e-Commerce and recent Rules-FDI

Electronic commerce or e-commerce is a business model that lets firms and individuals buy and sell things over the Internet. Propelled by rising smartphone penetration, the launch of 4G networks and increasing consumer wealth, the Indian e-commerce market is expected to grow to US$ 200 billion by 2026 from US$ 38.5 billion in 2017.

India’s e-commerce revenue is expected to jump from US$ 39 billion in 2017 to US$ 120 billion in 2020, growing at an annual rate of 51%, the highest in the world. The Indian e-commerce industry has been on an upward growth trajectory and is expected to surpass the US to become the second-largest e-commerce market in the world by 2034.

Types of e-Commerce in India

- It is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet.
- In India, there are three types of e-commerce business model:
  - Inventory base model of e-commerce
  - Marketplace base model of e-commerce
  - The hybrid model of inventory based and marketplace model.

Marketplace and Inventory-Based Model

- Marketplace based model of e-commerce means providing an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between the buyer and seller.
- In a marketplace model, the e-commerce firm is not allowed to directly or indirectly influence the sale price of goods or services and is required to offer a level playing field to all vendors.
- Inventory based model of e-commerce means an e-commerce activity where the inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

Advantages of e-Commerce

- The process of e-commerce enables sellers to come closer to customers that lead to increased productivity and perfect competition. The customer can also choose between different sellers and buy the most relevant products as per requirements, preferences, and budget. Moreover, customers now have access to virtual stores 24/7.
- E-commerce also leads to significant transaction cost reduction for consumers.
- E-commerce has emerged as one of the fast-growing trade channels available for the cross-border trade of goods and services.
- It provides a wider reach and reception across the global market, with minimum investments. It enables sellers to sell to a global audience and also customers to make a global choice. Geographical boundaries and challenges are eradicated/drastically
Through direct interaction with final customers, this e-commerce process cuts the product distribution chain to a significant extent. A direct and transparent channel between the producer or service provider and the final customer is made. This way products and services that are created to cater to the individual preferences of the target audience.

- Customers can easily locate products since e-commerce can be one store set up for all the customers’ business needs
- **Ease of doing business:** It makes starting, managing business easy and simple.
- The growth in the e-commerce sector can boost employment, increase revenues from export, increase tax collection by ex-chequers, and provide better products and services to customers in the long-term.
  - The e-commerce industry has been directly impacting the micro, small & medium enterprises (MSME) in India by providing means of financing, technology and training and has a favourable cascading effect on other industries as well.

### Disadvantages of e-Commerce

- There is lesser accountability on part of e-commerce companies and the product quality may or may not meet the expectations of the customers.
- It depends strongly on network connectivity and information technology. Mechanical failures can cause unpredictable effects on total processes.
- Definite legislations both domestically and internationally to regulate e-commerce transactions are still to be framed leading to lack of regulation of the sector.
- At times, there is a loss of privacy, culture or economic identity of the customer.
- There is a chance of fraudulent financial transactions and loss of sensitive financial information.
- The Internet is borderless with minimum regulation, and therefore protecting intellectual property rights (IPR) on the Internet is a growing concern. There are currently several significant IPR issues including misuse of trademark rights.

### Government Initiatives Regarding e-Commerce in India

- In February 2019, a draft National e-Commerce policy has been prepared and placed in the public domain, which addresses six broad issues of the e-commerce ecosystem viz. e-commerce marketplaces; regulatory issues; infrastructure development; data; stimulating domestic digital economy and export promotion through e-commerce.
- The Department of Commerce initiated an exercise and established a **Think Tank on ‘Framework for National Policy on e-Commerce’** and a **Task Force under it** to deliberate on the challenges confronting India in the arena of the digital economy and electronic commerce (e-commerce).
- The Reserve Bank of India (RBI) has decided to allow "interoperability" among Prepaid Payment Instruments (PPIs) such as digital wallets, prepaid cash coupons and prepaid telephone top-up cards. RBI has also instructed banks and companies to make all know-your-customer (KYC)-compliant prepaid payment instruments (PPIs), like mobile wallets, interoperable amongst themselves via Unified Payments Interface (UPI).
- **FDI guidelines for e-commerce by DIPP:** In order to increase the participation of foreign
players in the e-commerce field, the Government has increased the limit of foreign direct investment (FDI) in the e-commerce marketplace model for up to 100% (in B2B models).

- Government e-Marketplace (GeM) signed a Memorandum of Understanding (MoU) with Union Bank of India to facilitate a cashless, paperless and transparent payment system for an array of services in October 2019.
- The heavy investment of Government of India in rolling out the fibre network for 5G will help boost e-commerce in India.
- In the Union Budget of 2018-19, the government has allocated Rs 8,000 crore (US$ 1.24 billion) to BharatNet Project, to provide broadband services to 150,000-gram panchayats.

DRAFT NATIONAL eCommerce POLICY

- Data
  - **Individual Right:** An Individual owns the right to his data. Therefore, data of an individual is must be used with his/ her express consent.
  - **Indian Control Over Data:** There should be a restriction on cross-border data flow. The policy bats for data localization and states that the data generated within India must be stored within India.
  - If a business entity that collects or processes any sensitive data in India and stores it abroad, should not share data with business entities outside India, for any purpose, even with customer consent.
  - A request from Indian authorities to have access to all such data stored abroad shall be complied with immediately.
  - All e-Commerce websites, apps available for download in India should have a registered business entity here. Non-compliant e-Commerce app/website to be denied access here.

- **Infrastructure development**
  - It stressed on developing physical infrastructure for a robust digital economy and suggested steps for developing the capacity for data storage in India.
  - Incentives will be provided to companies for establishing data localization location facilities like data centers, server farms within India.
  - **Firms to get 3 years to comply with local data storage requirements** and data storage facilities should be given ‘infrastructure status’.
  - Domestic alternatives to foreign-based clouds and email facilities should be promoted through budgetary support.

- **e-Commerce marketplaces**
  - The policy mentions that foreign direct investment (FDI) is allowed only in the marketplace model, not in inventory based model.
  - This is in line with the e-Commerce guidelines given by the government in December.
  - The policy also takes into account the interests of domestic manufacturers and Micro, Small and medium enterprises and seeks to create a level playing field for them in online retail.
  - **To curbs on Chinese e-commerce exports** the Gifting route (where goods are shipped as gifts), often used by Chinese apps, websites should be banned for all parcels except life-saving drugs.
  - **To prevent fake products,** Seller details should be made available on the website for all products and sellers must provide an undertaking to the platform about the genuineness of products.

- **Stimulating the domestic digital economy**
  - There is a need to formulate domestic industrial standards for smart devices and IoT devices to meet the goals of the country like consumer protection.
Online custom clearance will eliminate the need for manual processes and will help in ease of doing business.

Continued focus on Digital India initiatives by the Government will help in the development of the e-Commerce sector.

- **Export promotion**
  - e-Commerce startups may get ‘infant industry’ status raising the limit for courier shipments from Rs 25,000 to boost e-Commerce export.
  - To promote export it is necessary to lower the cost of transport, reducing paperwork, reducing delays at ports and airports etc.
  - Integrating Customs, RBI and India Post to improve tracking of imports through e-Commerce.

### New Rules – FDI

The government has issued new rules regarding Foreign Direct Investment (FDI) in e-commerce.

- The Department of Industrial Policy & Promotion (DIPP) issued a clarification to the existing rules pertaining to FDI in e-commerce companies.

### New Rules by DIPP

- The vendors that have any stake owned by an e-commerce company (equity stake) cannot sell their products on that e-commerce company’s portal.
- Any vendor who purchases 25% or more of its inventory from an e-commerce group company will be considered to be controlled by that e-commerce company, and thereby barred from selling on its portal.
- The policy mandates that no seller can sell its products exclusively on any marketplace platform and that all vendors on the e-commerce platform should be provided services in a “fair and non-discriminatory manner”. Services include fulfillment, logistics, warehousing, advertisement, payments, and financing among others.

### Why New Rules?

- Large e-commerce companies such as Amazon and Flipkart, while not owning inventory themselves, have been providing a platform for their group companies such as CloudTail and WS Retail respectively.
- E-commerce companies with foreign investments can only operate under the marketplace model, and not under the inventory model, which has allowed them to sell products much cheaper than independent sellers.
- Some see this as skewing the playing field, especially as these vendors enjoyed special incentives from the e-commerce firm, over others.

### Impact of DIPP Norms

- The DIPP policy is directed at protecting small vendors on e-commerce websites. It seeks to ensure small players selling on the portals are not discriminated against in favor of vendors in which e-commerce companies have a stake.
- Smaller marketplaces that do not have a stake in any vendors will also be able to now compete with the big firms. It can also boost the Start-Up India initiative of the
government.

**FDI guidelines for e-Commerce**

- DIPP has issued guidelines for FDI in e-commerce:

In India 100% FDI is permitted in B2B e-commerce, however, No FDI is permitted in B2C e-commerce. 100% FDI under automatic route is permitted in the marketplace model of e-commerce, while FDI is not permitted in inventory based model of e-commerce.

**Conclusion**

e-Commerce has become an important part of many multilateral negotiations such as Regional Comprehensive Economic Partnership (RCEP), WTO, BRICS etc. e-Commerce still faces various issues like international trade, domestic trade, competition policy, consumer protection, information technology etc. As a growing sector with huge interest from both domestic and international players, it becomes pertinent to regulate it keeping in mind the interest of both entrepreneurs and consumers. A conducive environment and a level playing field should be encouraged.

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