

# E-COMMERCE BUSINESS MODEL

Relevant for: Indian Economy | Topic: Issues relating to Growth & Development - Industry & Services Sector incl. MSMEs and PSUs

Ministry of Commerce & Industry

## E-Commerce Business Model

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E-commerce companies are subject to various extant rules and regulations. Owing to the cross cutting nature of e-commerce, different laws and regulations across sectors govern the present e-commerce activities, some of which are Income Tax Act, 1961, Consumer Protection Act, 1986, Information Technology Act, 2000, Foreign Exchange Management Act, 2000, Payment and Settlement Systems Act 2007, Companies Act, 2013 and laws related to Goods and Services Tax.

Department for Promotion of Industry and Internal Trade (DPIIT) vide Press Note 3 of 2016 containing Guidelines for FDI on e-commerce was issued on 29 March, 2016. However, allegations were made against e-commerce companies that the marketplaces were violating the norms laid down in Press Note 3 of 2016. So in order to provide further clarity on FDI policy in e-commerce, Press Note 2(2018) (Annexure-I) was issued by DPIIT on 26th December, 2018. Through the Press Note 2(2018), Government has reiterated the policy provisions with more clarity to ensure better implementation of the policy in letter and spirit. Further, as per clause (ix) of Press Note 2(2018), e-commerce entities providing market place will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and non-discriminatory manner. Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/ marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.

Confederation of All India Traders (CAIT) has represented that large e-commerce platforms are in violation of Press Note 2 of 2018 of the FDI Policy as they are engaging in predatory pricing and are providing excessive discounts. In this regard, responses/clarifications were sought from e-commerce companies concerned on the allegations made by CAIT. All e-commerce companies, in their responses have maintained that they do not exercise any control over sellers and operate a pure marketplace. Any discount which is offered are offered by the seller/vendor or the respective brand alone.

CAIT has also filed a petition with the Jodhpur Bench of Rajasthan High Court alleging FDI policy violations by e-commerce companies like Flipkart and Amazon which is sub judice.

A draft e-commerce policy was prepared and put up in the public domain on February 23, 2019 for comments/suggestions. Comments from over 120 stakeholders (companies, Industry associations, think tanks, foreign governments) have been received.

For improving the mutual coordination between e-Commerce companies and retailers,

stakeholder consultation were being held.

## ANNEXURE-I

### Press Note No. 2 (2018 Series)

#### **Review of the policy on Foreign Direct Investment (FDI) in e-commerce**

**1.0** In order to provide clarity to FDI policy on e-commerce sector, Para 5.2.15.2 of the Consolidated FDI Policy Circular 2017 will now read as under:

#### **5.2.15.2 E-commerce activities**

<b>Sector/Activity</b>	<b>% of Equity/FDI Cap</b>	<b>Entry Route</b>
<b>E- commerce activities</b>	100%	Automatic

**5.2.15.2.1** Subject to provisions of FDI Policy, e-commerce entities would engage only in Business to Business (B2B) e-commerce and not in Business to Consumer (B2C) e-commerce,

#### **5.2.15.2.2 Definitions:**

- i. **E-commerce-** E-commerce means buying and selling of goods and services including digital products over digital & electronic network.
- ii. **E-commerce entity-** E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and conducting the e-commerce business.

iii. **Inventory based model of e-commerce-** Inventory based model of e-commerce means an e-commerce activity where inventory of goods and services is owned by e-commerce entity and is sold to the consumers directly.

iv. **Marketplace based model of e-commerce-** Marketplace based model of e-commerce means providing of an information technology platform by an e-commerce entity on a digital & electronic network to act as a facilitator between buyer and seller.

#### **5.2.15.2.3 Guidelines for Foreign Direct Investment on e-commerce sector**

- i. 100% FDI under automatic route is permitted in marketplace model of e-commerce.
- ii. FDI is not permitted in inventory based model of e-commerce.

#### **5.2.15.2.4 Other Conditions**

- i. Digital & electronic network will include network of computers, television channels and any other Internet application used in automated manner such as web pages, extranets, mobiles etc.
- ii. Marketplace e-commerce entity will be permitted to enter into transactions with sellers registered on its platform on B2B basis.
- iii. E-commerce marketplace may provide support services to sellers in respect of warehousing, logistics, order fulfillment, call centre, payment collection and other services.
- iv. E-commerce entity providing a marketplace will not exercise ownership or control over the inventory i.e. goods purported to be sold. Such an ownership or control over the inventory will render the business into inventory based model. Inventory of a vendor will be deemed to be controlled by e-commerce marketplace entity if more than 25% of purchases of such vendor are from the marketplace entity or its group companies.
- v. An entity having equity participation by e-commerce marketplace entity or its group companies, or having control on its inventory by e-commerce marketplace entity or its group companies, will not be permitted to sell its products on the platform run by such marketplace entity.
- vi. In marketplace model goods/services made available for sale electronically on website should clearly provide name, address and other contact details of the seller. Post sales, delivery of goods to the customers and customer satisfaction will be responsibility of the seller.
- vii. In marketplace model, payments for sale may be facilitated by the e-commerce entity in conformity with the guidelines of the Reserve Bank of India.
- viii. In marketplace model, any warrantee/ guarantee of goods and services sold will be responsibility of the seller.

- ix. E-commerce entities providing marketplace will not directly or indirectly influence the sale price of goods or services and shall maintain level playing field. Services should be provided by e-commerce marketplace entity or other entities in which e-commerce marketplace entity has direct or indirect equity participation or common control, to vendors on the platform at arm's length and in a fair and nondiscriminatory manner. Such services will include but not limited to fulfilment, logistics, warehousing, advertisement/ marketing, payments, financing etc. Cash back provided by group companies of marketplace entity to buyers shall be fair and non-discriminatory. For the purposes of this clause, provision of services to any vendor on such terms which are not made available to other vendors in similar circumstances will be deemed unfair and discriminatory.
- x. Guidelines on cash and carry wholesale trading as given in para 5.2.15.1.2 of Consolidated FDI Policy Circular 2017 will apply on B2B e-commerce.
- xi. e-commerce marketplace entity will not mandate any seller to sell any product exclusively on its platform only.
- xii. e-commerce marketplace entity will be required to furnish a certificate along with a report of statutory auditor to Reserve Bank of India, confirming compliance of above guidelines, by 30th of September of every year for the preceding financial year.

Subject to the conditions of FDI policy on services sector and applicable laws/regulations, security and other conditionalities, sale of services through e-commerce will be under automatic route.

This information was given by the Minister of Commerce and Industry, Piyush Goyal, in a written reply in the Lok Sabha today.

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**MM/ SB**

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