

Asia Cloud Computing Association's (ACCA) Response to the Telecom Regulatory Authority of India (TRAI) Consultation Paper on Cloud Services

Comment #1: Overall Comment

1. The ACCA holds that Cloud Service Providers (CSPs) are already adequately governed by MeitY and are subject to existing laws which will address regulatory concerns. For example:
 - 1.1. **Governance** - CSPs are governed by MeitY, particularly under the Allocation of Business Rules.¹
 - 1.2. **Registration** - There is already a CSP register under the MegRaj empanelment enrolment process.²
 - 1.3. **Quality of Standards and Terms of Service** – The MegRaj empanelment process involves CSPs to demonstrate adherence and compliance with standards on security, interoperability, data portability, service level agreements, and contractual terms and conditions.³
 - 1.4. **Regulations and Laws** - CSPs are already regulated through existing laws. For example,
 - 1.4.1. **Information Technology Act 2000** - CSPs qualify as an 'intermediary' under this Act, and thus have to comply with various provisions under the IT Act including obligations for data protection, cooperation with government authorities, due diligence requirements, as well as other provisions under the Act;
 - 1.4.2. **Indian Contract Act, 1872** – As CSPs use e-contracts such as terms of use and click-wrap agreements, they must also comply with this Act.
 - 1.4.3. **Draft Personal Data protection Bill 2018** – All CSPs will also be subject to this upcoming data protection law once it is passed by Parliament. The draft currently provides detailed obligations for "data processors", which is what CSPs are likely to fall under in the upcoming law.
 - 1.5. The ACCA believes that further development of an additional industry standardization body runs the risk of overlapping and/or conflicting regulatory regimes. In addition, the Consultation Paper on Cloud Services runs counter to an earlier conclusion from the Telecommunications Regulatory Authority of India (TRAI) paper which recommended a "light touch regulatory approach towards regulating cloud services."
 - 1.6. The ACCA notes that the registration and regulation of cloud service providers (CSPs) under a not-for-profit industry body may reduce the availability of cloud services to India, as this would increase the cost of doing business in India for many technology companies. Requiring additional fee-based registration with a not-for-profit body for CSPs would increase the cost of compliance for companies in India, creating an additional barrier to CSPs – and their resultant services – to the Indian market. As such, this approach may have the inadvertent effect of reducing the number of cloud services available in the Indian

¹ https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1_Upload_1829.pdf

² <http://meity.gov.in/content/gi-cloud-meghraj>.

³ <http://meity.gov.in/writereaddata/files/Application%20for%20Empanelment%20of%20CSPs.pdf>.

market. Additionally, the increased cost of compliance may also result in higher costs for Indian cloud users, as businesses possibly pass on these costs to customers.

1.7. All following comments should be read in light of Comment #1.

Comment #2: 1.1.1 TRAI's earlier recommendations on Cloud Services:

The Recommendations on Cloud Services" dated 16th August, 2017 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, especially in government networks. Under legal and regulatory framework for Cloud Services, Authority recommended to regulate CSPs through not for profit industry body. Authority further recommended that..

2. Comment 2

2.1. The ACCA recommends that any regulatory framework in the context of cloud computing should include both (a) necessary and justified high-level regulatory requirements framed to the greatest extent possible in terms of desired outcomes and (b) voluntary, industry-led standards that define parameters by which cloud services providers (CSPs) can meet those regulatory requirements. Furthermore, it is important to recognize that there are significant differences between telecommunications services and cloud services that must be taken into account in this regard.

2.2. We note that TRAI has recognized in the consultation paper (e.g. page 7) that over-regulation may hamper the growth of cloud services, and has noted (a) the benefits of very high-level regulations that state key objectives and (b) the use of voluntary, industry-led standards to describe ways in which such regulatory objectives can be achieved.

Comment #3: : 1.1.1 TRAI's earlier recommendations on Cloud Services

(i) 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. Threshold value, based on previous financial year, may be notified by the Government from time to time.

3. Comment 3

3.1. The ACCA recognises that a not-for-profit industry body that has an appropriate governance structure (referred to in the Proposal as a code of conduct) would be a good venue to develop and maintain voluntary standards. Such governance structure and related rules must meet globally-recognized standardization practices in order to be effective and fair.

3.2. That said, the ACCA recommends that it not be mandatory for all CSPs to become a member of such an association and/or implement the resulting standards. Any such standard should be viewed as one mechanism by which CSPs can conform to any high-level regulatory requirements, but not the ONLY way. Mandating only one way to conform to such regulatory requirements may unnecessarily constrain further innovation and competition.

Comment #4: 1.1.1 TRAI's earlier recommendations on Cloud Services

(ii) 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 timelines when sought by DoT/TRAI. Details regarding above provisions are annexed with this consultation paper as per Annexure- I.

4. Comment 4

4.1. The ACCA notes that the industry and standardisation body's Code of Conduct should include the governance structure, the roles and responsibilities of the different governance committees/bodies, and related standardization process rules and policies. The ACCA would like to seek clarity as to why some other items (such as data security, billing models, model SLA and some types of compliance issues) would be appropriate tasks for a standardisation organisation to undertake. These topics may be reflected in the drafted technical standards, but should usually not be addressed in the governance framework.

Comment #5: 1.1.1 TRAI's earlier recommendations on Cloud Services

(iv) 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.

(v) 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.

5. Comment 5

5.1. The ACCA recommends that government authorities should not dictate directions, rules or outcomes to an industry body. Rather, representatives of government authorities could be invited to participate as an equal stakeholder in the standardization process under rules that do not permit any one stakeholder group to dominate or unfairly influence the outcome of the process.

5.2. Further, we recommend that a government authority should not be permitted to unilaterally withdraw or cancel the registration of an industry standards body for failing to follow the directions/orders of such government authority (other than under exceptional circumstances) to avoid inappropriate dominance issues.

Comment #6: 1.1.1 TRAI's earlier recommendations on Cloud Services

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.

6. Comment 6

6.1. The ACCA seeks further clarity on the role of the Cloud Service Advisory Group vis-à-vis the different industry standardisation bodies, its relationship with the proposed set-up of the non-for-profit Industry body, and whether this is the proposal for the set-up of an accreditation body.

Comment #7: Question 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.

7. Comment 7

- 7.1. The ACCA recommends that it would be most effective to have as few industry bodies as possible and address any diversity of needs by having different committees within one or a few industry bodies. This will enable (a) the resulting agreements on standards to be coordinated and (b) defined requirements to be identical or at least consistent, to the greatest extent possible. As noted in the document, some CSPs offer multiple types of services and any deviation in related requirements should be sufficiently justified. Also, services can compete against each other in the marketplace, and therefore any differences in requirements should be avoided to the extent possible to ensure a level playing field.
- 7.2. At the same time, the ACCA recommends that, to the extent that industry standardization efforts are limited to one or only a few industry and standardization bodies, each such body must have neutral and effective appeals/complaints processes that can responsibly address any issues of procedural violations, dominance or otherwise unfair conduct.

Comment #8: Questions 2-4

Q2. 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.

Q3. 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.

Q4. 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.

8. Comment 8

- 8.1. The ACCA agrees that any industry-led standardization body should be a not-for-profit organization with an appropriately defined governance structure and a set of procedures, rules and policies that meet globally accepted practices. This includes requirements for transparency, adequate notifications, openness, balance, lack of dominance, consensus, consideration of views and objections, public review and comment, and a fair and neutral appeals/complaint process. It should also include policies related to all aspects of intellectual property rights, competition law and due process.
- 8.2. While the ACCA supports some of the “minimum requirements for Governance Structure and Code of Conduct” set forth on pages 12-13, we have some concerns that other proposed requirements do not sufficiently align with internationally-recognized best practices for standardization as described above and that are reflected in standardization bodies such as ISO/IEC JTC 1 (which oversees the development of a wide range of internationally recognized and accepted information technology and communications

standards). We suggest that DoT utilize as many internationally-recognized standards as possible in creating a framework of standards applicable to CSPs.

- 8.3. The ACCA believes that any such industry body should be open on a voluntary basis to a diverse set of members/participants that can be viewed as stakeholders. We are not aware of any such body that mandates participation by any such stakeholders, nor do such bodies require up-front that members/participants agree to implement the resulting standards. This can raise a number of legal issues, including those related to innovation and competition.
- 8.4. The ACCA note that it is generally appropriate for such not-for-profit industry body to charge a reasonable level of member/participation fees.
- 8.5. The ACCA notes that there are three types of conformity assessment – first party (self-declaration or self-certification), second party (supply chain certification) and third party certification. Most conformity assessment is accomplished through the “first party” approach. Third party certification frequently is more complicated and costly, and therefore is usually deployed in limited contexts. Therefore, we have some concerns with the proposals for “monitoring” or otherwise assessing the organization’s members’ compliance with the resulting standards. Having a sufficiently effective complaints/appeals process should generally suffice.
- 8.6. The ACCA notes the proposed requirement that the industry standards bodies need to comply with DoT rules and policies (section 2.1.6). We would appreciate the opportunity to provide related comments when further and more specific information is available in the future. While there may be certain issues where it might be appropriate for DoT/TRAI to impose such requirements, generally industry standardization organizations are industry-led groups that are not under the control of, or excessively influenced by, government authorities.

Comment #9: Question 5 and Question 6

Q5. 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.

Q6. What policy may be adopted for initial formation of industry body for cloud services? Please suggest with justification.

9. Comment 9

- 9.1. The ACCA recommends that the general structure and operational approach that a private sector industry and standardization body should follow should be left for such a body to formulate and ultimately decide with the full and active participation of its members through a consensus-based process. Sometimes this is done by issuing a public invitation to join a to-be-formed standardization entity in support of certain regulatory requirements (or other intended scope of work), have interested stakeholders collaborate on the development of a (a) related governance structure, (b) related rules/processes, and (c) related policies, and then adopt such a framework through an appropriate consensus process.
- 9.2. Alternatively, the ACCA recommends a solely standards-based approach towards addressing DoT’s concerns, as defined in Annexure I’s proposed Mandatory Provisions of Code of Conduct. For instance, the following concerns under section (iv) could be assuaged by applying existing standards:

- 9.2.1.(b) QoS parameters & (f) Model SLA – this could be managed via ISO/IEC 19086 which establishes a model Cloud Computing SLA Framework
- 9.2.2.(c) Billing models – this falls under ISO/IEC PDTR 23613 which defines cloud service metering elements and billing modes
- 9.2.3.(d) Data security – this falls under ISO/IEC 27017 on Security techniques and Code of practice for information security controls based on ISO/IEC 27002 for cloud services, and ISO/IEC 27018 on Security techniques and a Code of practice for protection of personally identifiable information (PII) in public clouds acting as PII processors
- 9.2.4.(e) Dispute resolution framework – ISO 10003:2018 addresses Quality Management Guidelines for dispute resolution external to organizations
- 9.2.5.(g) Disclosure framework – ISO/IEC TR 23186 establishes a framework of trust for processing multi-sourced data.