



## **COAI's Responses to TRAI's Consultation Paper on "Cloud Services"**

In today's data driven economy, cloud services have become essential to small, medium, and large enterprises storing and processing large quantities of data. Over the years, India has witnessed a gradual surge in the adoption of cloud and recent studies indicate that the cloud market is expected to grow rapidly to USD 7.1 billion by 2022. While the cloud services market in India is still at a nascent stage, any regulation thereof ought to be light touch so as to foster innovation. It is important that cloud service providers (**CSPs**) comply with existing applicable laws that are consistent with industry practices.

In light of the above, we would like to submit our comments to the issues presented in the Consultation Paper on Cloud Services (**Consultation Paper**) issued by the Telecom Regulatory Authority of India (**TRAI**).

### **Issue I – Need for Regulatory Framework for CSPs through Industry Body**

Firstly, we would like to submit that, unlike traditional service providers, CSPs do not fall within the same category of service providers as defined in the Telecom Regulatory Authority of India Act, 1997 (**TRAI Act**) owing to the fact that CSPs *merely use* the existing connectivity provided by telecom service providers and do not constitute telecom service providers by themselves. Since CSPs cannot be classified as a telecom service provider under the current definition, the creation of a regulatory framework for CSPs does not fall within the ambit of the Telegraph Act and TRAI Act. CSPs also do not fall within the ambit of OSP (Other Service Provider) as per the recommendations issued by TRAI on 21.10.2019.

We also note that as per the Government of India (Allocation of Business) Three Hundred and Twenty Seventh Amendment Rules, 2016 dated 16.07.2016, 'Policy matters relating to information technology; Electronics; and Internet (all matters other than licensing of Internet Service Provider)' are within the ambit of Ministry of Electronics & IT (MeitY).

## **Annexure-1**

Secondly, over the years, the Indian market has successfully adopted cloud across sectors including banking and finance, telecom, and public sector. At present, there already exists adequate legal and regulatory framework that are applicable to CSPs include the following –

- Information Technology Act, 2000 (**IT Act**) and rules framed thereunder – The IT Act and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (**SPDI Rules**) obligate body corporates including CSPs to comply with data privacy requirements such as obtaining user consent for collection, disclosure, retention, and transfer of sensitive personal information. Additionally, the Government of India is currently in the process of adopting a new data protection regime. It has recently released the Draft Personal Data Protection Bill that will replace the existing SPDI Rules in its entirety. The PDP Bill sets out obligations to be complied with by data controllers and processors. Since CSPs are likely to be classified as data processors under the proposed regime, the PDP Bill would adequately impose data security requirements for CSPs.

Further, the Information Technology (Intermediary Guidelines) Rules, 2011 (**IG Rules**) issued under the IT Act would classify CSPs as 'intermediaries'. Therefore, law enforcement access obligations under the IG Rules are applicable to CSPs.

- Unified License – The telecom sector is governed by the terms and conditions prescribed in the Unified License, which impose conditions to be adhered to by CSPs during the course of the provision of its services to telecom service providers.
- Financial Sector – Among other regulators in the banking and finance sector, the Reserve Bank of India (**RBI**) and Insurance Regulatory and Development Authority of India (**IRDAI**) have issued guidelines applicable to third-party service providers to banks, financial institutions, and intermediaries. Such entities are required to comply with several data privacy, cyber-security, and localisation requirements. Since CSPs may be classified as intermediaries under the abovementioned guidelines depending on the nature of services provided by them, CSPs are covered in such sector-specific regulations as well.
- Public Cloud – Pursuant to its objective of providing a unified strategy for adoption of cloud computing, the Government has launched its own Cloud called "MeghRaj". As part of this initiative, the Ministry of Electronics and Information Technology (**MeitY**)

## **Annexure-1**

has issued several guidance documents for the Central/State Government and Government agencies and departments that are seeking to adopt or migrate to MeghRaj.

Notwithstanding our submission that the regulatory framework for Cloud computing falls outside the ambit of Telegraph Act and TRAI Act, we would like to submit the following inputs while discussing a regulatory framework for cloud computing under the relevant Ministry:

Given that the cloud sector is already regulated by the existing general and sector-specific legal frameworks, there is no need for a separate regulatory framework for CSPs. Since CSPs provide services of varied nature to different sectors, classifying CSPs under a unified regime would hinder the flexibility, which currently exists within the sector and allows CSPs to provide diverse services.

On the question of whether a single or multiple industry body is required, it is submitted that the need or the time frame for creation of a single/multiple industry bodies be left to be determined by organic market dynamics.

TRAI has itself chosen to recommend a light touch regulatory approach in order to ensure that there is minimum intervention in the Cloud Services sector. The TRAI has premised the aforesaid approach on the understanding that the Cloud Services sector is at a nascent stage in India and needs flexibility in to speed up design and roll out of services. Clearly, the imposition of any registration requirements would lead to unnecessary regulatory burden.

As elaborated in Issue I, at present, the cloud sector is already regulated by a set of legal and regulatory frameworks, which have facilitated growth in the sector without any regulatory overlap. Therefore, it is recommended that CSPs do not require a unified regulatory model through industry bodies.

### **Issue II – Registration of Industry Body for CSPs with DoT**

TRAI's earlier recommendations on cloud services highlighted various issues that the cloud sector is currently dealing with, such as quality of service, data privacy, etc., that need to be addressed so as to ensure proper functioning and growth of the sector. Since a light touch approach in this regard will assist the sector in addressing the said concerns, there is no apparent benefit from registration of industry bodies with the DoT.

## **Annexure-1**

The CP proposes several mechanisms whereby the DoT will exercise control over CSPs including compliance with orders issued by the DoT, furnishing of information sought by the DoT or TRAI, code of conduct for the industry body, etc. Such regulation appears to be a departure from TRAI's initial recommendation for a light touch regulatory framework for CSPs and will only act as a barrier to the growth of CSPs and the cloud sector.

Since CSPs require an enabling environment to provide innovative solutions and services in India, they should not be subjected to any further regulation (in addition to the existing legal frameworks) through an industry body or regulator that may be burdensome or restrict their ability to innovate. Rather, CSPs must be treated as corporate entities that are required to comply with the existing legal and regulatory framework applicable to them in India.

### **Issue III – Membership Requirements**

Any regulation of CSPs based on parameters such as volume of business, revenue, number of customers, etc. would not be accurate as such parameters are subject to constant changes. Such parameters would be unreliable and result in exclusion of small and medium enterprises or monopoly by a few large players. Therefore, no membership requirements or industry body registration should be made mandatory for CSPs.

### **Issue IV – Entry Fee and Recurring Fee**

The Telegraph Act 1885 does not empower DoT to fix any entry or recurring fee for CSPs and it should be left to the industry bodies to determine such fees based on the services provided by the industry bodies to its members.

### **Issue V – Guiding principles for governance by an Industry Body**

The CP cites several industry bodies such as the Cloud Computing Innovation Council of India and National Association of Software and Services Companies promote innovation in the cloud sector. These industry bodies have adopted a voluntary governance structure and regulatory framework based on their different membership and objectives. These industry bodies bridge the gap between the various stakeholders and the Government, thereby accelerating innovation and transformation in the sector. Therefore, to ensure that such functioning of the industry bodies is not hindered due to regulation, it is recommended that no structure should be prescribed, and industry bodies be allowed to function autonomously.

**Issue VI – Policy for initial foundation of Industry Body for CSPs**

The CP has suggested several options for the initial foundation of an industry body for CSPs like nominating an existing body, allowing CSPs to form their own industry body, recognizing a non-profit organisation to enable it to function towards the objectives outlined in the CP, and allowing DoT to establish an ad-hoc industry body. It is reiterated that to protect the best interests of the CSPs, this should be left to the market dynamics to propel the formation of an industry body of CSPs, if needed. Also, the CSPs should, based on their goals and long-term objectives adopt their own code of conduct. This will ensure that the industry body functions flexibly and independently and that the aims and objective of the CSPs are adequately driven by the industry body and act as an impetus to the growth of the industry.

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