



Comments for Ministry of Electronics & Information Technology (e-Governance Division) on Draft Data Centre Policy, 2020

Background

Consumer Unity and Trust Society (CUTS) expresses its gratitude to the Ministry of Electronics and Information Technology (MeitY), for inviting comments and suggestions on The Draft Data Centre Policy, 2020 (draft policy).

About CUTS

In its 37 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur, to opening overseas Resource Centres in Vietnam,¹ Africa,² Switzerland,³ and most recently in the United States of America⁴. It continues to remain an independent, nonpartisan, and non-profit economic policy think tank, while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE)⁵; Centre for Consumer Action, Research & Training (CART)⁶; Centre for Human Development (CHD)⁷; and Centre for Competition, Investment & Economic Regulation (CCIER)⁸. It has been working towards enhancing the regulatory environment through evidence-backed policy and governance-related interventions across various sectors and national boundaries. Further details about CUTS, are available [here](#).

Having conducted various studies and events, pertaining to e-commerce (such as: Internationalisation of Micro and Small Enterprises through e-commerce and e-commerce in the Context of Trade, Competition and Consumer Protection in India)⁹, as well as on Data Protection (such as: Consumer Impact Assessment of Data Localisation,¹⁰ and Understanding the Impact of Data Localization on Digital Trade)¹¹, CUTS has observed a few critical issues in the Policy, which may impede the growth of data centres in India. These have been discussed in subsequent sections, along with a few recommendations to address them.

¹ <http://cuts-hrc.org/en/>

² <http://www.cuts-international.org/ARC/>

³ <http://www.cuts-geneva.org/>

⁴ <http://www.cuts-wdc.org/>

⁵ <https://cuts-citee.org/>

⁶ <https://cuts-cart.org/>

⁷ <https://cuts-chd.org/>

⁸ <https://cuts-ccier.org/>

⁹ <https://cuts-ccier.org/e-commerce/>

¹⁰ **Objective:** Assessing the impact of restriction of cross-border data flows on consumers, among other stakeholders, on parameters, such as quality of service, innovation, data privacy, data security etc. **Expected Outcome:** presenting an evidence-based impact of data localisation, to the government and other stakeholders. <https://cuts-ccier.org/consumer-impact-assessment-oncross-border-data-flow/>

¹¹ **Objective:** Understand and analyse the importance of digital exports for India's GDP and economy, along with the possible impact of data localisation barriers on Indian exports of digital goods and services. **Expected Outcome:** build detailed and holistic understanding of the economic implications of existing and/or proposed data localisation barriers on India's digital exports, while producing evidence to study alternatives to data localisation measures which are prohibitory to free data flows, in order to help policy makers in India and around the world to take an informed and appropriate and on data localisation. <https://cuts-ccier.org/pdf/projectbrief-dtdl.pdf>

Submission

CUTS would like to congratulate MeitY on taking an important step towards making India a trillion-dollar digital economy. The foresight on having a policy on Data Centres is a welcome step. While the policy does well on several aspects, such as: declaring data centres as an essential service and providing Infrastructure Status to the Data Centre Sector, CUTS submission brings forth a few lacunas in the policy, which have been highlighted in the subsequent section.

Table 1: Submissions

| Clause | Issues | Remarks |
|--|---|---|
| <u>Background</u> | | |
| 1.4 Need for data centre (DC) infrastructure | The need for Data Centre infrastructure within the boundaries of the country is further necessitated by the data localization provisions of the proposed Data Protection Act and for the protection of the digital sovereignty of the country in an increasingly connected world. | <p>Premising the need of fostering the domestic DC industry merely on the assumption of the Personal Data Protection Bill becoming law in its current form may be erroneous, given the resistance towards mandatory data localisation requirements by most stakeholders. CUTS studies on the subject, namely: Consumer Impact Assessment of Data Localisation and Understanding the Impact of Data Localization on Digital Trade may be referred in this regard.</p> <p>Reliance may only be placed on market-led growth, and providing an enabling environment for setting up DCs in India, making it a location of choice for global players.</p> |
| | India offers advantages of having established global connectivity through submarine cables, easy and cost-effective access power and readily available skilled manpower provides, enabling the nation to become a global Data Centre hub. | <p>The draft policy arguably incorrectly assumes India's infrastructural readiness to host DCs within its borders. Notably, such infrastructure has contradictorily but rightly been recognised as impediments under clause 1.6.</p> <p>India has ranked poorly in various DC risk indexes, based on energy costs, available international bandwidth, ease of doing businesses, and taxes imposed.¹² India also does not fare well in the International Telecommunication Union's (ITU) Global Cyber Security Index.¹³</p> |

¹² https://verne-global-lackey.s3.amazonaws.com/uploads%2F2017%2F1%2Fb5e0a0da-5ad2-01b3-1eb8-8f782f22a534%2FC%26W_Data_Centre+Risk_Index_Report_2016.pdf

¹³ https://www.itu.int/dms_pub/itu-d/opb/str/D-STR-GCI.01-2018-PDF-E.pdf

| Clause | Issues | Remarks |
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| | | <p>These aspects must be worked upon in order to realise the policy’s vision of making India a Global Data Centre hub and promote investment in the sector, which will propel the digital economy and help fulfil the growing demand of the country and facilitate a state of the art service delivery to citizens.</p> |
| <p>1.8 Data Centre Parks/Operators</p> | <p>The policy measures, as mentioned in the document, are applicable for Data Centre park developers/Data Centre operators as well as the allied ecosystem of the Data Centre sector.</p> | <p>The policy must identify, define, and assess the need of every stakeholder of the DC ecosystem. A Strength Weakness Opportunity and Threat (SWOT) Analysis may be conducted in this regard to check for the readiness and opportunities for development. Perspectives, roles, and expectations of each of the stakeholders need to be mapped by the policy itself in order to really maximise the value of the policy.</p> <p>These may include not only DC developers and operators but DC designers, consumers (business and end consumers), suppliers of DC equipment, investors, government departments and ministries, etc. as well.</p> |
| <p>1.9 fiscal and non-fiscal incentives</p> | <p>This policy framework shall be followed by a detailed scheme with an implementation guideline document providing the particulars of various fiscal and non-fiscal incentives to be provided to the sector by the Central and State Government.</p> | <p>While CUTS’ looks forward to details of the fiscal and non-fiscal incentives to be provided to the sector, it is advisable that a Cost-Benefit Analysis¹⁴ may be conducted on the proposed incentive scheme, in order to ensure that the envisaged benefits outweigh the possible costs of the incentives.</p> <p>For instance, CUTS study titled Consumer Impact Assessment of Data Localisation showed that mandatory local storage of data, despite having its merits with respect to economic development and national cyber-security, but had an overall negative impact on consumer welfare.</p> <p>Similar impact assessments may be undertaken for the proposed incentives to ensure that optimal incentives are devised for fostering the DC industry in India.</p> <p>At this stage, it appears that the policy is long on vision but short on details. While laying down the broader mission, objective, and strategies, it should have envisaged challenges that may arise in implementing such strategies and should have proposed mechanisms to address such challenges. Without a sound implementation</p> |

¹⁴ <https://cuts-ccier.org/regulatory-impact-assessment/>

| Clause | Issues | Remarks |
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| | | <p>framework, the policy risks of remaining one of those policy documents periodically issued by the government, which remain on shelf and never really see light of the day.</p> <p>Moreover, government incentive schemes typically intend to compensate industry for operating in sub-optimal conditions, without necessarily aiming the fix such conditions necessitating introduction of incentive schemes. This is a myopic approach and results in wastage of public resources. Financial incentives to attract investors must be time bound in nature and the government should aim to ensure existence of attractive and reliable environment which should be sufficient to attract investors in the DC industry, without any additional incentives.¹⁵</p> |
| <u>Objectives</u> | | |
| 4 Objectives | Key Objectives of the Draft Policy | The draft policy lays down valid objectives but misses out on considering the consumer perspective of the policy. The policy needs to add to its objectives the enhancement of consumer welfare emanating from the digital economy. |
| <u>Strategies for growth of Data Centre Sector</u> | | |
| 5.1.2 | Simplify clearances for setting up data centres in India | <p>While the idea of simplifying clearances for data centres is praiseworthy, it should not be limited to the setting single window clearance mechanisms or publishing a list of approvals required.</p> <p>India's tryst with single window clearance systems has not been encouraging as applicants still have to pursue different departments to issue necessary approvals. A deemed approval mechanism has not helped either as clarifications are requested by government departments just prior to expiry of the deadline and the deemed approval is not considered sufficient by financial institutions to provide credit.¹⁶</p> <p>Thus, there is a need to adopt regulatory guillotine framework which can test each approval on the thresholds of legality, necessity, and proportionality. This would list</p> |

¹⁵ <https://www.livemint.com/opinion/online-views/the-difficulty-of-decoding-business-incentive-schemes-11605711499148.html>

¹⁶ <https://cuts-ccier.org/evaluation-of-competitiveness-ease-of-doing/>

| Clause | Issues | Remarks |
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| | | in doing away with sub-optimal requirements, and truly simplify the clearance mechanism for data centres in India. ¹⁷ |
| 5.1.5.2 Data Centre Incentivisation Schemes | Incentives for usage of domestic IT hardware and non-IT equipment | While promotion of domestic equipment is necessary, it should not result in compromising with quality and global standards. In the capital goods and electronics sectors, manufacturers are unwilling to source inputs and intermediate products locally, owing to concerns with quality and standards. Local content preference policies also tend to skew the playing field and raise concerns of distorting competition. ¹⁸ There is need to prevent this in data centre equipment industry, by promoting research and development, international collaboration, focusing on quality and skill development. This will enable domestic industry to improve quality and become globally competitive. |
| 5.2.1.7 Enabling a favourable ecosystem for the operations of Data Centres | Formation of Steering group, comprising of representatives from the Ministry of Power, Ministry of Electronics and Information Technology and State Governments to identify the execution mechanism for the identified intervention related to the availability of quality power. | This is a case for overregulation. The need for multiple committees with seemingly similar roles seems redundant. This committee can simply be encompassed under the proposed Inter-Ministerial Empowered Committee (IMEC) as proposed under clause 5.5.1. |
| 5.2.2.1 Leverage the framework provided by National Digital | Common service ducts and utility corridors for enabling the proliferation of Optical Fibre Cables and dark fibre for the Data | While the goal of this policy is noble. Given the current status and delays on the BharatNet project, and several loopholes in the NDCP, the basis for this policy does not have strong foundations. Issues like rationalisation of Right of Way Guidelines across states and unevaluated infrastructure development targets within the NDCP |

¹⁷ <https://economictimes.indiatimes.com/news/economy/policy/view-india-needs-a-complete-regulatory-overhaul/articleshow/75238838.cms> and https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/wrkgrp12/wg_brf2103.pdf

¹⁸ <https://cuts-citee.org/convergence-between-trade-and-industrial-policies-in-india-contip/>

| Clause | Issues | Remarks |
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| Communications Policy 2018 (NDCP) | Centre operations and ensuring sharp reduction in downtime due to fibre cuts. | 2018 makes it unlikely for the leveraging the NDCP framework to facilitate infrastructure development for the Data Centres. CUTS submissions on the NDCP ¹⁹ may be referred in this regard. |
| 5.3. Data Centre Economic Zones | Setting up of at least four Data Centre Economic Zones. | Setting up of Data Centre Economic Zones on the lines of Special Economic Zones (SEZ) may not be a good idea. Our SEZ operators have been facing challenges like inconsistent and unpredictable taxation, limited incentives to expand, duplication of procedures. ²⁰ The mega food parks set up on similar lines to promote the food processing industry also suffer with several challenges. Consequently, it is necessary to take into account our experience of rolling out similar schemes in different sectors, and consider stakeholder perspectives, before launching such schemes to promote data centres in India. |
| 5.4.2 Encouraging Investment | Encourage joint ventures between the foreign and domestic companies to promote participation from Indian companies. | A Public-Private Partnership (PPP) model must also be considered when discussing investment models. The draft policy talks about partnerships between foreign and domestic companies, the PPP model between the public sector and private players, both domestic and international may be considered. This model may attract more investment because of the public sector's experience in navigating India's complex regulatory regime. |
| 5.5.2.2 Institutional Mechanism for Policy governance | Data Centre Facilitation Unit (DCFU) would be the nodal agency to work under the Inter-Ministerial Empowered Committee to drive and support the implementation of decisions taken. | While the idea of an inter-ministerial committee-driven facilitation unit is noble, encouraging an encompassing decision-making agency, the need for multiple governance/oversight bodies is unfounded, similar to clause 5.2.1.7. Should the finalised version of the draft policy decide on the necessity of this Unit, then it may consider empowering this unit as a single window for clearance of Data Centres, thereby removing excessive regulatory challenges. ²¹ |
| 5.5.3 Independent | An independent Data Centre Industry Council (DCIC) is also | The importance of an independent body to interface between the industry and the government is a welcome step. The DCIC must also consider including other key |

¹⁹ https://cuts-ccier.org/pdf/CUTS_Comments_on_Draft_National_Digital_Communication_Policy2018.pdf

²⁰ <https://www.asianage.com/opinion/oped/140219/leveraging-indias-trade-competitiveness.html>

²¹ <https://nasscom.in/knowledge-center/publications/nasscom-cloud-next-wave-growth-india-2019>

| Clause | Issues | Remarks |
|---|--|---|
| Data Centre Industry Council (DCIC) | proposed to be set-up, which would act as an interface between the sector and the Government. | stakeholders like CSOs, Industry representation, and representation from consumer groups within the council, ensuring the best possible services for the consumers in a fair market regime. |
| 5.5.4 Midterm evaluation | Government of India to undertake the mid-term evaluation of the policy and propose any modifications/ amendments if required. | The policy must specify the total term and determine the specific factors for the evaluation and the responsible body for such an evaluation. The draft policy should also consider specifying which agency will conduct this evaluation and if the evaluation will be conducted by an external agency, what will be the deciding factors in the choice of that agency. |
| <i>Issues missed in the draft Policy</i> | | |
| Not included: Law enforcement access | The issue of access of law enforcement agencies to data centres is conspicuous by its absence. A weak regulatory regime which allows disproportionate access to government is a disabler for data centre investors and operators. A predictable mechanism for government to request access to data and data centre operators to respond to such requests, including availability of judicial oversight, is essential to showcase a stable regulatory regime and attract investments in the data centre industry. ²² | |
| Not included: Cyber security | An efficient cyber security and response framework, with necessary cooperation between government and industry, and adequate transparency for citizens, is essential to ensure sustainable growth of data centre industry. Despite the existence of CERT-IN, domestic capacity regarding cybersecurity is less than desired. Capacity building within the government on cybersecurity issues will be critical to ensure long term growth of data centre industry in the country. | |

²² <https://www.financialexpress.com/opinion/oil-or-water-need-to-ensure-that-data-nationalism-does-not-hurt-consumer-interests/1749273/>

Conclusion

CUTS' looks forward to MeitY accepting the suggestions given above, and to assist MeitY in its endeavours of making India a Global Data Centre hub. For any clarifications/further details, please feel free to contact Sidharth Narayan (sid@cuts.org), and/or Setu Bandh Upadhyay (sbu@cuts.org).
