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January 24, 2022

Shri Ashwini Vaishnav
Hon'ble Minister for Electronics & Information Technology,
Communications and Railways
Government of India

Subject: Serious Concern of Electronics Hardware manufacturing industry on Clause 49(2) (o) of the Personal Data Protection Bill, 2019, as recommended by the Joint Parliamentary Committee on - “Establishment of a mechanism for certification all digital and IOT devices”

Hon'ble Sir,

Greetings from MAIT, the apex industry association for Electronics & ICT Hardware manufacturers, digital and IOT devices.

This is with reference to the Report of the Joint Committee on Personal Data Protection Bill, 2019, tabled in the Parliament on December 16, 2021. We have reviewed the report and the recommendations made by the committee.

On behalf of our members, we would like to express serious concerns specifically on **Clause 49(2) (o)** under the section on '**Powers and Functions of Authority**' in the Bill. It recommends:

- To further regulate hardware manufacturers through proposed Data Protection Authority (DPA) by framing regulations in this regard.
- The Government to make efforts to establish mechanism for formal certification process including pan India dedicated lab / testing facilities for security certification of all the digital devices.

The above recommendations if accepted will have a serious impact on the entire electronics manufacturing sector.

At no stage of its deliberation the committee has discussed this aspect with the stakeholders of the electronics manufacturing sector. The recommendations to regulate hardware manufacturers show a complete disregard to MeitY's (nodal ministry) current mandated testing and certification framework. The framework is mandatory and is being complied by the industry for over a decade now. The framework has evolved since then and is now recognised globally.

The recommendations aim to duplicate the testing / certification framework by adding both new authority and mandatory compliance requirements. If accepted this will severely impact the Ease of Doing Business of the industry by placing them in a never ending maze multiple / duplicate regulatory compliance burden.

MAIT, in its previous letter dated December 06, 2021 (letter attached) has highlighted this concern. We had also recommended MEITY that if the proposed suggestion is implemented, it would subject hardware manufacturers to additional burdensome compliances and testing requirements. We also understand from various news reports that MeitY is in the process of preparing a formal note on the draft bill for the Union Cabinet. The Cabinet will take a final call on the provisions in light of the recommendations before its tabled in the Parliament.

We firmly believe that the **above recommendations on regulating electronic hardware manufacturers can go against the interest of the electronics industry at large**. We request you not to accept the recommendation and undertake **an industry consultation on the same**. This will help in getting the much-needed industry feedback which is gearing up to meet the target of \$ 300 Billion of electronics production. The industry needs support to achieve this ambitious target as against multiple compliance burden which impedes ability to conduct business with ease.

The electronics hardware manufacturers are already regulated by Ministry of Electronics and Information Technology, Ministry of Communications, Ministry of Consumer Affairs and Ministry of Home Affairs. The sector is subject to numerous certifications, tests, standards, which are considered important and relevant from security, functioning, inter-operability perspective.

We would like to reiterate that the recommendation by JPC for hardware electronics industry will have severe impact on the industry, which is already burdened with a maze of compliances. This will further hurt the investor sentiment and goes against a predictable and stable policy environment. The key reasons are as follows:

- 1. Certification process would be an additional layer of compliance on the industry that will slow down the commercial availability of hardware in the Indian market-Delay in commercial access:** Additional certification of devices, will delay the market entry of wide range of electronic equipment into the Indian market. Digital and IoT devices have a rapid pace of advancement with new models being launched every few months. Additional mandatory certification requirements, only for the Indian market will delay the market entry of these products. The delayed access to products will have an adverse impact on the Indian consumers as well. In addition, modifications made by the user/third parties, and the testing of such products poses the concern of unreasonable liability on manufacturers. It is suggested that given the complexities involved, the security and technical aspects governing the hardware should continue to be handled by the nodal Ministry itself, as opposed to by the DPA.
 - **Hampers ease of doing business by impacting scale and competitiveness:** Additional testing requirements for the electronics sector would act as an impediment in achieving scale of production owing to time-consuming certification requirements. This shall have a direct impact on the growth of a 'sunrise' sector like Electronics. Such a requirement would slow down the commercial availability of innovative (and in some cases more secure) hardware by adding an extra layer of local testing. This will have an adverse impact on the ease of doing business in India.
 - **Severely impact Exports of Electronics:** Any mandatory additional testing and certification requirements as recommended may severely impact exports. Countries importing India's electronics may introduce a **reciprocal non tariff barrier** by subject India's exports to a similar testing and certification requirements. This will impact business of companies and will make exports uncompetitive.
- 2. The data fiduciary taking responsibility for the security of data while it is on a consumer's device is unreasonable-**
 - This obligation cannot be extended to the data fiduciary taking responsibility for the security of data while it is on a consumer's device. Once a device leaves the assembly line, manufacturers can no longer be reasonably held accountable for consumer use, or the modifications created by particular files or apps that are not regulated by the manufacturer.

- Such liability would be unreasonable, and would not account for any modification caused to the devices, for example, by unauthorised repairs. Such an obligation would be impractical, and unviable to implement.

3. Testing and certification may not meet the intended objective in case of consumer devices-

- The most significant threat for consumer devices such as laptops, tablets, or smartphones is the software installed by a user after purchasing the devices or unauthorized parts installed into the device by unauthorized/local repair centres.^{[1][2]} A pre-sale lab certification would not be effective in addressing this issue.
- A post-sale certification at the behest of a consumer would need to take account of any such changes that the consumer itself may have made to a device and this would put undue liability on the data fiduciary for aspects that are beyond their reasonable control.

4. Specific technical expertise of Data Protection authority required to regulate such provision-

- Data Protection Authorities across the globe, have expertise in relation to the supervision of personal data while it is transferred, processed, and stored on servers. Expertise in relation to software and hardware under the direct control of an individual as this aspect of cybersecurity is entirely a separate discipline. There exists separate ministries and departments including within the ambit of MeitY to address this aspect.
- The obligation on the Data Protection Authority to directly regulate and establish certification criteria and a lab testing regime for device security and supply chain security may result in overloading the DPA, which already would be taking care of the core elements of the Bill. This is at variance with the international best practices and should be outside the realm of DPA.

To the best of our knowledge, globally, there are no such security and testing requirements in place from a data security perspective. Introducing such a requirement in India will result in inconsistencies and onerous obligations for both multinational and domestic companies who will have to comply with additional testing norms only for the Indian market.

While many governments have already adopted general data protection frameworks, none of them have rightfully adopted a general commercial hardware security certification requirement. In addition, such requirements will be extremely burdensome especially for smaller/MSME industry players who may have to re-consider their business models to comply.

Government has framed policies like PLI, NPE 2019 which have and are helping transform the country into a competitive manufacturing destination. The aim is also to encourage investments and build capacity of a scale to be a lead contender in the global supply chain process. This has to be built on the pillars of predictable and certain policy / regulatory environment. India has gained great strides in improving EoDB global ranking. The government has rightfully removed more than 20,000 compliances. In such a positive environment recommending to impose additional regulatory requirements, by the Committee will have ramifications with the potential to neutralise the impact of policies which have just started yielding results.

In light of the above stated issues, we request that the suggested Clause 49(2)(o) with regards to the monitoring, testing and certification of hardware should be dropped from inclusion in the bill.

Since this has been recommended in the absence of industry consultation, **MeitY should consider undertaking a detailed industry-wide consultation on this subject.** This will allow the industry to provide detailed feedback including the concerns. This will help in arriving at an informed decision.

With regards,

A handwritten signature in black ink, appearing to read "George Paul". The signature is stylized with a large initial 'G' and a long horizontal stroke.

George Paul
Chief Executive Officer

CC: Shri Ajay Prakash Sawhney, IAS, Secretary, Ministry of Electronics & IT