

# The fallacies of ‘network neutrality’-regulation

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## Abstract

The present contribution is focusing on regulatory implications of two sided platforms in (tele-)communications with emphasis on the ‘network neutrality’ debate. Proponents of ‘network neutrality’ require that customers should be able to access any web content they choose and use any applications they choose, without restrictions or limitations imposed by their internet service provider via e.g. innovative pricing schemes.

The following arguments are developed:

- (i) Most important gains evolving from the two-sided platforms approach are its implications on welfare improving pricing patterns. On two-sided platforms, it is always wrong analyzing welfare effects of pricing structures only on one side of the market (e.g. end customer pricing) and ignoring effects on the other side. The ‘network neutrality’ debate shows that innovative pricing patterns evolve on the internet, what is to be perceived as the normal case in a (network based) economy and not simply be interpreted as grounds for regulatory intervention. Thus, the arguments of the proponents of ‘network neutrality’- regulation against price differentiation of access to content according to priority of delivery (‘access tiering’) are already challenged by the platform argument. The application of costing and pricing strategies to scarce multi-purpose network capacities are developed.
- (ii) The argument of the opponents against ‘network neutrality’- regulation are further substantiated by applying the monopolistic bottleneck theory to the internet. Network specific market power regulation is only legitimated in case of stable market power. Stable market power results from simultaneous existence of a natural monopoly and sunk costs (monopolistic bottleneck). Due to competing bandwidth provision by alternative carrier, the market for backbone interconnectivity does not possess network specific market power. Furthermore competing internet service providers and content providers can be observed. As a consequence the criteria of the application of the ‘essential facilities doctrine’ (non-discriminatory access at regulated prices) can not be justified. In particular, the special duties of monopolistic bottleneck owner should not be transferred to the world of competing infrastructures. The only regulatory problem exists in the local network access, as long as alternative local loop infrastructures are not in place.

**Keywords:** Communications markets, two-sided platforms, ‘net neutrality’-regulation

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