



BIF RESPONSE TO TRAI CP ON CLOUD SERVICES

PREAMBLE

Broadband India Forum welcomes the consultation on this important subject by the Authority. Our comments herein are based on the collective experience of our members who are either major Cloud Service Providers (CSP) themselves and/or represent major cloud service providers in India as well as globally. These Cloud Service Providers provide services to thousands of consumers from the private and public sector. They hold a number of industry-recognized certifications and audits, such as PCI DSS Level 1, ISO 27001, FedRAMP, HIPAA, and SOC 1 and SOC 2 audit reports.

In view of the above, please find below our responses to the Questions in the Consultation Paper

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.

BIF Response

There are many extant rules and regulations from several departments including those from MeitY, which are being complied by Cloud Service Providers. In our humble opinion, they should continue to be under the ambit of the extant rules & regulations already setup by MeitY. Also it is felt that there are no perceived market failures nor any consumer concerns, which would necessitate need for ex-ante intervention from the Authority. In view of the above, further regulations and monitoring by other agencies viz. DOT & TRAI is perhaps not required.

As already mentioned, these Cloud Service Providers should continue to conform to the rules and regulations set by Ministry of Electronics and Information Technology (“MeitY”), as described below:

- a. We note that Under Page 34 of the Allocation of Business rules¹, DoT deals with “policy, licensing and coordination matters relating to telegraphs, telephones, wireless, data, facsimile and telematics services and other like forms of communication”. Section 11 of the TRAI Act 1997 states that TRAI’s functions relate to telecommunication services, telecom service providers licensed under the Indian Telegraph Act, 1885, and the telecom sector². Pg. 51, of Government of India (Allocation of Business Rules) 1961 (as amended up to 04 April 2019), states that MeitY shall deal with Policy matters relating to information technology; Electronics; and Internet (all matters other than licensing of Internet Service Provider); Promotion of internet, IT and IT enabled services].³. Since cloud services do not fall within the scope of telecommunication services, MeitY could be considered to be the appropriate authority for regulation of Cloud Service Providers. This approach is aligned to global conventions where telecom regulators govern communication services while cloud services are subject to data/IT governance obligations.
- b. Cloud Service Providers are already subject to multiple laws and regulations, which are enforced by various regulatory bodies in India. They are :

S. No.	Relevant authority/legislation	Key provisions
a.	The Information Technology Act, 2000 (“IT Act”), including the various rules under the IT Act	<ul style="list-style-type: none"> i. Cloud Service Providers are required to implement and maintain reasonable security practices and procedure, which govern collection, disclosure, retention, transfer, security and use of sensitive personal information, they are (Section 43A). ii. Cloud Service Providers can be asked to co-operate with authorised government agencies (by way of extending all facilities and technical assistance) to facilitate electronic surveillance (Section 69) iii. Under the IT Act, Cloud Service Providers are categorized under ‘intermediaries’ and are required to comply with a wide range of due diligence requirements. Failure to comply with these requirements will result in Cloud Service Providers losing safe harbour protection under the IT Act (Section 79).
b.	Ministry of Electronics and Information Technology, Government of India	MeitY oversees the empanelment of Cloud Service Providers with the government under its ‘MeghRaj’ cloud computing initiative ⁴ . To meet standards of empanelment, Cloud Service Providers must evince compliance with standards on security,

¹ Pg. 34, Allocation of Business Rules.

² Section 11, The Telecom Regulatory Authority of India Act, 1997, https://main.trai.gov.in/sites/default/files/The_TRAI_Act_1997.pdf.

³ Pg. 51, Government of India (Allocation of Business Rules) 1961 (as amended up to 04 April 2019), available at <https://cabsec.gov.in/writereaddata/allocationbusinessrule/completeaobrules/english/1 Upload 1829.pdf> (“Allocation of Business Rules”) [MeitY- Policy matters relating to information technology; Electronics; and Internet (all matters other than licensing of Internet Service Provider); Promotion of internet, IT and IT enabled services].

⁴ GI Cloud (Meghraj)- A cloud computing initiative of MeitY, available at <http://meity.gov.in/content/gi-cloud-meghraj>. (“MeitY cloud computing initiative”)

		interoperability, data portability, service level agreements, and contractual terms and conditions ⁵ . Such compliance by Cloud Service Providers is also thoroughly verified by way of a rigorous audit conducted by the MeitY's Standardisation Testing and Quality Certification Directorate ⁶ . As the nodal government agency responsible for cloud services, MeitY will step in to govern other aspects related to cloud services as and when needed.
c.	Indian Contract Act, 1872	The e-contracts entered into by Cloud Service Providers with their users are subject to the provisions of the Indian Contract Act, 1872.
d.	Consumer Protection Act, 2019 (" CPA ")	<ul style="list-style-type: none"> i. Cloud Service Providers would fall under the definition of an 'electronic service provider' under the CPA [Section 2(17)] ii. Buying or selling of cloud-based services would qualify as e-commerce under the CPA [Section 2(16)] iii. The central government is empowered to take measures for the purposes of preventing unfair trade practices in e-commerce. Such measures may relate to the trade practices of Cloud Service Providers (Section 94)
e.	Personal Data Protection Bill, 2018 (" PDP Bill ")	<p>Cloud Service Providers will be subject to a number of obligations as 'data processors' under the PDP Bill. These include:</p> <ul style="list-style-type: none"> a. Processing data only as per instructions of data fiduciaries by whom the Cloud Service Providers has been engaged (Clause 37) b. Implementing appropriate security safeguards through use of methods such as encryption and de-identification of data (Clause 31) c. Possibly complying with 'codes of practice' issued by the Data Protection Authority under the PDP Bill (Clause 60)

(Please see Annexure I for detailed information about the existing Indian laws applicable to Cloud Service Providers)

The Indian Government has made every effort to ensure that the aforementioned laws and regulations remain updated with time. For instance, in August 2019, the government completely overhauled the old legislation on consumer protection and notified the modified CPA⁷. Similarly, the government is currently in the process of finalising amendments to the Information Technology (Intermediaries Guidelines) Rules, 2011 under Section 69 of the IT Act.

⁵ Invitation for application/proposal for empanelment of cloud service offerings of CSPs, Ministry of Electronics and Information Technology, Government of India, available at <http://meity.gov.in/writereaddata/files/Application%20for%20Empanelment%20of%20CSPs.pdf>.

⁶ MeitY cloud computing initiative.

⁷ Consumer Protection Act, 2019, <http://egazette.nic.in/WriteReadData/2019/210422.pdf>.

c) The TRAI consultation paper is not in consonance with its earlier recommendations for a light-touch approach when it comes to regulation of Cloud Service Providers. The current consultation paper does not seem to be in consonance with TRAI's 2017 recommendation expressly calling for 'light touch regulation of Cloud Service Providers'.⁸ Such a position had been arrived at by TRAI, via extensive stakeholder consultations where it had taken note of concerns that licensing/registration of Cloud Service Providers could be counterproductive and restrict innovations. Hence, in TRAI's view as articulated in the 2017 recommendations, a 'light touch' approach would be best placed to allow the cloud services industry to grow while addressing any consumer concerns, as & when they arise. A similar approach has also been adopted under the National Digital Communications Policy which seeks to enable a "light touch regulation for the proliferation of cloud-based systems".⁹

Some of the proposals in the consultation paper indicate that instead of following TRAI's recommendation of a 'light touch' approach to regulation, the DoT will be exercising regulatory control over Cloud Service Providers indirectly. For example, it highlights that the registered industry body and its Cloud Service Provider members 'may' be required to comply with the orders/directions issued by the DoT or TRAI in the future, while also being subject to requests to furnish information¹⁰. The consultation paper also prescribes mandatory provisions for the code of conduct for the industry body¹¹. These provisions in the code of conduct cover various aspects of the proposed industry body, such as how new members will be admitted and what working groups have to be formed. It also covers various aspects of Cloud Service Providers such as quality of service parameters, billing and dispute resolution framework. Far from promoting a 'light touch regulatory approach', such provisions prescribe measures that will greatly curtail the freedom of business of Cloud Service Providers that will be registered with this industry body.

We also believe that the industry bodies discussed in the consultation paper are very different from the industry body proposed earlier by TRAI, such as the Cloud Industry Forum and Cloud Computing Innovation Council of India. For one, such bodies have completely voluntary membership models; and secondly, they do not envisage any kind of government intervention in their functioning.

Therefore, it is important that a regulatory impact assessment study be undertaken to understand the bearing of a regulatory framework on India's growing cloud services industry¹², especially in terms of business cost, prior to putting in place a regulatory framework that may curtail future innovation and growth in the sector.

⁹ Para 2.2(f)(ii), pg. 12, National Digital Communications Policy, 2018, Department of Telecommunications, Government of India, http://dot.gov.in/sites/default/files/Final%20NDPCP-2018_0.pdf.

¹⁰ Paragraphs (i) and (j), Annexure-I, TRAI consultation paper on cloud services, 23 October 2019, https://main.traai.gov.in/sites/default/files/CP_23102019.pdf.

¹¹ Annexure-I, TRAI Consultation Paper.

¹² The TRAI can also consider looking at other best practices as prescribed by the International Telecommunications Union (ITU); see "Fast forward digital connectivity for all", 2019 Best Practice Guidelines, Global Symposium for Regulators, https://www.itu.int/en/ITU-D/Conferences/GSR/2019/Documents/GSR19_BPG_V2_E.pdf.

Cloud services in India are forecasted to show a steep growth curve. As per a NASSCOM report, cloud spending in India is estimated to grow at 30% p.a. to reach USD 7.1-7.2 billion in 2022. In 2019 itself, the cloud services industry in India is expected to record the third highest growth rate in the cloud services sector globally.

Based on the aforementioned discussion, it may be concluded that all aspects of the Cloud Service Providers are amply regulated under existing laws and regulations and there is no need for any additional regulations or need to bring them under ambit of other agencies, in addition to Meity. Any additional regulations and monitoring requirements is thus very likely to be detrimental to India's goal of becoming a global hub for cloud computing, content hosting and delivery¹³. In the event that additional regulation is enacted, it is felt that the same will create overlapping or conflicting requirements thereby resulting in avoidable additional business costs for Cloud Service Providers. Therefore, in order to ensure unhindered growth and innovation in the cloud services market in India, it is felt that Cloud Service Providers should not be subject to any further regulation from any industry body and not be subject to guidelines/rules from any other agency, other than Meity.

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.

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.

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.

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.

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

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

BIF Response

Response to Questions 2 to 7:

¹³ Para 2.2, pg. 12, National Digital Communications Policy, 2018, Department of Telecommunications, Government of India, http://dot.gov.in/sites/default/files/Final%20NDCP-2018_0.pdf.

Our Response to Question 1 above amply covers all the issues that have been raised in Qs 2 to 7. . We wish to once again reiterate that in the current regulatory environment, Cloud Service Providers are already sufficiently governed by the existing guidelines/rules of MeitY and operate under the existing laws. If in the future, additional regulation by DoT/ TRAI is deemed necessary, it is felt that it will only create a risk of overlapping or conflicting regulatory regimes which will ultimately hinder the growth of cloud services in India.

The telecom infrastructure used for providing cloud services is already regulated. Customers access cloud services using network infrastructure, which is categorised as a communication service, and is already regulated by the DoT. Cloud Service Providers also use telecom infrastructure for connecting their data centres. Telecom/Digital infrastructure, and telecom service providers providing the same, are amply regulated by the DoT and TRAI in India. In doing so, these regulations adequately ensure protection of customers, maintenance of public network security and integrity, and enabling the Government to monitor and obtain information on transmission of data (e.g., for national security purposes). Hence it may be surmised that Cloud Service Providers need not be licensed/regulated separately through additional measures or brought under the ambit of a new agency like DOT or TRAI , as envisaged here.