

September 18, 2020

Shri Ajay Prakash Sawhney
Secretary
Ministry of Electronics & Information Technology
New Delhi, Delhi 110001

Dear Secretary Sawhney,

On behalf of the undersigned organizations, we write to register our strong concerns regarding proposals in the *Report by the Committee of Experts on Non-Personal Data Governance Framework* (“Report”), which is currently before the Ministry of Electronics and Information Technology.

Our organizations represent thousands of companies from every corner of the global economy who invest in and conduct trade with India, including, but not limited to, the manufacturing, agriculture, automotive, life sciences, financial services, retail, logistics, and technology sectors. Despite the many differences in the products and services we create and in the customers we serve, we are united by the need to process, protect, and transfer proprietary data across international borders. Our companies rely on this data to reach consumers, drive business efficiencies, and continue to innovate.

Worryingly, the Report proposes a framework that would force global companies to share their data with the Government of India and other businesses in India, which would amount to the expropriation of proprietary business information. In addition, the Report recommends mandatory local storage of so-called critical and sensitive “non-personal data.” Due to an expansive definition of “non-personal data,” most company-held data – including intellectual property, trade secrets, processes, and insights – would be subject to these measures. The Report does not provide empirical evidence to support its conclusions; rather, it adopts far-reaching assumptions on how the mandated sharing of “non-personal data” would serve to “spur innovation” and correct “market imbalances.” If enacted, however, these measures would create powerful disincentives for India’s innovation ecosystem, as they would devalue the data sets themselves and undermine the significant investments global companies make to collect and derive value from “non-personal” data.

The Report’s recommendations run counter to global standards for data protection, competition, and good regulatory practices. Mandates for companies to locally store their data and to obtain consumers’ consent to process anonymized data

will degrade the privacy and cybersecurity protections available in India. While the Report outlines the authorities for a new regulatory agency to enforce mandatory data sharing, it is also silent on issues of due process and oversight to prevent misuse and abuse by third parties. When these and other proposals in the Report are considered as a whole, their result, if enacted, would be a significant deterioration in India's business environment. Indeed, the ability of our companies to participate in the Indian market would be dramatically impacted, thereby impeding the flow of foreign goods and services to India and sharply reducing foreign investments.

Given the strong negative precedents the Report's recommendations will set in expropriating proprietary data, and the adverse impacts it is likely to have on India's innovation ecosystem, we respectfully urge the Ministry to refrain from endorsing its findings. Our organizations are committed to assisting your efforts to accelerate India's digital transformation and economic growth.

Sincerely,

American Property Casualty Insurance Association
American Council of Life Insurers
Asia Video Industry Association
Association of British Insurers
Association of Bermuda Insurers & Reinsurers
Australian Services Roundtable
Biotechnology Innovation Organization
Canadian Chamber of Commerce
TheCityUK
Coalition of Services Industries
Computer & Communications Industry Association
DIGITALEUROPE
Engine
Federation of German Industries
Information Technology Industry Council
Japan Business Machine and Information System Industries Association
Japan Electronics and Information Technology Industries Association
Japan Information Technology Service Industry Association
TechUK
National Foreign Trade Council
Reinsurance Association of America
U.S. Chamber of Commerce
U.S. Council for International Business
U.S.-India Business Council