

NET NEUTRALITY- A LEGAL AND ECONOMIC ANALYSIS

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INTRODUCTION

Net Neutrality is a principle of non-discrimination in the sense that all communications should be treated equally irrespective of content, application, service and sites. It also puts at rest all differentiation or discrimination with respect to speed, access and price over the internet. Net Neutrality, a term coined by Professor Tim Wu, has emerged as a network design principle. According to him, “the idea is that a maximally useful public information network aspires to treat all content, sites and platforms equally, which allows the network to carry every form of information and support every kind of application”.¹ This principle is synonymous to “equal and non-discriminatory access.” Thus, a practice is discriminatory when it restricts the users’ freedom to access through barring of speed, content, price or any other important element and creates a non-level playing field in the market. In this sense, net neutrality implies that providers of the internet charge the consumers once for internet access and then the consumer is free to access all types of content without any kind of discrimination or prioritization of a particular content. Thus, net neutrality is associated with absence of price discrimination both for suppliers of content and for the end consumers and creation of a tier-less market ensuring absence of favoritism towards or bias against a content provider.

The polarizing debate over net neutrality raises a fundamental question - Why discuss net neutrality? Firstly, net neutrality affects people directly. One’s dependence over the internet has increased tremendously and it has begun to dominate ones’ daily lives. The internet would continue providing value to the users in the future if it can protect user choice and freedom of access. Secondly, anti-net neutrality proponents believe such neutrality is becoming difficult to sustain with the changing technology, increasing internet traffic and growing dependence and dominance of the internet. And therefore, net neutrality need not be bothered about. Thirdly, there are accusations of potential abuse of market by the limited number of service

¹ Tim Wu “Network Neutrality FAQ”, available at http://www.timwu.org/network_neutrality.html

providers which could result in “gatekeeping” function by the providers of the internet. Thus, all these factors collectively compel a nuanced debate on net neutrality.

PROS & CONS

Advocates of net neutrality believe that content providers, especially small players owe their growth and success to an open and free internet. Small players have established themselves due to the non-discriminatory nature of the internet, low entry barriers and modest resources. Small players wouldn't have become tycoons without net neutrality. Facebook is an apt example.

Freedom of choice and independence provided to the consumer over the internet are crucial to their popularity and success of such small players. Moreover, the internet is meritocratic – success depends on the quality of service or product offered and not on deal-making capacity. Net neutrality, they contend, maintains meritocratic nature of the internet. It drives competition and enables the consumer to choose any website, content and application that suits him best at the same price. It is reasoned that absence of merit would significantly impact consumer decisions and control market functioning at the fate of such “bilateral agreements” between internet service providers and their chosen content providers.

They further argue that departure from principles of net neutrality would pose a danger of fragmentation of the internet. It could result in service providers “competing” for content, by charging different fees and bargaining on exclusive agreements with content providers.² Therefore, availability of a particular content over the internet would depend on the bilateral agreement between content provider and service provider. Proponents of a neutral internet imagine a situation where big web companies who manage to strike a deal with the ISPs would be given a “faster” access while the relatively smaller companies or startups would be accessed “slowly”. This could impact consumer choice by luring or unknowingly pushing him to such faster or limited content.

The concept of net neutrality is centered on ideas of fairness, equality and non-discrimination which have driven the growth of the internet. Lack of “exclusive agreements” make it easy for

² Robin S. Lee and Tim Wu, *Subsidizing Creativity through Network Design: Zero-Pricing and Net Neutrality*, Vol. 23, No. 3, *Journal of Economic Perspectives*, (2009)

entrepreneurs to enter and innovate. It has been contended that anti-neutrality makes the market less attractive for new players to enter and survive. Such privileged treatment is argued to also risk innovate new content due to the inability of such players to enter into contracts. Would a new Facebook or Amazon be able to make headway where competition is driven by privileged connections? By maintaining neutrality, startups can compete on a level playing field over the internet thereby making competition based only on merit of innovation and entrepreneurship.

Another issue of vertical division and debate is “termination fees”³ Advocates for charging of “termination fees” to the content providers argue that such fees act as an incentive for the service providers to upgrade existing infrastructure. On the other hand, charging termination fees has been criticized on the ground that instead of sparking last mile innovation it provides an incentive to the provider to maintain a level of scarcity and maximize gatekeeper revenue.⁴ Moreover, it is unclear whether such additional revenue in the pockets of the ISPs would actually be utilized for up gradation of existing infrastructure. However, the question raised about termination fees charged to content providers will be used for up gradation of infrastructure can be answered by bringing in disclosure guidelines on the final usage of termination fees. Supporters of “termination fees” also fear that imposition of strict net neutrality would handicap the service providers to charge the content providers thereby shifting the burden on the subscribers. In turn, this could disincentivize the content providers with lower penetration and inflict higher prices to subscribers.

Opponents of net neutrality also believe that such rules not only limit the operators’ opportunity to innovate new business models and network management practices but also limits possibilities of realizing revenue through new models of business and management. This would disincentivize network operators to make further investments in higher capacity broadband and could also negatively impact consumer welfare by reducing the geographic spread of broadband access networks, decreasing backbone capacity, increasing congestion and diminishing service quality, reducing the number of service providers in a given geographic area, and raising prices.

Another argument put forward by the ISPs for charging such termination fees to the content providers is that absence of termination fee would increase web usage and congest the internet.

³ A fee charged by internet service providers on application or content providers to access its consumer base.

⁴ *Supra* note 2

Watching videos on the internet also creates difficulties of increased and congested traffic and bandwidth consumption. Hence, the operators believe they should be free to devise business models and strategies to address such concerns. Content providers counter such arguments by stating that they are already forced to take into account the costs of bandwidth usage in the form of usage and access fee to the internet service provider.⁵ Furthermore, internet service providers can, and in certain circumstances do, charge end-users for the amount of bandwidth used regardless of what content is consumed; thus, content providers that utilize massive amounts of bandwidth will also face and internalize lower demand by consumers.⁶

Opponents of net neutrality also contend that the mandate of treating everyone alike and not allowing any form of discrimination would deter competition and new investment. By imposing neutrality, the operator is unable to positively differentiate himself from his competitor and thereby is less attracted to make further investment. Similarly, innovation is accelerated when innovators or application providers can respond to price signals by the operators.

The issue of net neutrality also involves the discussion of the government's goal of accelerating digital inclusion and penetration of the internet. Operators contend that policies such as zero rating, where certain websites or applications are accessed free of any charge to the consumer, are motivated towards creating a digitally connected economy. They argue that greater broadband access would connect the unconnected and providing free internet would attract non-users. One of the objectives of the New Telecom Policy 2012 is to recognize telecom, including broadband connectivity as a basic necessity like education and health and work towards 'Right to Broadband.'⁷ Greater broadband access has the power to augment productivity of the agricultural sector as well as small enterprises, facilitate easier and more efficient participation of the rural population in governance, generate new employment opportunities, and enable a host of services like e-commerce, e-learning, e-banking etc.⁸ Rural

⁵ *Supra* note 2

⁶ *Ibid*

⁷ National Telecom Policy 2012, available at http://dot.gov.in/sites/default/files/NTP-06.06.2012-final_0.pdf

⁸ Telecom Regulatory Authority of India, *Recommendations on Encouraging Data Usage in Rural Areas through Provision of Free Data*, 2016, available at http://www.trai.gov.in/sites/default/files/Recommendations_19122016.pdf

penetration of the internet has become an emerging need for economic growth as a number of services, including Government services are being delivered over the internet.

The real question is- is it correct to provide minimal or limited access to the internet to poor and vulnerable as a means to promote digital inclusion at the cost of neutrality of the internet? Operators argue that an obligation to maintain strict neutrality is not only against their interest but also against the interest of the user. Zero rating policies provide access to some aspects of the internet to sections of society who have no means to use the internet at all. Although the contention of providing some access rather than none at all is difficult to refute, however, such policies constraint consumer choice. By luring him to free content, the consumer has no voice and choice in what should be zero rated and what should not. Essentially the consumer would be digitally included in technical sense but democratically excluded in free voice and choice sense.

Advocacy for zero rated plans by telecom operators are looked at promoting a business strategy. Most definitely, free content attracts a user but it also expands the consumer base of the content provider. Since zero rating applications are not counted under the monthly internet usage plan, the telecom operators would only make money if the user accesses sites outside the “walled garden.” Would customers still be willing to access services outside this “walled garden”? How many subscribers would actually become paying customers? This raises questions on sustainability of providing free content on the internet. If the users are willing to pay for internet despite limited content being available for free, the effect of such zero-rated schemes would not be adverse.

Looking at zero rated plans from a consumer’s perspective, such plans may seem logical. Suggestions have been made to ensure that the content/application offered free of cost should be driven by the consumer and market demand, thereby making it difficult for telecom operators to act unfairly. Therefore, decisions of offering zero rated plans would not be based on deal making but on popularity of the content and demands of consumer voice and choice. However, such a stance would result in certain already popular content gaining significantly higher customer base in comparison to its competitors. Would that necessarily be a harm to the competition? Future research can answer this question.

The web provides a variety of usages that differ in their capacity of bandwidth consumed. Simple web browsing and email do not use high capacity bandwidth while services such as video streaming, video downloading, video chat and voiceover internet protocol (VOIP) are bandwidth intensive and sensitive to delay. Although such services greatly enhance consumer benefit and value of the internet, telecom providers contend that such sites and applications should pay up as they are responsible for increased bandwidth usage and traffic over the internet. Some proponents of net neutrality are not against “consumer tiering” of service.⁹ This implies that the user could purchase high speed for video content as long as the choice remains open to any video provider.¹⁰

Telecom operators claim that they feel burdened with the stiff competition from Over-the-Top (OTT) applications such as Skype and Whatsapp which provide voice, message and video services over the internet. Such application providers reach the customers directly by riding on the operators’ networks and are not subject to stringent regulations and licensing requirements. But operators realize revenue through increased data used to access these applications. Not only do such services utilize the infrastructure of the network provider, they also act as a means of greater revenue for telecom operators and compete with the traditional services provided by the operator. Increased demand for such applications leads to more internet traffic and congestion which requires operators to make investments for infrastructure up gradation. However, the question is- are operators really in a pity situation? Consumers, on the other hand, support such OTT applications as they pay for their monthly data to the TSPs and get innovative, free and low-cost services. In true sense, there is no free ride. Merely because such applications are inventive and creative in their approach of providing services to the consumer, they should not be considered predators to the telecom service providers.

LEGAL AND ECONOMIC ANALYSIS

While arguing for such strict neutrality the larger questions need to be addressed is- What promotes competition? Is net neutrality a consumer welfare policy? The focus needs to be

⁹ Barbara van Schewick, *Network Neutrality and Quality of Service: What a Non-Discrimination Rule Should Look Like*, Vol. 67, Issue 1, Stanford Law Review, (2015)

¹⁰ *Ibid*

shifted from arguing for net neutrality based on ideologies of fairness, equality and free voice and choice to understanding it as a principle having economic and legal implications also.

The huge spurt of growth of the telecom sector at a global level since the 1980s has resulted not merely in advancements of technology, but also in large part in the de-monopolization and deregulation of the telecom sector.¹¹ In India, the telecom sector is not monopolistic in nature. Rather, it is oligopolistic. The transition of the telecom sector to a competitive market was made by The National Telecom Policy of 1994 and the New Telecom Policy of 1999. The argument of intent of abuse of market by the service provider does not hold strong ground. Unlike a monopoly, where the consumer lacks substitutes of the product/service being offered, oligopolistic nature of the market makes such operators replaceable. They face stiff competition from each other based on price differentiation and customer service. While the significance of having an open and competitive internet that promotes innovation is a need for all countries but the form of regulation required differs with the nature of market, competition, technology and other factors. Therefore, in the context of India the question of such operators acting as a “gatekeeper” does not have much significance. The competition prevalent in the market is real and ever growing and does not give them the power to create a “walled garden”. Operators would be barred from indulging in any form of arbitrary discrimination by constraints of competition and consumer preference. Another factor that promotes competition and protects the consumer is the switching option or portability available to the subscriber. In India, switching from one mobile provider to another, though initiated 15 years into the telecom revolution, is almost as easy as buying a new SIM card.¹² Also, even if it is conceded that there is potential for the TSPs to act arbitrarily, there is no need of over-regulation as competition laws would take their own course.

Price discrimination is a well-established legal and economic concept. As a general practice, price discrimination is prevalent across different sectors. We encounter differential pricing for water, electricity and transport which are in vogue for many years. Moreover, it has been upheld by courts.¹³ Under section 11(2) of the TRAI Act, differential pricing has been

¹¹ R.U.S. Prasad, *The Impact of Policy and Regulatory Decisions on Telecom Growth in India*, Stanford Center for International Development, 2008

¹² *Mobile number portability launched by PM*, India Today, Jan 2011, available <http://indiatoday.intoday.in/story/pm-launches-nationwide-mobile-number-portability/1/127176.html>

¹³ *Coimbatore Stock Exchange Ltd & Ors v/s. Tamil Nadu Electricity Regulatory Commission & Ors*, 2013(6)SCALE408 ; *Rohtras Industries Ltd & Ors v/s. Chairman, Bihar State Electricity Board & Ors*,

recognized and permits the regulator or operator to levy different rates for different class of persons. Moreover under competition law, vertical agreements between enterprises or persons on different levels of the supply chain are not void per se.¹⁴ For them to be declared illegal, it has to be proved that such agreements cause an appreciable adverse impact on competition. Whether an agreement causes an appreciable adverse impact on competition is to be judged on factors such as- creation of barrier to new entrants, driving existing competitors out of the market, foreclosure of competition etc.¹⁵

Anti-net neutrality advocates believe that vertical agreements need not necessarily reduce the value of the internet and therefore, should not be feared. They also contend that vertical integration can play a vital role in ensuring the development of a more robust broadband marketplace and offer consumers a wider array of service options.¹⁶

Currently we follow an “all-you-can-eat” or “buffet” approach with regard to the usage of the internet. The consumer is charged for monthly data, and the internet does not distinguish between the content, application or site he accesses. However, anti-net neutrality proponents raise question on such blanket ban on differentiation. They argue that all forms of price discrimination are not illegal and unethical. Rather, a distinction needs to be made on discrimination that could promote consumer welfare and competition as opposed to one that doesn't. To achieve this, there must be consensus and intervention to clearly define the term “discrimination”. Discrimination can be justified as long as it does not harm user's choice and openness. They further contend that merely because the broadband operator is unable to internalize costs is not a good enough reason to allow discrimination.¹⁷

Indulging in predatory pricing is anti-competitive in nature only if the producer is already dominant. In the recent case, the Competition Commission held that Reliance Jio does not occupy a dominant position and hence claims for predatory pricing hold no ground.¹⁸ The

1984(1)SCALE465; Association of Hospitals v. Maharashtra Electricity Regulatory Commission, 2011ELR(APTEL)1612 ; Association of Industrial Electricity User v. State of AP & Ors, (2002)3SCC711

¹⁴ Competition Act 2002, Section 2

¹⁵ Competition Act 2002, Section 19(3)

¹⁶ Adam Thierer, *Are “Dumb Pipe” Mandates Smart Public Policy? Vertical Integration, Net Neutrality and the Network Layers Model*, 2004

¹⁷ Tim Wu, *Network Neutrality, Broadband Discrimination*, 2005

¹⁸ “Competition Commission shoots down Airtel's allegations against Reliance Jio over predatory pricing”, The Times of India, June 9 2017, available at <http://timesofindia.indiatimes.com/business/india->

determination of whether discrimination distorts market competition thereby creating a non-level field in the market needs to be answered based on legal and economic principles. Discrimination would be unfair if it harms rivals in the market unreasonably and illegitimately but not if it is intended to promote greater access or enhance consumer welfare. Therefore, an operator charging an over-the-top (OTT) application such as Whatsapp to reach its consumer base or provide faster speed would not be legitimate as it constitutes a different layer. Similarly, charging a higher cost for providing higher quality of service does not necessarily amount to price discrimination as the differentiating factor is not provision of content but the experience of a higher quality being offered.

It cannot be disputed that anti-net neutrality could pose a threat to small content providers and startups in the future. Net neutrality is advocated to bring both big and small players at the same level competing with each other primarily through content. Exclusive agreements could cause two problems- one for the content provider who is restricted from accessing all customers and the other for the consumer by attracting him towards faster/free content or limiting his voice and choice by practices such as blocking. Moreover, the threat of exclusive agreements between the operator and content provider could see a converse situation where the big tech companies such as Facebook, Amazon etc. dominate to make their content/service available to the operator. Creating such a tiered structure based on bilateral agreements could potentially lead to a negative impact on the diversity and creativity of content available by discouraging small players to enter. However, the mandate of net neutrality to bring all players at the same level competing with each other solely on the basis of content is an ideal situation. In reality, perfect competition does not exist in any market. Bargaining and exclusivity exist in various other competitive markets as well. The question at hand is whether online markets should be treated differently? The answer to this lies in enforcement by antitrust laws. The need for imposition of net neutrality regulation should not come from the need to protect a potential “have-not.” Rather, the determining factors to judge whether a vertical agreement is anti-competitive should be based on impact on competition, capacity to influence the market and market power to create a monopolizing effect. Merely because practices such as price discrimination and vertical integration are looked upon with suspicion and have low social acceptance is not good enough reason to impose a blanket ban on them. The term “harm to

business/competition-commission-shoots-down-airtels-allegations-against-reliance-jio-over-predatory-pricing/articleshow/59074253.cms

competition” is not to be given a wide interpretation encompassing ethics and fairness but it should be judged on legal and economic basis as argued previously.

Zero rating is also a form of price discrimination as it offers certain chosen content for free to the consumer. The question whether access (although limited) is more important or adherence to ideals of net neutrality is a complex and debatable one. Zero rated plans are beneficial for all three stakeholders- the consumer, content provider and operator. However, a blanket ban on zero-rating may not be ideal. Not all forms of zero rating are anti-competitive. Ensuring transparency to join a zero rated platform is a means to prevent big players dominating the internet and protect the new or relatively smaller content providers. As long as these policies are non-exclusive and transparent, they may operate as a form of positive price discrimination. For example, content providers should be able to make agreements with multiple operators. Moreover, such zero rated schemes may not actually be threatening due to their lack of long term sustainability.

Another objective associated with zero rated plans is to promote digital inclusion. But relying solely on zero rated plans to promote digital inclusion is unreasonable. Not only would it require establishing regulations but would also be illogical in a country like India where the majority of the population are not English speakers and readers. Therefore, policies such as free video and voice service, internet coupon schemes, free monthly data without favoring a particular content provider should be explored. The government through its Universal Service Obligation Fund can fulfill its mandate of creating a “Digital India.”

EX-ANTE VS. EX-POST REGULATION

Another diverging debate with regard to net neutrality is -What kind of regulation is required to address the emerging issues? For some, the discrepancy between the private and public interest makes a strong case for ex-ante or prior regulation. Proponents of net neutrality advocate for prior regulatory intervention to bring much needed certainty which case-by case approach would bring over the course of many years. Ex ante regulation is endorsed not only to bring quick clarity but also maintain stability in the market for network investment. This is because case by case approaches create high costs of adjudication, discovery into facts, severe interpretation of rules and precedents which need not be binding. Moreover, every case

judgment is based on the specific circumstances of that case which might not fit the issues in another case.

TRAI issued the “Prohibition of Discriminatory Tariffs for Data Services Regulations 2016” under which it prohibits service providers to offer or charge discriminatory tariffs for data services on the basis of content being accessed by customer.¹⁹ Net neutrality proponents welcome the regulation as it has not only provided much needed certainty of rules but also saves new players and small businesses who do not have the time and resources to engage in long and costly proceedings before regulators to defend themselves against harmful forms of zero rating.²⁰

The other approach suggested is that of ex post regulation where intervention is made only when circumstances arise. Anti-net neutrality players desire that the market and external factors should regulate themselves rather than bringing excessive regulation. Instead of prior regulation, they suggest a case by case approach which springs in action as and when discrimination poses a threat to competition. For them, competition laws or a limited form of regulation is best suited to deal with the issues. This idea rests on the premise of the success of an unregulated internet which has radically transformed our society. Such form of ex post regulation would ensure market experimentation and flexibility, they claim.

Understanding the developments of net neutrality debate in the US provides insight to what the future in India could see. Broadband classification under the Open Internet Order was governed by Title II. Such classification regulates broadband more comprehensively. Ajit Pai, Chairman FCC had proposed that such classification of broadband into “telecommunication service” be reversed. He describes treating broadband as a telecom service as “a radical departure from the bipartisan, market-oriented policies that have served us so well for the last decades.”²¹ He further argues that classification under Title II would lead to higher broadband prices, less broadband deployment and less innovative experimentation in services and choice for consumers. The FCC on 14th December, 2017 scraped the so called net neutrality regulations

¹⁹ Telecom Regulatory Authority of India, '*Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016*', available at http://www.trai.gov.in/sites/default/files/Press_Release_No_13_28_08-02-2016.pdf

²⁰ *Supra* note 9

²¹ Chloe Albanesius, *Senate Democrats to FCC: Hands Off Net Neutrality*, PCMagazine, Feb 2017, available at <http://in.pcmag.com/internet/112404/news/senate-democrats-to-fcc-hands-off-net-neutrality>

imposed in 2015 under the Obama Administration. Although rolling back of such classification enables business experimentation, it is feared that it may see potential exploitation of this new found freedom by providers of the internet. Proponents of such reversal believe that Title II is an extreme path which could deter investment and discourage innovation and experimentation.

Taking into consideration the two proposals put forth, a sweeping statement that prior regulation is the only means to ensure consumer welfare is flawed. The ever changing market circumstances and nature of technology industry bring with them unpredictability. The regulators are not in a position to comprehensively determine what practices would be best suited for the consumer in the future. Undertaking prior regulation would disable operators from acting according to changing market circumstances and technology thereby causing harm to investment, innovation and consumer welfare. The complex issues and sub-issues involved in the debate of net neutrality is another reason which makes ex ante regulation unsuitable.

Absence of net neutrality in today's world may not be as constraining as it has been made out by advocates of an "open and free internet." On the contrary, consumers would be protected from hurtful discrimination not only by market forces but also by antitrust. Competition laws would prohibit operators abusing their market power to ban rival content and abuse their position. Were an ISP to degrade one form of desired content in favor of another without providing a concomitant benefit, then it would experience fierce reprisals from its customers.²² Therefore, there may not be any real harm to the consumers and content providers by allowing differential pricing as they would be protected by antitrust laws.

Net Neutrality is essentially a nuanced issue of price discrimination, competition and consumer welfare. To get more clarity on the issues concerning it, a transition needs to be made from regulation through sectoral regulators like the TRAI to an institutional body like the Competition Commission which would be better suited to deal with concerns of price discrimination. Such a shift would be more appropriate as the Competition Commission of India is well versed with anti-competitive concerns. It would determine questions involved and pass directives on principles of law and economics rather than on ideals of fairness and equality. Moreover, a universal institutional regulator such as the Competition Commission of India

²² Hon. Maureen K. Ohlhausen, *Antitrust Over Net Neutrality: Why We Should Take Competition in Broadband Seriously*, Colorado Technology Law Journal, Jan 2017

would be free from any biases and pre conceived notions. Another alternative could be that the TRAI could also receive suggestions and recommendations from the Competition Commission of India before making regulations.

However, there can be no denying that some form of regulation and consensus on prohibited practices is required to address the issue given the increasing volume of traffic and dependency over internet. As already argued, all forms of discrimination are not illegitimate, it needs to be determined what form of discrimination may or may not be permissible. Some form of broad guidelines should be put in place to bring in a framework for certainty. Uncertainty brings in insecurity and apprehension for various stakeholders. It may reduce incentives to innovate, reduce investment and limit the evolution of the network infrastructure²³ However, the biggest challenge is to ensure a balance of regulation. Over regulation is as harmful as under regulation.

An ex ante regulation seems appropriate to lay down the fundamental issues in question. Although clarity regarding what can be permitted and what cannot is essential to ensure investment and openness of the internet, over regulation threatens the very essence of business experimentation and causes long term harm to consumer welfare. All forms of discrimination are not illegitimate however, general guidelines should be laid down while ex-post regulation should be adopted to address peculiar cases as and when circumstances arise. Moreover, rather than emphasizing on prior regulation, the emphasis should be laid on creating transparency and disclosure.

CONCLUSION

Establishing a clear perspective on net neutrality is an arduous task. This is because the term “net neutrality” is relatively new and vague. It not only lacks a clear and uniform definition but also consensus on the issues involved. Proponents of strict net neutrality associate net neutrality with ideals of equality, freedom of expression and democracy over internet. On the other side, opponents of net neutrality believe that strict net neutrality is against established principles of economics and law.

²³ *Supra* note 10

Justifying the need for a neutral internet is imperative, however, the concerns of the telecom operators and other stakeholders should not be brushed aside. Strict interpretation of net neutrality may not benefit anyone, even the consumer. It could cause reduced investments or increased prices for internet access.²⁴ A distinction needs to be made between “denial of access” and differential access”. Differential access need not necessarily be opposed to net neutrality principles and may not necessarily harm the user. All forms of discrimination cannot be termed illegal or harmful. The same needs to be addressed through competition laws and detailed analysis. The debate over net neutrality is a tradeoff. On one hand, public interest of inclusion, increased investments, cogent business strategies and legitimate price discrimination needs to be dealt carefully while on the other hand user choice, free voice, small players and inherent openness of the internet should be handled with a kids glove. Some kind of middle path depending on the geography, culture and economic development needs to be achieved. Determining the impact of price discrimination lies at the core of antitrust enforcement and net neutrality should be regulated through principles of competition laws. For let’s not forget that the end goal is to enhance consumer welfare, promote competition and enable innovation.

²⁴ Jan Krämera, Lukas Wiewiorraa, Christof Weinhardta, *Net Neutrality: A Progress Report*, Telecommunications Policy, 2013