



To,
Advisor (QoS)
Telecom Regulatory Authority of India

Reference: IFF/2019/137

December 4, 2019

Re: Comments on TRAI's Consultation Paper on Cloud Services

We take this opportunity to thank the Telecom Regulatory Authority of India ("TRAI") for consistently ensuring that diverse stakeholders are engaged in its consultation process, and specifically for its solicitation of comments and in this consultation on Cloud services.

The Internet Freedom Foundation is an Indian member supported organisation that ensures technology respects fundamental rights, born out of the SaveTheInternet.in movement for net neutrality. We work across a wide spectrum of issues, with expertise in free speech, electronic surveillance, data protection, net neutrality and innovation; we aim to champion privacy protections, digital security, and individual freedoms in the digital age.

At present we put forth three major concerns that formulates our comments on the consultation paper which firstly, relates to the mandate of the TRAI, secondly, the creation of industry interest groups and finally, our concerns with the model of self regulation proposed; these effectively provide our views to a majority of the questions provided by the Consultation Paper.

Jurisdiction of the TRAI

It is important to establish that the mandate of creating a framework for the registration of an industry bodies for Cloud Service Providers should not be carried by the TRAI as primarily it does not have the authority to regulate cloud services.

While cloud service providers provide information technology services which are supervised by the Ministry of Electronics and Information Technology ("MEITY") under the provisions of the Information Technology Act, it appears that this consultation is being organised under an assumption that it pertains to telecom infrastructure regulated by the Indian Telegraph Act, 1885 and the Indian Telegraph Rules, 1951. The consultation paper based on the recommendations provided by TRAI further this assumption; however, as their main purpose is to provide information technology services, all regulation should fall



within MEITY's ambit presently and TRAI cannot exert regulatory authority and powers to frame binding directions.

Creating cloud cartels

TRAI's recommendations indicates that cloud service providers should be regulated through not-for-profit industry bodies; this involves many registration requirements as well as conditions such as that only cloud service providers above a certain threshold are permitted to become a member. There is even a suggestion that the creation of industry bodies be based on the categories of cloud service providers.

The entire process of the creation of industry bodies for cloud service providers brings to the fore the worry of cartelisation and its resulting anti-competitive effects. The inclusion of entry and recurring fees that may be based on financial turnover will not only automatically exclude smaller providers from the same industry circles but also enable large providers to gain greater influence over the market, as only those select few will be financially capable of meeting such requirements.

Additionally, it is pertinent to note that the focus of this paper entirely lies with elevation of industry bodies and its cloud service providers, moving the spotlight from where it is required: the rights of Indian consumers (particularly with respect to their privacy and data).

Provision of Grants

The paper suggests that initial funds or grants may be provided by the Government to this the adhoc industry body till elected bearers assume control. There is little clarity afforded to this provision, particularly in terms of the reasons for the providing of such grants. There is concern that such provision might create an unsustainable precedent for the Government in terms of establishing such an expectation with industry bodies across sectors.

The worries of self-regulation

The consultation paper puts forth the recommendation that a Code of Conduct be curated, which will lay down mandatory standards and guidelines to be met by cloud service providers, and their proposed industry body - essentially translating to a self-regulation mechanism which in itself is a questionable solution. Maintaining consistency with all arguments against self-regulation, the lack of a legal form necessitating these requirements



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and any formal oversight is one of its major drawbacks. Further, as per the paper, such extensive self-regulation also argues against the supposed 'light-touch' approach the TRAI claims to prescribe.

As a final point, we would like to point out that there are various other aspects such as data, cyber-security and consumer safeguards that require regulation by established legal frameworks - or upcoming legislation such as the Personal Data Protection Bill - and cannot be governed through self-regulation.

The Internet Freedom Foundation makes these initial submissions to the TRAI's consultation paper. We value the opportunity for any further requests for information, inputs or clarifications and remain available for meetings.

Kind regards,

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Internet Freedom Foundation