariffs and zero rating.

5) Encourage transparency from all digital ecosystem players.

Transparency is necessary for a properly functioning market. The GSMA supports equal application of transparency standards at all levels of the digital ecosystem and from all service, application and content providers. While policymakers should ensure the confidentiality of certain proprietary information, they should also ensure that consumers have the necessary information from all digital actors to help them decide.

6) Utilize competition law framework.

Given the lack of any evidence of market failure or market power, the government should rely on the ex post competition law framework to safeguard the open internet, rather than risking unintentional consequences to investment and innovation from restrictive ex ante regulation. All stakeholders must work together to “[e]nsure the functioning of competitive markets in network, content and applications by prohibiting and preventing practices that distort competitive markets.”¹⁹

C. Disruptions in service may be caused by a number of complex factors and it is difficult to detect the effects of TMP practices (Q7, Q10-12)

In its consultation paper, TRAI notes that few countries (e.g. USA, EU) have prohibited certain TMPs. While observing that the open internet regulations in these jurisdictions place obligations in relation to TMP over public internet access services, it is also important to recognise that the same regulations permit the use of reasonable TMP. A key consideration in this context is the assessment of reasonableness.

Even if an approach of ex ante prohibition of certain TMPs is envisaged, monitoring and detecting such practices is challenging. TRAI recognises these challenges when it notes that detection of QoS degradation is affected by QoS parameters for other services, the geographical location and the time of the day.

Empirical TMP detection mechanisms should be statistically precise, scalable to analyse large data sets and capable of reproducing the detection tests. The analysis should also consider not only the differences between network architectures, scheduling algorithms and packet routing paths between different entities, but also the interactions between different entities in the internet value chain, the numerous applications and the multitude of TMPs practiced in this broad digital ecosystem. Therefore, an effective TMP detection tool should be able to identify the instances of TMP along this complex chain of multiple entities and also avoid false detections in the analysis process.

¹⁹ *Id.*



Therefore, it is extremely difficult to practically assess the network performance attributes for the numerous applications, measure all these performance attributes along multiple points on the internet delivery chain and detect with precision TMPs that should be investigated further.

As concluded in a report (2015) for Ofcom, none of the currently available techniques or combination of tools meet the requirements for an effective TMP detection tool.

D. Transparency policies should ensure that consumers have sufficient information from all digital ecosystem actors in an accessible, easy-to-understand manner

The GSMA agrees with the TRAI that transparency is important to maximize consumer choice. As the TRAI rightly notes, TSPs already must provide consumers directly with “extensive information” related to price, commercial terms and value-added services.

The GSMA encourages the TRAI to apply its objectives in relation to transparency equally upon the entire internet value chain, including all providers of internet access services, applications and content. As the TRAI notes, “factors such as the browser or operating system being used can also determine the user’s experience.”²⁰

Models of transparency (Q8-9)

From among the options suggested by TRAI, the GSMA submits that disclosures provided directly to all consumers achieve the best outcomes.

We do not believe that mandating, as TRAI suggests, the submission of “more granular or technical information on TMPs to the Authority and other third parties who can aid in monitoring and presenting technical information in an understandable manner to users”²¹ will provide any added benefit for consumers. To require regular reporting of such granular details would be a significant regulatory burden without achieving beneficial outcomes that outweigh the costs. While the general nature of these practices may remain the same, the granular details would likely change on an ongoing basis as the technologies used, the challenges faced and the very network environment continuously change. This would only add complexity and confusion rather than help consumers to make better choices.

Therefore, the GSMA supports the TSPs in their disclosures directly to the public. Rather than confusing consumers with highly technical details, TSPs should offer easily accessible and easily consumable information directly to consumers. Such existing, direct transparency from the TSPs to consumers fully “ensure[s] that consumers have sufficient information in relation to the services being purchased at the time of signing a contract with the service provider.”²²

²⁰ *Id.* ¶ 4.1.6.

²¹ *Id.* at 44.

²² *Id.* ¶5.3.1.



Information disclosure template (Q9)

Disclosures should be easy to access and easy to understand for all consumers. The GSMA submits, though, that TSPs already provide adequate information on their websites and in other locations, both voluntarily and in compliance with regulations. To make more elaborate demands for disclosure regarding speeds experienced with each type of applications risks further complicating matters and confusing users, given the role of other factors such as applications and browsers in determining the online experience. Accordingly, the GSMA discourages the TRAI from requiring more elaborate information disclosures to explain a consumer's state of connectivity. Each user's experience will be different based on a multitude of factors. Consumers have access to numerous apps, including MySpeed app, to measure data throughputs.

The quality of service experienced by a consumer will depend on the applications, browsers and other programs used in each situation, and so the GSMA urges the TRAI to ensure that all digital actors act in a transparent way towards consumers, offering relevant information in easily accessed and in easily consumable formats for the average user, just as the TSPs do, so that users have a more complete understanding of all practices that may affect them.

Accordingly, the GSMA calls upon the TRAI to consult with all players from across the digital ecosystem to encourage adequate transparency from all digital service providers for the education of consumers, providing them with the full context of their experience.

E. Policy approach should focus on the use of existing ex post competition enforcement mechanisms and reliance on collaborations with stakeholders to monitor the developing ecosystem

The GSMA supports the primary Digital India goal of securing universal access to the internet for all Indians. The TRAI's and the DoT's primary mission, as set out by the government, should be the pursuit of expanding the reach of mobile broadband networks and increasing the rate of adoption. To this end, policies must support a market environment conducive to investment and innovation, requiring regulation be applied only when absolutely necessary and in a technology-neutral manner across all digital ecosystem actors.

Effective policy mechanism for the open internet: Ex post framework (Q10, Q12-14)

The Indian mobile market is competitive, with multiple operators offering consumers innovative services through varied packages. In the face of such a high level of competition, no TSP may even attempt to act as a gatekeeper to content and services without facing high customer attrition rates. As such, TSPs already have enormous incentives to offer customers complete access to content and applications they desire. Such market forces, not ex ante regulations, secure the internet's status as a platform for limitless growth, innovation and participation.

What's more, India's existing competition legal and regulatory framework already provides the government with the authority to safeguard the market against any anti-competitive practices. India's Competition Act 2002 creates comprehensive rules that may prevent any types of harm to consumers either now feared or which may arise in the future, without need for constant adaptation dependent



on evolving circumstances. The Act prohibits any agreement or combination that “causes or is likely to cause an appreciable adverse effect on competition within India,”²³ with the Competition Commission taking into account how any such agreement might create a barrier to new entrants to the market, drive other competitors out of the market, foreclose competition by making entry to difficult, affect the production or distribution of goods or provision of services, promote developments by means of production, distribution or provision and, importantly accrue benefits to consumers.²⁴

Ex ante regulation should be reserved for circumstances in which market failure has been found and ex post rules have not adequately addressed it. In this case, no evidence has been presented that TSPs hold market power, much less of market failure, and, even should such an event occur, the existing ex post competition legal and regulatory framework is well equipped to address the issue. Rather, policymakers should promote transparency in service providers’ TMPs and other practices in order to encourage greater competition by further enhancing consumer choice. Accordingly, ex ante rules are not needed to preserve the open internet.

SUMMARY:

The issues addressed by this consultation document are complex. Accordingly, the GSMA appreciates the measured approach adopted by the TRAI in asking thoughtful questions.

The GSMA also urges TRAI to consider the various aspects of this debate - including policy objectives on technical flexibility, commercial freedom of business models and incentives for broadband investment – in arriving at its recommendations. As part of this deliberation, TRAI should also review the restrictions it placed on the use of differential pricing by TSPs.

The questions posed by the TRAI in these consultations and some regulatory determinations made in the past two years on those matters have sought to set the operational infrastructure for a policy which is yet to be framed. We recommend that these issues should be dealt separately in detail only after policy framework is in place. A new policy framework that is fit for the changed and broader digital landscape is required. This policy framework should be based on applying consistent principles across the digital ecosystem. Firstly, regulations should be based on functionality, not the type of company or technology that delivers them. Secondly, measurable, performance-based approaches should be favoured over prescriptive regulations, promoting market dynamism and delivering increasing benefits to consumers. Finally, policymakers should take a fresh look at legacy rules and discard those that are no longer relevant, applying a consistent set of criteria throughout the ecosystem.

The GSMA urges the TRAI to rely on a principles-based approach to the open internet, relying on an ex post framework rather than overly burdensome ex ante regulation, utilizing existing competition laws and rules to avoid anti-competitive behavior, promoting transparency and treating all providers of similar services equally.

²³ See Competition Act §§ 3, 5.

²⁴ Competition Act ¶19(3).



The TRAI and the government already have the tools at their disposal to achieve their stated goals of ensuring transparency, promoting consumer choice and preventing discrimination. No further action is needed at this time.

The GSMA appreciates the opportunity to offer its views on open internet principles and the policy approach.

For further information, please contact:

Dr Mani Manimohan, Senior Director of Public Policy, GSMA; mmanimohan@gsma.com

Nitin Sapra, Spectrum and Policy Manager, GSMA India; nsapra@gsma.com

H. David Darwin, Policy Advisor, ddarwin@gsma.com
