TRAI Consultation Paper on Cloud Services
October 23, 2019

TRAI has released this consultation paper on 'Cloud Services on dated 23rd Oct. 2019, which is focused on the subject matters related to Cloud Service Providers (CSPs) Industry body i.e. terms and condition of registration of Industry body, eligibility, entry fee, period of registration, and governance structure and other matters relevant for prescribing a framework for registration of CSP's industry bod(y)(ies).

1. Background:

TRAI has given its recommendations on "Cloud Services" dated 16thAugust, 2017 which includes recommendation on:
- Legal and regulatory framework for Cloud Services,
- overarching and comprehensive legal framework for data protection,
- interoperability and portability,
- legal framework for Cloud Service Providers (CSPs) operating in multiple jurisdictions,
- cost-benefits analysis,
- incentives for conceptualisation and implementation of cloud based services in India,
- etc.

Under legal and regulatory framework for Cloud Services, TRAI has recommended to regulate CSPs through not for profit industry body and recommended that:

1. All CSPs, above a threshold value, to become member of one of the registered Industry body for cloud services and accept the code of conduct (CoC) prescribed by such body. Such threshold may be based on either volume of business, revenue, number of customers, etc. or combination of all these. Registered Industry body, not for profit, may charge fee from its members, which is fair, reasonable and non-discriminatory.

2. The industry body for Cloud Services to prescribe the Code of Conduct of their functioning. Code of Conduct shall include provisions for adoption of a constitution towards its members, Membership, Creation of working groups, and Mandatory codes of conduct, standards or guidelines that specifically include, Definitions, QoS parameters, Billing models, Data security, Dispute resolution framework, Model SLA, Disclosure framework, Compliance to its codes and standards, Compliance to guidelines, directions or orders issued by DoT, and providing requisite information in stipulated time lines when sought by DoT / TRAI.

3. No restrictions on number of such industry bodies may be imposed to ensure that there is freedom in functioning of such industry body and such body should not become monopoly of few big entities.

4. DoT may issue directions, from time to time, to such registered industry body as and when needed to perform certain function and procedures to be followed.

5. DoT may also withdraw or cancel registration of industry body, in case it finds the instances of breach or non-compliance of the directions/ orders issued by it, from time to time or non-adherence to code of practices notified by it.

6. DoT may keep close watch on the functioning of industry body and investigate functioning of the body to ensure transparency and fair treatment to all its members.

7. A Cloud Service Advisory Group (CSAG) to be created to function as oversight body to periodically review the progress of Cloud Services and suggest the Government actions required to be taken. This Advisory Group may consist of representatives of state IT departments, MSME associations, Consumer advocacy groups, Industry experts and representatives of Law Enforcement agencies.

DoT has accepted all the TRAI recommendations on the 'cloud services'. However, for the TRAI's recommendations in Para 4.1 (ii), accepting it in principle, DoT has sought additional recommendations from TRAI vide DoT letter dated 27th September, 2018 on terms and condition of registration of industry body.

In response to that TRAI has issued this consultation paper which is focused and limited to the subject matters on which DoT has sought additional recommendation referred above.

[_TRAI's recommendations in Para 4.1 (ii)_: _Authority recommends DoT may prescribe a framework for registration of CSPs' industry bod(y)(ies), which are not for profit. The terms and condition of registration of Industry body, Eligibility, entry fee, period of registration, and governance structure etc. would be recommended by TRAI once the recommendations are accepted by the Government in principle"]_

TRAI recent Consultation paper on Cloud Services of dated 23rd Oct. 2019 is available at https://main.trai.gov.in/sites/default/files/CP_23102019.pdf

TRAI has listed Seven (7) Issues / questions in Chapter 3 of the Consultation Paper to give the comments by the stakeholders.

Issues for Consultation

Q.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.

Comments:
TRAI in its earlier recommendations of dated 16th August, 2017 has recommended that _"No restrictions on number of such industry bodies may be imposed to ensure that there is freedom in functioning of such industry body and such body should not become monopoly of few big entities"._ This statement of TRAI is very true. Government should not impose any restriction in number of such industry bodies. The industry body should be self-sustaining and only source of fund for these Industry body will through fee from its members. In likelihood, the number of industry bodies will automatically get restricted.

Further it is suggested that these industry body should not be registered based on category or type of CSPs, because most of the CSPs will be providing the services to various categories of customers or various verticals. There will be many common functionalities for various categories / types.

Regarding multiple membership by a CSPs, it should be permitted. However, CSP should declare his multiple memberships to all the Industry bodies wherever they are registered. Moreover, CSP should declare membership to one of the Industry bodies as 'Primary' and remaining as 'Secondary'. The primary Industry body will be responsible for the CSP and will furnish the complete data / compliance to DoT / TRAI for that CSP. A CSP should not be in governing position of multiple bodies.

Q.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.

Comments:
Industry body should be registered **as a not for profit Society**, under the Indian Societies Registration Act XXI of 1860 or under sec. 25 of the Companies Act, 1956. It should submit the 'Certification of registration' and MoA (Memorandum of Association).

The industry body should be obliged to carry out all the activities required by DoT / TRAI / Govt agencies as prescribed such as submitting the required reports after obtaining the data / information from the registered CSPs, to ensuring the compliance by CSPs and submitting to the Govt body.

The body should have certain number of memberships (say x) along with a well-defined governance structure to make it eligible for registration with DoT. Along with the registration (to keep it active) the body should be expected to report on its activities, and off course participate / contribute in various initiatives of Govt, Regulator(s) and Industry. The protocol for such bodies can be similar to IEEE and The Open Group for inclusion.

Q.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.

Comments:
It is up to the industry body to make it attractive for CSPs to join them, however, TRAI should mandate that CSPs should be part of an industry body to operate in India. If a CSP decides not to become member of any industry body, then it is their decision. Obviously, they will lose their voice in deliberations, as Govt, regulators and other related agencies may not entertain views from specific company as against an industry body which represents a large group of CSPs and cloud professionals.

Startups and MSME will lose their representation with DoT, if they are not part of a body. It must be ensured that they are represented. However, tiers of membership can be based on the revenue that CSPs account for in India business.

Q.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.

Comments:
Entry may be based on the annual revenue of the CSPs – there may be two three slabs based on the annual revenue [example of TSDSI or similar organisation may be taken, which are proven model].

It should not be mandated by DoT, it should be left to the industry body to decide themselves based on their working model and sustainability.

Entry criteria for start-ups should be attractive and have a low barrier and they could move up the tier based on participation and other factors.

Q.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.

Comments:
Form a seeding panel of experts (ONLY from Indian companies) for the body and let them create the guiding principles for governance and the principles/ organisation structure etc. It is easy to stick by what you have come up with and signed and agreed to instead of being stifled from outside enforcements. However, it can reviewed and approved by the regulators and government agencies.

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

Comments:
NASSCOM, MAIT, IBA, COAI, CCICI, etc already functioning, there are group of bodies already formed. Don't need to be rigid and prescriptive about formation of a new body.

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

Comments:
The industry body should take control of governance and the day to day affairs with a project management office. Ideally, it can also be a subset of any of the existing competent bodies.