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Dear Sir,

Subject: BSA Submission on the Consultation Paper on Cloud Services issued by the Telecom Regulatory Authority of India on October 23, 2019

BSA | The Software Alliance¹ (BSA) is grateful for the opportunity to comment on the [Consultation Paper on Cloud Services](#)²(Paper) issued by Telecom Regulatory Authority of India ('TRAI') on October 23, 2019.

BSA is the leading advocate for the global software industry before governments and in the international marketplace. BSA members are at the forefront of data-driven innovation that is fueling global economic growth, including cutting-edge advancements in artificial intelligence (AI), machine learning, the Internet of Things, and cloud computing services. These innovations are helping to make our devices smarter, our businesses more competitive, and the delivery of government services more efficient.

As the leading advocate for the global software industry, BSA is greatly interested in contributing to initiatives that seek to drive growth of cloud services. In July 2016, BSA

¹ BSA's members include: Adobe, Amazon Web Services, ANSYS, Apple, Autodesk, AVEVA, Bentley Systems, Box, CA Technologies, Cadence, Cisco, CNC/Mastercam, DataStax, DocuSign, IBM, Informatca, Intel, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, SAS Institute, Siemens PLM Software, Splunk, Symantec, Trend Micro, Trimble Solutions Corporation, and Workday.

² *Consultation Paper on Cloud Services* by TRAI dated October 3, 2019 available at: https://main.traf.gov.in/sites/default/files/CP_23102019_0.pdf

submitted its [response](#)³ to the TRAI '[Consultation Paper on Cloud Computing](#)'⁴ and, through this submission, we once again welcome the opportunity to share our views on the approaches that would be most effective in promoting a regulatory environment that will allow India to continue leveraging the economic and societal benefits enabled by the use of cloud computing.

As a result of the 2016 consultation mentioned above, one of the [recommendations](#)⁵ issued by TRAI was that a 'light-touch regulatory approach may be adopted to regulate cloud services'. However, mandating the creation of a government-led industry body or bodies that would issue codes of conduct to which cloud service providers would have to adhere would not be consistent with the light-touch regulatory approach recommended by TRAI previously. For the reasons explained below, we urge TRAI reconsider the prescriptive approach the "Paper" under consideration proposes with regards to setting up of an industry body.

- 1. TRAI should encourage the use and adoption of standards that are global, voluntary, and industry-driven and allow industry-bodies to be created voluntarily**

As the cloud services industry continues to evolve and mature in India, the TRAI should refrain from mandating the creation of industry bodies and from imposing any limitations on, or preferences for, specific frameworks these bodies may adopt. Rather, TRAI should encourage the use and adoption of standards that are global, voluntary, and developed through industry-led multi-stakeholder processes which reduce costs and promote innovation.

Providing an enabling environment for such standards to develop will also allow industry bodies to emerge on an organic and voluntary basis. Such industry bodies will formulate and ultimately decide on the functioning rules and processes with active participation of its members through a consensus-based process. Industry bodies highlighted in the Paper such as the Cloud Industry Forum and the Asia Cloud Computing Association are prime examples of this approach. Similarly, codes of conduct developed by those industry bodies do not follow prescriptive requirements. CloudCode, New Zealand's cloud computing code of practice, for instance, was developed voluntarily. The Government of India should rely on voluntary, consensus-based industry bodies, instead of prescribing a framework upon the industry and such bodies.

³ BSA submission – TRAI consultation paper on cloud computing dated July 25, 2016 available at: <https://www.bsa.org/files/policy-filings/07252016BSASubmissiononCloudComputingIndia.pdf>

⁴ Consultation Paper on Cloud Computing by TRAI dated June 10, 2016 available at: https://main.trai.gov.in/sites/default/files/Cloud_Computing_Consultation_paper_10_june_2016.pdf

⁵ Recommendations On Cloud Services by TRAI dated August 16, 2017 available at: https://main.trai.gov.in/sites/default/files/Recommendations_cloud_computing_16082017.pdf

We recommend that the Government of India:

- a) Support IT industry organizations developing voluntary, industry-led codes and standards;
- b) Recognize and utilize widely adopted international standards and certifications;
- c) Refrain from prescribing a framework for industry bodies.

2. Additional regulatory requirements will only hurt the growth of the cloud industry

Cloud service providers (CSPs) are already subject to existing laws covering different aspects of their operations. Additional prescriptive requirements imposed through government-led industry bodies may result in significant compliance burdens and negatively impact the ability of companies to provide cutting-edge cloud computing services in India. Some of the various regulatory requirements that CSPs are already subject to include:

- As ‘intermediaries’ under the Information Technology Act (IT Act), CSPs are subject to due diligence requirements.⁶ CSPs also implement reasonable security practices for collection, use, disclosure, and transfer of sensitive personal information or data under the IT Act.
- The Ministry of Electronics and Information Technology (MeitY) is developing a personal data protection framework for collection and use of personal data. This framework may regulate CSPs as ‘data processors’.
- The infrastructure layer through which cloud services are made available to customers are regulated by the Department of Telecom or TRAI.
- The Consumer Protection Act 2019 (CPA) already protects consumers against unfair trade practices or deficient services.
- MeitY governs cloud services as the ministry entrusted with developing policies for information technology under the Allocation of Business Rules.⁷ MeitY already governs empanelment of CSPs as government service providers under the ‘Meghraj’ initiative.

Any additional prescriptive requirements for CSPs, whether directly imposed by government agencies or through a government-led industry body, may run counter to the ease of doing business objectives of the government. Mandating codes of conduct, standards or guidelines that include product or service definitions, Quality of Service (QoS) parameters, billing models, data security, dispute resolution framework, model Service-level agreement (SLA), disclosure framework and other onerous prescriptive

⁶ Section 79 of the IT Act.

⁷ 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

requirements as mentioned in 1.1.1. (ii) of the Paper, will only stifle the pace of innovation in India.

India seeks to position itself as an economic powerhouse by 2024. The digital ecosystem is a key pillar of India's vision of a \$5 trillion-dollar economy. Cloud computing services will supplement innovation and emergence of new technologies. As one of the fastest growing cloud services market in Asia-Pacific, India has the opportunity to develop a robust, innovative and transformative base for its digital ecosystem. Measures that slow the growth of cloud computing at this stage could put at risk the growth of this important industry, in addition to the many other costs to the Indian economy.

Thanking you

Best Regards,

