



BIF Counter Comments on the TRAI Consultation Paper on “Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India”

At the outset, we welcome the opportunity to provide counter comments to the submissions and comments received by the Telecom Regulatory Authority of India (**TRAI**) from various stakeholders, including industry members and trade associations on the Consultation Paper on Regulatory Framework for Promoting Data Economy Through Establishment of Data Centres, Content Delivery Networks, and Interconnect Exchanges in India (**TRAI CP**). Basis our review of these submissions and comments, we would like to submit the below counter-comments.

We would like to reiterate that the three industries being discussed in this paper, viz. Data Centres, Content Delivery Networks (**CDNs**) and Internet Exchange Points (**IXPs**), will play a sizeable role in the development of India’s data economy. Devising a balanced approach to regulating these sectors will be key to improving domestic competitiveness as well as attracting top global players. In doing so, the Government of India, will maximize consumer welfare in parallel to enhancing India’s status as a digital power and top global destination for digital goods and services.

On Regulation of Data Centres

1. On a perusal of other stakeholder comments, we note that while stakeholders are widely in agreement that we should endeavour to attract large foreign investment and incentivize industry players to set up Data Centres in India, recommendations on regulatory frameworks are contrary to global best practices advising stricter control mechanisms be imposed than those existing in global Data Centre hubs, such as Singapore the EU, and some US states.

2. Fiber and Connectivity Constraints

- a. We note that a fair number of stakeholders are advocating that fiber connectivity to Data Centres should be provided only by licensed entities and that the captive use of dark fibers by Data Centres should be disallowed. As is well known, dark fiber is imperative to the rapid growth and scaling of a Data Centre industry. Further, as the rural India experience tells us, laying down broadband infrastructure in Tier-3 cities and rural areas can be prohibitively expensive for lone operators, and as a result, such infrastructure does not get laid and consumers and businesses must contend with lesser availability or denial of access to good quality internet services.
- b. Tightly regulating infrastructure in the way that is being proposed will be detrimental to the growth of an infant industry heavily reliant on such infrastructure as well as to the welfare of consumers by erecting insurmountable barriers to entry. The latter will inevitably reduce competitiveness at the retail level, thereby driving down the incentives

to provide the best quality of service and cost structures to consumers (and businesses alike).

- c. Furthermore, heavily restricting the ability to provide such services will ensure that Data Centres get concentrated in and around Tier 1 cities, which is a challenge on multiple counts, not least because of space constraints and demands placed on otherwise saturated infrastructure. Simultaneously, this also pulls away valuable investment and growth opportunities from more rural or more underserved areas in India. Given that both the Indian government as well as the TRAI are focused on enhancing investment in non-urban areas, it is crucial to remove any infrastructural bottlenecks.
- d. **Recommendation:** The best way to overcome these entry barriers is to encourage passive and active infrastructure sharing on a wholesale basis — distributing and thus lowering associated costs. Specifically, regulatory policies for Data Centres should streamline licensing processes and fees for granting right-of-way (including fast track of such procedures and processes), remove regulatory barriers to entry (such as permitting data centre companies to lay their own dark fiber which would be akin to the concept of Private/Campus Networks being permitted to provision their own digital infrastructure as these infrastructure are not being used to connect to Public Networks.), enable ease of access to telecom infrastructure (such as optical fibre networks) without the need to enter into agreements with licensed entities as mentioned previously), adopting incentives for sharing license obligations and a “dig once, build once” business and policy model to encourage providers to share the costs of deploying and maintaining connectivity infrastructure.

3. Data Localisation and the Data Protection Bill (DP Bill)

- a. A few submissions to the TRAI CP have observed that data localisation will enable India to become a data hub in Asia and that it is important to enforce the DP Bill (in its current form after the JPC report released in December 2021) at the earliest to realize the gains from data localisation. However, none of the submissions advocating for such enforcement acknowledge the unique challenges this proposition poses for a balanced opinion to harmonise the growth of data centres –both domestic as well as foreign as well as regards storage and processing of foreign data in our own /domestic data centres.
- b. To reiterate our previous comments, the DP Bill in its current form posits data localisation requirements and restricts cross border data flows, while also exempting Indian regulators from data protection obligations. Further, the DP Bill in its present form does not contain provisions protecting the data of foreign origin from the purview of the Indian laws. The absence of this protection can result in a scenario where the protections provided to personal data in other jurisdictions are overridden, potentially affecting user rights, as well as compliance with domestic laws in other jurisdictions. This could possibly lead to serious conflict of laws issues, huge negative externalities on bilateral/multilateral trade, as well as undermine the confidence of foreign investors to ensure security of foreign-owned and foreign-regulated data in Indian Data Centres.
- c. Mandating data localisation norms to bolster the Data Centre industry will thus run contrary to the intended impact.

- d. **Recommendation:** We urgently recommend that TRAI should perhaps send its recommendations on this aspect to MeitY before the DP Bill is put out in the public domain and advocate for removing mandatory data localisation requirements or significantly narrowing the scope of the same thereof. Before any regulatory frameworks for Data Centres are crafted, we wish to request that the focus should be diverted towards increasing the lucrateness of setting up and running Data Centres in India after balancing the customer requirements along with power and cooling capabilities required to sustain the same.

4. On Regulation of CDNs

- a. Based on the universal acknowledgement that CDN industry is not regulated globally, we are concerned that a few stakeholders are advocating heavy regulation of the CDN industry in India. Contradictorily, while many such submissions recommend the need for light-touch regulation, they seem to advocate greater restrictions on non-Indian CDN service providers and generally are in favour of legally mandated frameworks in place for CDNs. Such suggestions run contrary to global policies and practices.
- b. Some of the suggestions made include requiring CDNs to mandatorily register with a regulator; be subject to net neutrality norms; maintain quality of service in parity with the TSP/ISPs; and to have onerous content-related restrictions (content blocking, minimum local use quotas for customers delivering content to India, geographical limitations on routing and re-routing of domestic content).
- c. These recommendations on CDN regulation do not adhere to the global view and standards for how the CDN industry should be treated. Further, there seems to be a prevalent conception that CDNs compete with TSPs/ISPs, even though there is no evidence to support the same. In this regard, we would like to re-emphasize that the CDN ecosystem relies heavily on TSPs/ISPs and most CDNs are customers of TSPs/ISPs or operate private networks interconnecting with such TSPs/ISPs. In fact, TSPs/ISPs have a natural advantage to provide CDN services relative to traditional CDN operators, since they already have the requisite network infrastructure available, as well as have a direct relationship with content providers and concomitant control over last-mile delivery of content to end-users.
- d. Further, it cannot be over-emphasized that the absence of CDN regulation in India has allowed global CDN service providers to invest very deeply in a CDN footprint in India, allowing deployments in a very large number of small operators and resulting in extensive consumer reach through coverage in Tier-2/3/4 cities and rural areas. Since the existing policy and regulatory regime has helped them prosper and grow so far, we feel there is no need for stricter regulations or mandates to be imposed. Any contrary attempt is likely to result in reduction in rural coverage, downgrade in user experience and quality of service, increased bandwidth demands and costs, and disadvantages for smaller operators who are dependent on rural reach for their success. Thus, regulating CDNs, will have the effect of hurting rural consumers and domestic industry as well.

e. Recommendations:

- i. We strongly recommend that the CDN industry should not be regulated in India since this would be a marked departure from the global best practices on CDNs. Over-regulation of a new industry, especially one that has thrived on competitiveness and low/negligible entry barriers, will have adverse negative consequences and most likely lead to a plateau in a burgeoning industry in India.
- ii. With respect to content-related concerns, sufficient Indian regulatory frameworks exist to account for national security, content filtering, quality of service, anti-competitive behaviour and other similar concerns (such as the Information Technology Act, 2000 (**IT Act**) and associated regulations, the Consumer Protection Act, 2019 and the Competition Act, 2002).
- iii. It would be more beneficial instead to incentivize domestic TSPs/ISPs to provide CDN services by introducing suitable fiscal incentives viz. tax and license fee exemptions for TSPs/ISPs operating CDNs.

5. On Regulation of IXPs

- a. Similar to the recommendations for CDNs, we note that some comments recommend subjecting IXPs to the same licensing requirements that are present for ISPs in India and include compliance with tax laws, licensing and revenue sharing requirements, obligations under the IT Act as they relate to monitoring, blocking, cybersecurity and other such areas of compliance.
- b. Imposing such a burdensome compliance regime on private companies that are beyond the purview of telecom regulations, will deter such companies from operating domestic IXPs. This will significantly impact the growth of the sector in India and reduce our potential for attracting investments in this sector.
- c. **Recommendation:** It is requested to avoid imposing a licensing framework for IXPs, given that they primarily function as a 'transit zone' to enable free flow of internet traffic across borders and tend to be content-neutral.
