

## A telco double dip attempt that threatens Net neutrality

In July this year, the Telecom Regulatory Authority of India (TRAI), at the request of the government, invited a comprehensive consultation on the need and possible mechanisms for regulation of Over-The-Top (OTT) services. It seems to have stirred up a hornet's nest.

For more than a decade now, telecom companies have seen revenue from traditional streams such as voice calls and Short Message Service (SMS) come under pressure, as competing OTT services are often free. At the same time, they have had to invest heavily in upgrading their infrastructure to handle increased data traffic, without necessarily seeing an equivalent rise in revenue. It is also their lament that OTT services are not subject to the same level of taxation and licensing fees, leading to an uneven playing field.

On the flip side, the use of OTT services has led to a surge in data consumption, which is a growing revenue stream for telecom companies.

### Flawed argument that affects net neutrality

The OTT consultation has renewed the clamour from the telecom companies that content providers such as Netflix, Amazon Prime, and Disney+ Hotstar be asked to share in the costs of bandwidth. They argue that streaming platforms are free riders, benefiting from the infrastructure built and maintained by the telecom companies. However, this argument is fundamentally flawed and sets a dangerous precedent that undermines the principle of net neutrality.

Telecom companies do not own the Internet; rather, they provide access to it. Consumers pay the telcos for access services by purchasing data plans.

By offering services that consumers desire, OTT platforms generate demand for Internet access. They also pay for the content delivery networks (CDNs) to create pathways that substantially augment the capacity of the internet to deliver their content.

Telecom companies capitalize on this demand (and the availability of OTT content) by providing connectivity to the Internet and charging subscribers for it. If they fail to cover costs, telecom companies are at liberty to increase their prices, which should go towards maintaining and upgrading their infrastructure.

One of the requirements for the operation of a fair market is that the costs and benefits of a transaction are fully accounted for in the exchange price. Therefore, any attempt to seek cross-subsidies instead of fully accounting for the costs could warrant scrutiny from the Competition Commission.



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Upholding the principles of net neutrality is essential to foster a conducive environment for innovation, competition, and consumer welfare, especially in India

OTT services compete in their own market on the basis of variety and quality of content, the quality of streaming (such as, support for HD or better resolution or 5.1 surround sound), ease in navigation and discovery of content, and its availability on multiple devices. The consumers pay the price for these benefits as compared to the alternatives.

Similarly, in the marketplace for Internet access, the consumers are free to choose the provider that offers them the highest bandwidth, data volume, and reliability at an affordable price.

These are distinct markets because services from one are not substitutable for services in the other. Therefore, it is logical to maintain a separation of costs between these two markets.

The attempt of telcos to double dip by charging both consumers and content providers is not only avaricious but also undermines net neutrality, as stated above. To better comprehend the fallacy in telcos' demand, let us employ an analogy.

Imagine a toll plaza where specific brands or models of vehicles are charged an additional tax, directly payable by the manufacturers, because they make "popular vehicles that tend to cause congestion". If owners of all vehicles pay the regular toll, the more popular vehicles as a category contribute a proportionally higher amount. There is no need for their manufacturers to contribute extra. On the other hand, an additional toll directly collected from the manufacturers would push up the price of popular cars for their buyers, making them less attractive.

Likewise, if OTT platforms were to acquiesce to the demands of the telcos, the incurred costs would trickle down to subscribers, either through increased subscription fees or degraded service quality for those platforms unwilling or unable to pay the toll. This outcome can only be detrimental to consumers who have come to rely on OTT services for entertainment, education, and professional pursuits.

### The principle

Net neutrality is the principle that Internet access providers must treat all traffic originating from and terminating to the Internet in the same way. The idea has been developed over time, but its modern articulation may be largely credited to Columbia Law School professor Tim Wu, who coined the term "net neutrality" in a 2003 paper titled "Network Neutrality, Broadband Discrimination." Here, Wu proposed the concept of net neutrality to promote an even playing field on the Internet, ensuring that all data is treated

equally without discrimination by Internet service providers (ISPs).

Net neutrality draws from earlier notions and principles concerning common carriage, which posit that service to all customers must be provided on a non-discriminatory basis. The application of these principles to the modern Internet, with its unique technical and economic characteristics, required fresh legal and policy analysis, which Wu and others provided.

This principle that has been examined by economists (from the perspective of market competition, consumer welfare, and innovation); by legal experts (for the regulatory frameworks that govern net neutrality, and how these laws impact the rights and obligations of Internet service providers, content providers, and consumers); computer scientists and engineers (for detection and enforcement mechanisms that are technology based); and other policy analysts on how it affects different social groups, their political expression, and how it impacts fairness, justice, and equality.

### Basis of TRAI regulation

Net neutrality formed the basis of TRAI's regulation on prohibition of discriminatory tariffs for data services brought out on February 8, 2016. The regulator's action forced the withdrawal of Facebook's Free Basics platform and some other offerings in India. Later, on November 28, 2017, TRAI released its comprehensive recommendations, which have largely guided the adoption of this principle in India.

These steps taken by TRAI were noted elsewhere in the world. The Body of European Regulators for Electronic Communications (BEREC) and TRAI adopted a Joint Statement for an Open Internet on June 14, 2018, later reaffirmed in 2020. The two organisations agreed through this memorandum of understanding to cooperate in developing technological and policy initiatives for net neutrality. Many other countries have also adopted net neutrality, thereafter.

It is imperative for all stakeholders, including policymakers, to recognise the long-term ramifications of acquiescing to the short-sighted demands of telecom companies. Upholding the principles of net neutrality is not merely about preserving the ethos of an open Internet but is also intrinsic to fostering a conducive environment for innovation, competition, and consumer welfare, especially countries such as India where the Internet is going to be the carrier of all Digital Public Infrastructure (DPI).

*The views expressed are personal*

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## *The cult of operational superiority, from Israel to India*

Israel's prevailing security policy has collapsed. For decades it projected a mirage of ruthless sophistication, as it repeatedly and confidently cut its Palestinian enemies down to size. But the unspeakable horrors of October 7, 2023 have prompted a visceral retaliation in Gaza, that brings still-unknown risks of escalation on other fronts, and the unprecedented suffering of innocent civilians that will ricochet through generations. The catastrophe should prompt a fundamental rethink of Israel's strategic concepts – and carries dire warnings for India, too.

### **Managing rather than solving**

Every couple of years, starting in 2008, Israel launched limited air campaigns into Gaza, to degrade the military capabilities – from rocket launchers to tunnels – of Hamas and other militants. Every couple of years, it would kill and destroy just enough of Hamas's people and power to keep the rockets silenced, and the threat contained. A tenuous peace would return to the skies over Israel. This strategic "concept" based on periodic attrition seemed to work. But in fact Israel's military virtuosity masked the reality that its approach was bereft of a political plan.

Israel was managing, not seeking to solve, the problem of Palestinian resistance, from which its terrorist enemies sprouted.

In parallel with the routine military campaigns, the government of Israel Prime Minister Benjamin Netanyahu abandoned the two-state solution and actively undermined it. His cynical ploy was to sabotage politics, by strengthening extremists such as Hamas at the expense of more credible and popular Palestinian forces, especially the Palestinian Authority (PA) that nominally ran the West Bank. Mr. Netanyahu sought to keep the Palestinians hopelessly divided, the PA weak, and to thereby stall the political process for addressing the Israel-Palestine dispute. And he succeeded.

Managing a strategic threat through purely military means can work – until the adversary finds a way in. Israel's strategic concept of periodic attrition only ever addressed Palestinian groups' capabilities, never their political intent. It was based on an assumption of unassailable



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Managing a  
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as Tel Aviv has  
learnt and New  
Delhi must note

Israeli power – a belief that operational superiority alone can deliver strategic effects.

Indeed Israel's operational superiority does provide something of a guarantee – Hamas poses no existential threat to Israel. But short of that, as Hamas showed on October 7, a weaker and highly resolved enemy can still inflict untold physical harm, let alone massive national dislocation. Relying on a cult of operational superiority, while ignoring the problem's political roots, invites the adversary to hold fast to its unshakeable beliefs, cling to violence as the only mode of politics, and to keep trying until it finally lands a meaningful blow.

This should sound familiar to Indian ears.

### **India's handling of Pakistan**

For almost a decade, aside from some initial feelers, the Narendra Modi government has treated Pakistan as little more than an irritant to an unstopably rising India. In defence matters, this has included some commendable efforts. Facing a more urgent threat on the China border, in 2021 India resuscitated the Line of Control ceasefire, and it re-tasked a dedicated Pakistan-facing Strike Corps to the China border. More could be done to right-size the military's focus on Pakistan, which, for decades, has been a sink of resources and military attention.

But India was also seduced by the cult of operational superiority. Just as in Israel's case, the core of this concept suggests that a more powerful actor can apply periodic attrition to manage its threats. India has procured new technologies such as the SPICE (Smart, Precise Impact, Cost-Effective) missiles, adopted new punitive attack options such as in Balakot, and may even be involved in the mysterious assassinations of several anti-India terrorist leaders in Pakistan. Perhaps, unsurprisingly, some or all of these impressive capabilities are products of India's closer relationship with Israel. They make India stronger; but by themselves they only enable successful tactics, not effective strategy.

Meanwhile, India has rejected the notion of addressing the threat politically. New Delhi abrogated Jammu and Kashmir's autonomous

status in 2019, signalling that the Kashmir dispute is now irrevocably non-negotiable, and maintains that it will not reopen talks with Pakistan as long as cross-border terrorism exists. This seems like a reasonable position. India has a thriving economy, is diplomatically courted by the world, and brims with the promise of technology-fuelled dynamism. Why should it get bogged down in a torturous process, full of spoilers, where any deal may not be enforceable?

The answer lies in Israel. Ignoring the political interests at the heart of a rivalry only invites the adversary to dig in and try harder.

### **A political process may have dividends**

Dialogue will not extinguish the Pakistan Army's entrenched anti-India ideology, and even less, the fervour of its terrorist allies. But détente has broken out among inveterate rivals before – including between Israel and its older Arab enemies, most recently Saudi Arabia. Similarly, Pakistan's Army and political elite could conceivably gain a stake in at least calming tensions with India and distancing themselves from extremist groups. They have incentives in buttressing economic stability, building capacity to counter anti-state terrorism, and reducing their dependence on China.

A grand bargain may be elusive, but starting a political process could address a range of pressing issues, from nuclear and missile confidence-building measures, to coordination on Afghanistan, and opening the spigot on trade and investment.

We have seen, in the past month, the costs of ignoring politics. A weaker and highly-resolved adversary can still cause untold harm. The cult of operational superiority has produced only more intractable insecurity for Israel, more devastating loss for Gazans, and possibly ripples of war across the region. Next to India, Pakistan is in the midst of seemingly endless internal tumult, and hosts a rolling soup of violent extremism. And it has nuclear weapons. By all means, New Delhi must maintain and reinforce deterrence through the full spectrum of conflict. But managing a strategic threat through purely military means works only until the adversary finds a way in.

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