

Saurabh Sanyal
Dy. Secretary General

Date: December 10, 2019

Dear Shri Asit Kadyan ji,

ASSOCHAM Suggestions to TRAI Consultation Paper on Cloud Services

As a representative organ of corporate India, ASSOCHAM articulates the genuine, legitimate needs and interests of its members. Its mission is to impact the policy and legislative environment so as to foster balanced economic, industrial and social development.

ASSOCHAM represents the interests of more than 4,50,000 direct and indirect members. Through its heterogeneous membership, ASSOCHAM combines the entrepreneurial spirit and business acumen of owners with management skills and expertise of professionals to set itself apart as a Chamber with a difference.

We are grateful for an opportunity to present our comments on the Consultation Paper on Cloud Services dated October 23, 2019 (**CP**) issued by the Telecom Regulatory Authority of India (**TRAI**). We provide our views on the subject of regulation of cloud services in Part I, and provide our responses to the questions raised by TRAI in the CP in Part II.

I

REGULATION UNDER EXISTING FRAMEWORKS

The Indian cloud services market is witnessing tremendous growth, and the adoption of new technologies such as big data and Internet of Things are expected to create exponential increase in the coming years. Public cloud services revenue in India for 2019 is projected to amount to USD 2.4 billion, which is an increase of 24.3% from 2018. Further, a NASSCOM Report has estimated a threefold increase to \$7.1 billion by 2022. It is also estimated to constitute a significant percentage of India's total IT spending. In 2019 itself, India's public cloud services will record the third-highest growth rate globally.

Currently, India has a relatively light touch framework for the regulation of cloud services, and is primarily governed under existing information technology laws and sectoral laws. The significant regulations are set out below:

REGULATORY FRAMEWORK	APPLICATION TO CSPs
Information Technology Act, 2000 (IT Act)	The IT Act provides an umbrella framework for IT in India. It identifies cyber-crimes in relation to computers, computer networks, and computer systems in India.
Information Technology	Along with the IT Act, the SPDI Rules provide a data

<p>(Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (SPDI Rules)</p>	<p>protection regime that is applicable to cloud service providers (CSPs). Under the SPDI Rules, CSPs have certain obligations as body corporates who collect, process or otherwise handle personal data. The upcoming Personal Data Protection Bill, 2018 ("PDP Bill") will create an even more robust data protection regime in India, and provide various obligations for CSPs, who are likely to be treated as 'data processors' under the new framework.</p>
<p>Law enforcement access</p>	<p>CSPs are subject to law enforcement mechanisms under the rules notified under the IT Act, including Information Technology (Procedure and Safeguards for Interception, Monitoring and Decryption of Information) Rules, 2009, and as intermediaries under the Information Technology (Intermediaries Guidelines) Rules, 2011 (IG Rules). Further, law enforcement agencies also have powers under the provisions of the Code of Criminal Procedure, 1973.</p>
<p>MeghRaj (Government Cloud)</p>	<p>The MeghRaj initiative was designed to provide a unified strategy for the adoption of cloud computing by various government agencies including Central and State Government departments. Under the MeghRaj programme, CSPs must demonstrate compliance with standards on security, interoperability, data portability, service level agreements, and contractual terms and conditions. Compliance by CSPs is verified through a rigorous audit conducted by the Ministry of Electronic and Information Technology's (MeitY) Standardisation Testing and Quality Certification Directorate.</p>
<p>Sectoral laws</p>	<p>The sectoral regulators such as Reserve Bank of India (RBI) and Department of Telecommunication (DoT) provide specific compliances for the entities regulated by them. For instance, the RBI has prescribed the Cybersecurity Framework in Banks, 2016, Outsourcing Guidelines, as well as other regulations for the insurance sector and for financial intermediaries.</p> <p>Similarly, the terms and conditions of the Unified License, which regulates telecom license-holders, are also applicable to cloud service providers when providing services to telecom license-holders.</p>

Based on the above analysis, it can be said that CSPs are regulated under various existing laws, which are general and specific in nature. Further, there are no concerns of system failures or consumer grievances in this sector, which would lead to the need

for a specific regulatory framework for all CSPs. The current regulations have ensured responsiveness to the market needs, and have shown remarkable success in the adoption of cloud services across different sectors (public sector, financial sector, telecom sector, etc.). Businesses big and small have adopted cloud services and all statistics point to a further rise over the coming years.

We therefore believe that a standards driven approach should be adopted, instead of Industry bodies being created to regulate. Industries should have the flexibility to decide if there is any need for additional platforms. Cloud service providers should be encouraged to adopt voluntary global standards developed through industry-led multi-stakeholder processes.

II

RESPONSE TO TRAI QUESTIONNAIRE

- 1. Whether there should be single industry body or multiple industry bodies of cloud service providers which may be registered with DoT? If multiple industry bodies, whether there should be any cap on their number? Should the industry bodies be registered based on the category or type of CSPs? Can a CSP be a member of multiple industry bodies? Please suggest with justification.**

ASSOCHAM Response:

We believe that the cloud services sector has shown remarkable growth and responsiveness by virtue of the light touch regulatory framework applicable to CSPs. This framework has enabled CSPs to be flexible and innovative in catering to the multifarious sectors in India.

The imposition of any requirement of registration with a single or multiple industry bodies would adversely impact the flexibility in the cloud services sector, and create many questions as to the categorization of CSPs, categorization of their services, regulation of the industry bodies conducting the registration, varying standards imposed by the industry bodies etc. These challenges have been recognized in the CP, which has noted the possibility that too many bodies might create confusion in the mind of consumers and the high risk of fragmenting the cloud market by taking this approach.

As previously discussed in part I, there do not appear to be any outstanding concerns of market failure and consumer demand to justify mandatory registration, and thus, we are of the opinion that CSPs should be able to continue to provide services ranging across type of service and deployment model based on the needs of the customer segment, without the imposition of one service delivery model.

- 2. What should be the eligibility criteria for an Industry body of CSPs to register with DoT? What is the list of documents that should be required to be submitted as proof of eligibility? What obligations should be cast upon the Industry Bod(y)(ies) after registration with DoT? Please suggest with justification.**

ASSOCHAM Response:

CSPs should be considered as regular business entities which follow applicable law to conduct business in India. In order to ensure unhindered growth and innovation in the cloud services market in India, CSPs should not be subject to any further regulation through an industry body or otherwise. In this context, it should also be noted that TRAI itself recommended 'light touch regulation' of CSPs in 2017, however, the regulatory framework envisaged in the CP goes much beyond light touch. Under the proposed framework, the registered industry body and its CSP members may be required to comply with the orders/directions issued by the DoT. The industry body and CSP members may also be required to furnish such information as is sought by the DoT/TRAI. In addition, the CP also prescribes mandatory provisions for the code of conduct of the industry body.

- 3. What may be the threshold value of parameters such as the volume of business, revenue, number of customers etc. or combination of these for a CSP to mandatorily become member of a registered Industry body? Please suggest with justification.**

ASSOCHAM Response:

In a fast-changing digital world, the volume of business, revenue, number of customers etc. are not stable figures that can always provide guidance as to the market presence of a CSP. Accordingly, they would not serve as reliable parameters to guide their regulation. In any event, we stress our position that any registration of industry bodies is not conducive to the market.

- 4. Whether entry fee, recurring fee etc. need to be uniform for all members or these may be on the basis of type or category of members? How such type or category can be defined? Should such fee be prescribed by DoT or be left to be decided by the Industry body? Please suggest with justification.**

ASSOCHAM Response:

We have previously discussed the challenges associated with using parameters such as number of users, revenue etc. in order to form categories of members. Additionally, any categorization based on the type of services provided by the CSP (such as IaaS, PaaS, etc.) in question is liable to straitjacket their future growth and innovation. Further, the powers provided to DoT under the Telegraph Act do not permit it to fix such fees, as it is not a stated power of either the DoT or the TRAI under extant Indian law.

- 5. What should be the guiding principles for governance by an industry body? How would these principles/ organisation structure ensure fair, reasonable and non-discriminatory functioning of body? Should structure of Governance be prescribed by DoT or should it left for the industry body to decide? How can the industry body achieve the desired deliverables efficiently and effectively? Please suggest with justification.**

ASSOCHAM Response:

As recognized by the CP, there already exist bodies such as NASSCOM and TSDSI which represent the interests of several industry participants without the presence of any regulatory framework mandating the same. The success of these bodies lies behind their voluntary nature, support to various concerns and issues relevant to the players in the industry, and their history of meaningful representation and interface with the Government and with regulators. In our view, the guiding principles for governance and their operation should be left to be decided by the industry bodies. CSPs should be encouraged to adopt voluntary global standards developed through industry-led multi-stakeholder processes. Depending on the nature of services being offered, the CSP can participate and adopt the relevant standards. Multi stakeholder groups can then develop standards and Industry can adopt the applicable standards depending on their nature of operations and scope of services and offerings.

6. What policy may be adopted for initial formation of industry body for cloud services? Please suggest with justification.

ASSOCHAM Response:

The CP lists four possible options for the initial formation of the industry bodies, namely:

- (a) Nomination of existing industry body;
- (b) allowing CSPs to form industry bodies and adopt a code of conduct;
- (c) recognize a not-for-profit and approve the by-law and memorandums to enable it to function for the purposes envisaged within the CP; and
- (d) DoT establishing an ad-hoc industry body.

While our position continues to remain as elaborated in part I, in the present question, we recommend allowing CSPs to form a body and adopt their own code of conduct. Out of the options provided, we believe that this policy may provide some extent of flexibility and allow CSPs to develop and innovate, thereby aiding the goals of Digital India and fourth industrial revolution.

7. Any other issue which is relevant to this subject? Please suggest with justification.

ASSOCHAM Response:

The CP, at Annexure 1, provides for mandatory code of conduct (CoC) to be adopted by the industry body(ies). While our position continues to remain as elaborated in part I, in the present question, we recommend allowing CSPs to form a body and adopt their own code of conduct, we highlight the following factors which should be address in the CoC:

- (a) **Information sharing** . It is critical to ensure that information sharing only in response to specific requests for information from Government, with clear reasons for the request and how it will be used, with disclosure to the CSPs.
- (b) **Billing models**. Billing should be left to businesses to decide. The Industry body as a part of its market research can make available information but this may not

be part of Code of conduct. The market forces should be allowed to decide the pricing and billing models.

- (c) **Data Security.** It is important that entities be given flexibility to adopt the most suitable security practice, and not be limited or tied down to only certain specified standards. Securing data requires global vigilance and cooperation. It is important that global arrangements such as Security Trust Assurance and Risk (STAR) Program, which outlines key principles of transparency, rigorous auditing, and harmonization of standards, are duly considered. The publicly accessible registry allows cloud customers to assess their security providers in order to make the best procurement decisions. Companies who use STAR indicate best practices and validate the security posture of their cloud offerings. Companies are given ratings, and such global alliances should be relied upon, including recognizing any performance ratings /certifications to avoid duplication of effort and compliance burden.

Thanking you with best regards.

Yours Sincerely,



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