

CLOUD COMPUTING SERVICES FROM INDIA

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July 2010

Soon Google's cloud computing initiative will be led by its centre's in Bangalore and Hyderabad. With several million businesses and active users globally, Google aims at developing India as a "Centre of Excellence" for the company in cloud computing. This in-turn will translate Google India as the largest enterprise development centre of the company.

PSA view – This will definitely generate further employment and strengthen India's position as a global IT service provider. However, it will also divulge the existing loopholes in India's Information Technology Act, 2000 ("Act"). Cloud computing is a shift from the usage of hardware and software to store and use data, to online storage and usage of data on a computing platform run by a third party, such as Google, Yahoo, Amazon, etc. Its per-use service-based model benefits businesses by lowering costs and performing efficiently. However, there are several legal issues, such as data protection, jurisdiction and electronic evidence revolving around it. Cloud computing service from India will provide a stringent test to the existing Act. To withstand such test, the legislators will have to fine tune the Act to curb violations and place stringent penalty on the offender. Necessary steps will also have to be taken to provide clarity on multi-jurisdictional issues and the procedure for obtaining electronic evidence from the service provider. Since such measures are not in place, it is to be seen how the legal issues arising from cloud computing services are resolved, and the view of the judiciary towards it.

TRAI's recommendation on foreign investments in Broadcasting

The Ministry of Information and Broadcasting ("Ministry") has requested the Telecom Regulatory Authority of India ("TRAI") to review its recommendations of April 26, 2008 on foreign investment in broadcasting sector in the light of recent changes in FDI policy. The Consolidated FDI Policy of March 31, 2010 issued by the Department of Industrial Policy & Promotion has come into effect since April 1, 2010. The TRAI, after consulting with stakeholders, sent its recommendations to the Ministry on June 30, 2010. The key recommendations are: (a) Foreign investment limit for the broadcast carriage services i.e. DTH, IPTV, Mobile TV, HITS, Teleport and MSOs who are upgrading to digital & addressable environment should be 74%; (b) Foreign investment limit for LCOs should be 26%; (c) The foreign investment limits should be 26% for news & current affairs TV channels and FM radio; (d) There will be no restriction on foreign investment for up linking and down linking of TV channels other than news & current affairs TV channels; and, (e) All foreign investment less than 26% would be through automatic route. Investments of 26% and above will require prior approval of the Government.

PSA view – TRAI has based its recommendations dividing broadcasting services in two broad groups – carriage services and content services. The reason for the differential treatment in respect of foreign

investment limit between the two services is that carriage services are in the nature of infrastructural services whereas content services, especially the news and current affairs services are considered more sensitive as the power of news content to influence public opinion may have a bearing on maintenance of public order, security of the State, and maintenance of communal harmony. It is hoped that the present recommendations would further facilitate the investments for growth of broadcasting sector.

Guidelines for import of telecom equipment

Much to the delight of various telecom companies, the DOT has decided to release guidelines on the import of telecom equipment. These guidelines are primarily being introduced in the wake of national security. The DOT will prepare an exhaustive list of core telecom equipment that will require mandatory security clearance before placing purchase orders by any operator. This will certainly provide a structured procedure ensuring a channelized import of equipments for the telecom sector.

PSA view – Telecom companies have been facing difficulty in importing equipment from vendors, especially those from China. These equipments are held up by the custom authorities and are rarely given security clearance, thereby having a detrimental impact on the rollout obligations and expansion plans of the local telecom companies. Though the government denies targeting Chinese goods, we will have to wait and see how the guidelines are enforced against imports from other countries vis-à-vis Chinese imports. Hardware is an important component for the telecom industry and it is necessary that the process of importing be made as structured as possible. With the intense tariff war prevailing amongst the telecom operators, time is of the essence. Therefore, any delays which can impact rollout obligations of a company should be avoided. A well formulated and drafted import policy on telecom equipment will certainly result in the overall growth of the sector.

By:

Neeraj Dubey

Rohan Jhusiwala

Dhruv Suri



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