
8th Annual

*NALSAR-Justice Bodh Raj Sawhny
Memorial Moot Court Competition,
2014*

*September 26-28,
2014*

Proposition



1. Manu Sharma is considered a pioneer amongst his peers in the Indian startup ecosystem. He has built his TV show and Movie streaming service, 'FlixTime' into a billion dollar company in a matter of months. While he faces criticism that he has only aped the super successful US based 'Netflix', his supporters argue that his ability to adapt the business model to the Indian setup makes him worthy of all the accolades and money that is flowing his way. FlixTime requires users to pay 500 rupees a month, and in exchange they can stream any TV show or Movie from its extensive catalogue. FlixTime has contracts with numerous content providers and this means that the average person can make do without a regular cable connection, and simply rely on Sharma's service for his/her infotainment needs. What sets FlixTime apart from services like Hulu and Netflix, is that it also offers live streams from popular news channels in India. Owing to licensing constraints FlixTime only 'officially' operates in India, but because it's content is primarily consumed through the Internet, and through its apps on various smartphones, users across the world successfully stream from of it by employing techniques such as using a proxy DNS server, making the company even more money.

2. While FlixTime is the most popular of the new breed of streaming services, these companies along with industry giants like YouTube have become a growing concern for traditional cable and DTH companies who are rapidly losing money due the proliferation of such on-demand services. Many of these DTH companies also double up as Internet Service Providers (ISPs), and heads of these companies have been looking at ways to stem the losses in the DTH business. One such company is WindTel, whose Q1 2014 results show that its revenues from its DTH business have fallen almost 35% QOQ from the last year, and its revenues as an ISP have stagnated over the last three quarters. These numbers are alarming; as WindTel is by far India's largest ISP and DTH provider, having managed to capture 65% of the market in the past 10 years of operations. Mr. Nitin Kaushal is the CEO of WindTel, and he has been under tremendous pressure from shareholders to act quickly and stop the hemorrhage.

3. Meanwhile FlixTime has just gone public, and its share prices have skyrocketed, putting the valuation of the company at over a billion dollars, which is still a fraction of what WindTel is valued at. In July 2014, WindTel's users started noticing deterioration in the, by then, renowned streaming quality that had become a FlixTime benchmark. Gone were the seamless HD streams, and instead the service would keep buffering every few minutes,



making for a very poor experience. This would happen to users who had WindTel's special 'Wind Speed 16 MBPS' plans as well, while FlixTime continued to work well on other operators. Manu Sharma immediately made a statement to the press that WindTel was deliberately interfering in the connection quality in the hope that his users would move away from the streaming service and once again embrace its DTH network. He called for immediate proceedings against WindTel, and hoped that the regulators would take strict action.

4. WindTel CEO, Nitin Kaushal categorically denied that the company was actively sabotaging the connection quality while claiming that their DTH service was very healthy and that as far as he was concerned, '*FlixTime wasn't even a player in the big leagues*'. On being asked what he thought of FlixTime displaying a message to its users blaming WindTel every time the stream buffered, he stated that 'it was a desperate attempt of an immature startup to stay relevant' and warned FlixTime's Manu Sharma that there would be consequences for such actions, without getting into specifics. "*Mavericks don't last too long in this business*".

5. One week later WindTel's ISP division announced a major overhaul in the way its Internet plans worked. Instead of charging a fixed sum of money for a guaranteed minimum speed; WindTel would now have tiered data plans that came with a fixed data allowance, post which the speed would fall to 256 kbps. Kaushal hailed this as a major innovation that would disrupt the market, as they were making high speed internet available to the masses for a price which was much less than what they charged for an 'unlimited' plan. For example, an 8 MBPS unlimited plan previously cost Rs. 3000 a month, whereas customers could now get 8 MBPS speeds for just Rs. 999 with a 15 GB high speed data cap, still giving them unlimited internet. Customers who wanted greater high speed data could pay more for special packs. Other ISPs soon followed suit, and plans like these became the norm rather than the exception. Industry watchers viewed these as a ploy to discourage users from streaming large amounts of video, and murmurs of anti-competitive practices were heard. Still, no lawsuits were filed and WindTel began backdoor negotiations with ISPs with a view to resolve this latest roadblock.

6. Despite these sweeping changes, WindTel's Q2 2014 results did not paint a very different picture, and the board called for the CEO's ouster. On August 12, 2014 Kaushal called a press conference, and many expected him to announce his departure from the company. Instead, he admitted that WindTel had been responsible for the poor streaming that was being



experienced by FlixTime’s customers and that that ‘network optimisations’ that WindTel had recently carried out were the reason for the same. He went on to state that almost 55% of the data being transmitted on WindTel’s network was from FlixTime’s service, and this was causing a tremendous strain on its network, which meant that WindTel’s other subscribers were getting deteriorated performance and that wasn’t acceptable to the company. Instead he called on FlixTime to pay WinTel ‘interconnection charges’, as content and services companies such as Sharma’s are making money at the cost of ISPs, which had actually invested money in setting up data pipes across the world. When pressed he stated that he only expected the FlixTime streaming problems to improve once FlixTime agreed to these terms, although they were doing everything within their powers to making the Internet a happy place for everyone. When pushed by journalists, a clearly irritated Kaushal said that WindTel was free to do what it chose and since India has no net neutrality rules they could do as they please and that ‘Manu Sharma can go hop for all I care’.

7. On August 15, Manu Sharma published an impassioned post on his blog:

‘Once again, we fight’

“The Internet has entrenched and enriched our lives like nothing else. Our subjugation to this wonderful piece of technology is so complete that cut off from this virtual world, a lot of us start feeling as if we’re missing out something incredibly important. Such a feeling is understandable as almost any activity that we do involves the all-pervasive interweb that keeps us connected, informed, educated, and entertained. Sending messages, video chatting, watching videos is second nature to us, and to imagine that none of this existed ten years ago in unimaginable. A free Internet is the backbone of modern society, and many a revolution, small or big, has been sparked off because the Internet is free and it is fair. It is the guardian of our civil liberties, the incubator of innovation and entrepreneurship, and my friends make no mistake it is under siege.

‘Net Neutrality’ is the key word here. The principle simply means that Internet service providers should enable access to all content and applications regardless of the source, and without favouring or blocking particular products or websites. These are the fundamentals on which the Internet was built, and the backbone of innovation; as anyone with an idea could start a website or a service and billions of people across the world would be able to access it, at the same speed as say a competing service from a big company. This, my friends is what has brought FlixTime into your homes, and made us one of the most exciting companies of this decade. We owe it all to you dear customer, and to this platform that has made this dream possible.

To slightly trivialize the whole process, when the Internet was growing, it was basically just one computer trying to connect to the other, much like how calls on



telephones worked. So the principles that the telecom companies were made to follow were similar to how phone lines worked. The provider had no business looking into who you called; it could be your doctor or your drug dealer. The premise was that you pay a fixed charge based on the duration of the call, and it didn't matter if the person on the other end gave you the location to the elixir of life or a way for you to get your next 'fix'. This is how the internet evolved as well, even today we pay a fixed sum of money based on the amount of data we consume, and it shouldn't matter if you spend your 100 GB allowance streaming FlixTime, on online gaming, or having video chats with people on the other side of the world.

We did not say a word when companies like WindTel brought in tiered data plans to scuttle our growth, as we understood that they might have infrastructure costs to reckon with. But if I were to digress from our official company line and voice my personal opinion - its all hokum and that Kaushal fellow is a blundering buffoon who will run WindTel to the ground. Despite posting a 10 billion dollar profit last quarter they are just greedy for more, and then some.

Companies like WindTel have failed to innovate and now are looking to abuse their dominant position to blackmail startups like ours for the proverbial pound of flesh. To say that India doesn't have net-neutrality is as irresponsible and as it is misleading. While we might not have the law in-name, but the Constitution of India, the Telecom Regulatory Authority of India Act 1997, the Competition Act, 2002 and various other legislation, TRAI guidelines and policies boldly embody this in spirit. I am no lawyer, but if you ask me, WindTel's actions are a direct violation of our Article 19 rights.

The ISPAI (Internet Service Providers Association of India), much like COAI has been lobbying the government for years to tilt the balance in their favour. They wish to make the Internet into an old boys club, where the incumbents not just dominate, but obliterate. We cannot let this stand, and we will not let this stand - for today we celebrate our Independence Day!"

8. In the evening in a brief statement to the press, Mr. Sharma stated that he had retained the law firm of 'Singh & Sethi' to agitate the matter before the Supreme Court as WindTel's actions violated their fundamental rights, and in addition his attorneys were looking into law and policy, both domestic and international, to take the fight to WindTel. In a follow up interview Singh & Sethi's lead rainmaker claimed that net neutrality was very much a part of Indian law, and that they would unequivocally demonstrate that in the Supreme Court.

9. WindTel issued a statement saying that this was a classic case of a company not understanding the rules of the game and crying wolf; and that they had retained the services of the law firm of 'Chandok & Juneja' who would represent them if the matter ever went to court. In a follow up interview, the lead attorney at 'Chandok & Juneja' scoffed at the idea of a writ petition even being maintainable against a private entity like WindTel.



10. On August 19, 2014 FlixTime filed a petition in the Supreme Court alleging that WindTel's actions in deliberately slowing FlixTime streaming were illegal and prayed for directions to the Respondent to forthwith ensure that such policies are immediately terminated. Much to WindTel's chagrin, the Supreme Court was pleased to issue notice and direct the parties to address arguments on all substantive and technical issues on the following date of hearing.

11. Four days later, Manu Sharma received summons in a complaint case that had been filed by WindTel's sister company Wind Entertainment, that owned all rights associated with the upcoming movie 'Sugar Rush'. The allegations in the complaint were that Sharma had downloaded pirated songs of their movie on August 19, 2014 using the WindTel broadband connection installed at his home. It claimed that Wind Entertainment had conclusive proof of his illegal activity owing to the detailed ISP logs that the company had in its possession. In a statement released to the press, WindTel's CEO claimed that this was just the tip of the iceberg and Sharma's internet history was going to soon give him sleepless nights. *"I have a Masters in International business and finance law, and I can categorically tell you that we have done nothing illegal. It is every citizen's duty to report a crime wherever it is committed and Sharma is a thief"*.

12. A visibly incensed Sharma called this a gross violation of his privacy, and claimed that WindTel had no business sharing his Internet activities with a third party. *"How would WindTel's posh CEO feel if I told you that his FlixTime history was filled with nothing but graphic 'documentaries' on the skin trade? That would be like calling Mr. Fancy pants a pervert, right?"*

13. On August 25, 2014 Sharma's attorneys filed a motion to modify their original petition to include a claim for declaratory relief that WindTel's sharing of a subscriber's Internet history with a third party, especially one like Wind Entertainment is illegal. The Supreme Court was pleased to allow this application, and direct that all issues would now come up for arguments on September 27/28, 2014.