



October 09, 2020

Shri. Anshu Prakash
Secretary

Department of Telecommunications,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi – 110001

Subject: TRAI Recommendations on Formation of a Cloud Services Association as a Registered Industry Body

Reference: TRAI Recommendations on Cloud Services dated September 14, 2020

Dear Sir,

1. As representatives of India's flourishing cloud service industry, we write to you with regard to the Recommendations of TRAI on Cloud Services under reference.
2. We appreciate TRAI's emphasis on making this a stakeholder driven process by allowing stakeholders to submit comments to the 2019 Consultation Paper. They also held an open house discussion ("OHD") in February 2020^[1] where multiple concerns were expressed by a large number of stakeholders. Some of us had raised these concerns in a joint letter (dated April 16, 2020 – copy enclosed).
3. We want to put forth the problems with the proposed regulatory framework for this new industry body and why there is no need for this kind of framework. This is highlighted in the subsequent paras:
 - a. **First**, the assumption that cloud services should be treated as a part of the telecom sector and that service delivery to customers by both Telecom Service Providers ("TSPs") and Cloud Service Providers ("CSPs") involves the performance of both their respective infrastructure. The recommendations assume that it is important to regulate CSPs as it would soon become 'almost impossible' to assign different responsibilities to CSPs and TSPs from a regulatory perspective.

However, this ignores how TSPs and CSPs are technologically different from one another. TSP networks are designed to provide telecom services as encapsulated in the License conditions.

[1] OHD on consultation paper on cloud services, TRAI, 28 February 2020, <https://tra.gov.in/events/open-house-discussion/ohd-consultation-paper-cloud-services>.



In contrast, CSPs are not telecom/ internet service providers. They are customers of TSPs/ ISPs who offer cloud services using their infrastructure. It would therefore be inappropriate to regulate them under the telecom laws.

- b. **Second**, the recommendations state that CSPs can come under TRAI jurisdiction as the definition of ‘telecommunication services’ under the TRAI Act and ‘telegraph’ under the Indian Telegraph Act can easily include cloud services. It has even compared CSPs to ‘other service providers’ (“**OSPs**”), stating that if it can prescribe guidelines for OSPs, it can also regulate CSPs.

At the outset, the OSP regulations of the Department of Telecommunications (“**DoT**”)^[2] have themselves been subject to criticism for having a vague definition of ‘application services’. Many stakeholders have sought the removal of the registration regime for OSPs¹. As OSPs, Information Technology Enabled Services (**ITES**)/ Business Process Management (**BPM**) industry is faced with onerous regulation which has led both TRAI and the DOT to examine the regime for simplification. Therefore, OSP is not a good example to make a case for regulating the CSPs.

More importantly, the Allocation of Business Rules^[3] clearly show that it is the Ministry of Electronics and Information Technology (“**MeitY**”) that is responsible for developing policies for information technology and the internet. MeitY has already framed criteria for empanelment of cloud service offering of CSPs for Government purposes, viz. Meghraj, which require CSPs to comply with various standards on security, interoperability, data portability, service level agreements and contractual terms and conditions^[4].

Though the recommendations capture these points, there is no justification regarding the exceptional reasons or circumstances for the regulator stepping into the jurisdiction of MeitY. Having multiple bodies defining the policies would only hamper the growth of the CSPs and consequently the tech ecosystem in India.

- c. **Third**, the recommendations state that CSPs are not sufficiently regulated under existing laws to address end customers’ concerns. It is necessary to highlight that CSPs do not operate in a legal vacuum. There are host of existing laws that apply to them, such as the Information Technology Act, 2000 (including its various rules), the Indian Contract Act, 1872, the Consumer Protection Act, 2019 and the proposed Personal Data Protection Bill, 2019 (PDPB 2019). The PDPB 2019 would further strengthen the regulation on data processors which would apply to the CSPs. In sum, the applicable laws cover various

^[2] Terms and conditions, Other Service Provider (OSP) Category, August 2008, <https://dot.gov.in/sites/default/files/OSP%20registration070808.pdf>.

¹ NASCOM submission to TRAI consultation paper on review of terms and conditions for registration of OSP (May 2019), https://www.trai.gov.in/sites/default/files/NASSCOM_21052019.pdf.

^[3] Government of India (Allocation of Business Rules) 1961 (as amended up to 14 August 2020), https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1_Upload_2391.pdf.



issues highlighted in the recommendations, such as grievance redressal, portability/ interoperability, billing-related issues and quality of service.

Further, the issues highlighted in the recommendations are in general terms. There is no study/ data which might indicate that there is a market failure which requires an additional regulatory mechanism. It is therefore premature to suggest an additional regulatory regime or even to conclude whether the CSPs are insufficiently regulated or there are gaps in existing regulations or enforcement mechanism based on general statements.

d. **Fourth**, and the most ambivalent and thereby problematic argument given in the Recommendations under reference, is how a registered industry body strikes the potentially appropriate balance between the extremes of having a statutory regulation and a completely free market driven mechanism. This argument is paradoxical because the proposed industry framework is very far removed from the idea of a 'light touch regulation' or 'self-regulation'. There are many features of the framework which show how it imposes a strict regulatory regime on CSPs :-

- a) 'Mandatory' membership requirement, which will be enforced by preventing TSPs from providing any infrastructure or platform to non-members.
- b) Appointing government officials as members of the ad-hoc body, and the apex governing body of the recommended industry body; this body will frame a code of conduct to be followed by CSP.

All these requirements are antithetical to a 'light touch' or 'self-regulatory' approach. The recommendations cited the example of the Telecommunications Standards Development Society of India ("**TSDSI**") as an industry body formed by the DoT. However, the TSDSI is a voluntary membership-driven organisation- no stakeholder is compulsorily required to become its member ^[5]. Moreover, the purpose, scope, mandate and working of TSDSI is entirely different from the kind of an industry body proposed in the recommendations.

4. In 2018, the 'National Digital Communications Policy' ("**NDCP**") released by the Department of Telecommunications ("**DoT**") acknowledged that light touch regulation is essential for CSPs and has called out various measures to enable the industry to grow.²

However, the proposal of creating an additional regulatory regime through a 'registered industry body' for CSPs, as recommended, will be contrary to the above policy of light touch regulation by the Government. This potentially will be detrimental to attracting investment in this important

^[5] TSDSI- India's telecom SDO, https://tsdsi.in/wp-content/uploads/2019/10/TSDSI_Brochure2019_FINAL.pdf.

² "2.2(f) Establishing India as a global hub for cloud computing, content hosting and delivery, and data communication systems and services; Evolving enabling regulatory frameworks and incentives for promoting the establishment of International Data Centres, Content Delivery Networks and independent interconnect exchanges in India; Enabling a light touch regulation for the proliferation of cloud based systems; and Facilitating Cloud Service Providers to establish captive fibre networks."



industry sector as also undermine the Governments policy for facilitating policies for enabling Ease of Doing Business.

5. We request DoT to kindly take into consideration the above cited concerns before accepting these recommendations and defining any policy in this regard. Together we can ensure that the cloud service industry reaches its maximum growth potential and contributes to the Government's vision of making India a USD 1 trillion digital economy.

We would also request a joint industry meeting to discuss the above issues in detail and address any further related issues.

Kind regards,

S. No.	Name and Designation	Association	Signature
1.	Tapan K Patra, Director	ACTO	
2.	Lim May-Ann, Executive Director	Asia Cloud Computing Association	
3.	Jeff Paine, Managing Director	Asia Internet Coalition (AIC)	
4.	Jared Ragland, Senior Director, Policy	BSA	
5.	Lt. Gen Dr. S.P. Kochhar, Director General	COAI	
6.	Robert Strayer, Executive Vice President, Policy	ITI	
7.	Ashish Aggarwal, Sr. Director & Head Public Policy	NASSCOM	

**CC : Shri. K. Ramchand, Member – T, DoT
Ms. Anita Praveen, Additional Secretary – T, DoT**