



BIF RESPONSE TO THE 2019 DRAFT NATIONAL E-COMMERCE POLICY

CLAUSE	COUNTER ARGUMENTS	RECOMMENDATION
Chapter 1: DATA		
<p><i>Clause 1.2 (a) and (b)</i></p> <p><i>A business entity that collects or processes any sensitive data in India and stores it abroad, shall be required to adhere to the following conditions:</i></p> <p><i>a) All such data stored abroad shall not be made available to other business entities outside India, for any purpose, even with the customer consent;</i></p> <p><i>b) All such data stored abroad shall not be made available to a third party, for any</i></p>	<ul style="list-style-type: none"> • Globally recognized regulatory frameworks on data protection typically define the Data principal (as the individual or data subject is referred to) as a natural person to whom the personal data relates. The said data principal is vested with the broad rights relating to confirmation and access, to correction, to data portability and to be forgotten. This has also been the approach of India based regulators on the issue of data thus far. Clauses 1.2 (a) and (b) of the draft National Ecommerce policy, which proposes that data cannot be stored, processed or shared with third parties even with the customer consent, bestows the Government with custodianship over data, which is not in line with contemporaneous global and national discourses on data governance. • The Right to Privacy Judgement clearly states that personal data protection flows from an individual’s right to informational privacy – thus the Draft policy should not liken it to natural resources. Public resources are not owned by individuals, which contradicts the understanding of <i>Puttaswamy</i>. Likening data generated by Indians to 	<ul style="list-style-type: none"> • Under globally recognized regulatory frameworks such as the GDPR and the APEC privacy principles, it has been recognized that explicit consent is the primary criterion invoked for the processing of sensitive personal data of individuals i.e. consumers’ data. Individuals’ consent should be placed as the primary criterion for the processing of data. • The policy should allow the processing of data and its transfer and storage abroad, as long as informed, clear and explicit customer consent has been taken. • Data localisation requirements does not necessarily improve data protection and often undermines efforts to do so by restricting flexibility on the part of the data

purpose, even if the customer consents to it;

public resources would allow the government to exercise control over it and determine how private companies access it, which violates the individual's right to determine uses of their own data and is not supported by Indian law.

- By proposing government control over derivatives of personal data, the policy contradicts the principle that individuals retain ultimate control over the data that is produced and generated by her/him.
- The Policy acknowledges an individual's control and consent over their own data, but suggests that 'the collective data of the nation' is something the 'government holds in trust' to which 'certain rights can be permitted'. This is disharmonious with parallel discussions within Government on the issue of regulation of data and is also against the democratic principles enshrined under Article 21 of the Constitution of India.
- Data localisation requirements does not necessarily improve data protection and often undermines efforts to do so by restricting flexibility on the part of the data fiduciary to move data to locations where they can be best protected. Data Localisation tends to hamper operations of both Fiduciaries and Processors thereby often leading to non-optimum results. While governments may perceive a sense of increased security when imposing data residency requirements for data processed and stored in local IT facilities because they offer physical proximity and control, restricting the entire gamut of digital services to the local jurisdiction has many business & economic imperatives for the country, which the country can ill afford today viz. the space & power required to set up multiples of huge data centers that is required to store all the local data generated besides the cost that it would entail. To top it all, there perhaps is no empirical evidence to suggest that this necessarily improves overall data security.
- Cross border flow of data is critical for building risk assessment and mitigation systems. Building robust risk management systems needs different data sets to be aggregated and analyzed to detect fraud patterns and bad actors. This global benchmarking helps to ensure that customer interests are safeguarded across countries, including India. Restricting cross border data flow is likely to have a deleterious impact on businesses' ability to leverage global systems and best practices to protect customers against any malicious activities, besides

fiduciary to move data to locations where they can be best protected. Data Localisation tends to hamper operations of both Fiduciaries and Processors thereby often leading to non-optimum results. While governments may perceive a sense of increased security when imposing data residency requirements for data processed and stored in local IT facilities because they offer physical proximity and control, restricting the entire gamut of digital services to the local jurisdiction has many business & economic imperatives for the country, which the country can ill afford today . The humungous amount of power required to feed multiples of huge data centers that is required to store all the local data generated, given that we are a power sdeficit country, besides the cost that it would entail are reasonable factors to be kept in mind while deciding on localisation of data. To top it all, there perhaps is no empirical evidence to suggest that this necessarily improves overall data security.

	<p>encouraging innovation and rapid adoption of emerging data intensive technologies to enable consumers to get a great experience at affordable costs.</p> <ul style="list-style-type: none"> • Such restrictive measures, if implemented, will deny access to some of the most secure computing environments on earth, and will lead to a perpetual lag in access to cost-effective, state-of-the-art technology needed for digital transformation. We encourage governments to review the security objectives vis-a-vis the impact these are likely to have on the economy, IT modernization, and security opportunity costs. 	
<p><i>Clauses 1.1, 1.2, 1.3 and 1.4</i></p> <p>1.1</p> <p><i>A legal and technological framework to be created that can provide the basis for imposing restrictions on cross-border data flow from the following specified sources:</i></p> <p><i>a) Data collected by IoT devices installed in public space; and</i></p> <p><i>b) Data generated by users in India by various sources, including ecommerce platforms, social media, search engines etc. The legal and technological framework would also provide basis for sharing the data collected by IoT devices under (a) above with domestic entities for use in research and development for public policy purposes.</i></p> <p>1.2</p>	<p><u>Data needs to move to create value:</u> The policy has assumed that there are many benefits derived from placing restrictions on cross border flow of data for the Indian economy. The following considerations may be assessed to re-evaluate this:</p> <ul style="list-style-type: none"> • When a company processes individual data and creates datasets, copyright law protects rights in that dataset. • The innovation begotten through the use of this data of Indian citizens taken abroad, is used to create actual value for Indian citizens and the economy in the form of goods and services • Enforcing restrictions on cross border data flow, could perhaps invite reciprocal measures from other nations, thereby setting off a negative precedent which could severely impact growth of ITeS Services thereby affecting our GDP growth • Corporations use derivatives of data to provide services to customers. These datasets are proprietary and forms the IP of the entity. Requiring the entities to share data with domestic entities for research and development purposes would be violative of corporate law principles and the entity's constitutional rights to hold property and 	<ul style="list-style-type: none"> • Based on the arguments alongside, it is desirable to allow cross-border flow of data for all entities and hence request this clause to be withdrawn. • In addition, the policy should not create artificial fragmentation of the ecosystem and leave enough room for those companies to thrive who have invested in collecting high quality data, and creating value on this data through innovation.

A business entity that collects or processes any sensitive data in India and stores it abroad, shall be required to adhere to the following conditions:

a) All such data stored abroad shall not be made available to other business entities outside India, for any purpose, even with the customer consent;

b) All such data stored abroad shall not be made available to a third party, for any purpose, even if the customer consents to it;

c) All such data stored abroad shall not be made available to a foreign government, without the prior permission of Indian authorities;

d) A request from Indian authorities to have access to all such data stored abroad, shall be complied with immediately;

e) Any violation of the conditions mentioned above shall face the prescribed consequences (to be formulated by the Government).

1.3

Restrictions on cross-border flows of data shall not apply to the following:

a) Data that is not collected in India;

b) B2B data sent to India as part of a commercial contract between a business

carry on business, enshrined under Articles 19 and 31. This interpretation of the constitutional provisions' applicability to the right of entities to hold proprietary data and conduct business has been validated in several case laws. .

- Free flow of data is mutually beneficial to all countries:
 - As per IBEF's July 2018 report, India's IT industry contributed around 7.7% to the country's GDP, and its IT exports are expected to grow to 8-9% in 2018-19¹ .
 - India was also the leading outsourcing destination across the world, accounting for approximately 55% market share of the US \$185-190 billion global services outsourcing business in 2017-18². As India's exports alone will show, our domestic enterprises rely heavily on the free transfer of data across borders.
- Restricting cross-border flow is akin to creating entry-barriers:
 - Stifling cross-border flows or restricting to specific purposes will increase the compliance costs for operators, and restrict them from benefiting from the potential of hyper-scale cloud services. This will have direct impact on choice of the consumers as well as on affordability of services.
 - Creating an artificial fragmentation of the ecosystem and disincentivising 'foreign' businesses would have adverse unintended consequences on the Indian Start-Up ecosystem. Global corporations have through their local operations created higher adoption of digital payments, services and products. Several Start-Ups have been launched on the back of the ecosystems provided by large corporations with global operations, who bring infrastructure heavy investments and critical know-how to the domestic ecosystem.

¹ IT & ITeS, IBEF Report (July, 2018), available at

² IT & ITeS, IBEF Report (July, 2018), available at <https://www.ibef.org/download/IT-ITeS-Report-July-2018.pdf>

<p><i>entity located outside India and an Indian business entity;</i></p> <p><i>c) Software and cloud computing services involving technology-related data flows, which have no personal or community implications; and</i></p> <p><i>d) MNCs moving data across borders, which is largely internal to the company and its ecosystem, and does not contain data that has been generated by users in India from various sources, including e-commerce platforms, social media activities, search engines etc.</i></p>	<ul style="list-style-type: none"> ○ It is likely that companies who are unable to realize the full benefits of economies of scale, would withdraw offering services in India, thereby limiting consumer choice and affordability. 	
<p>Clause 1.4</p> <p><i>Suitable framework will be developed for sharing of community data that serves larger public interest (subject to addressing privacy-related issues) with start-ups and firms. The larger public interest or public good is an evolving concept. The implementation of this shall be undertaken by a 'data authority' to be established for this purpose.</i></p> <p><i>[Note: In later parts of the policy, there are multiples references to mandatory data sharing, technology transfer, disclosure of source code etc.]</i></p>	<ul style="list-style-type: none"> ● The Policy acknowledges in Chapter I the economic gains arising out of having access to data and how companies leverage data and technology together to innovate and scale their business models, it has been stated in the draft policy that data is the 'most critical factor in the success of an enterprise'. Therefore, the expectation from companies to share their data with other players for a purpose that is evolving goes against the concept of a level-playing field which NEP seeks to promote, and can prove to be anti-competitive. ● In addition, there are proprietary rights in data which may be violated – leading to IP litigation or even expropriation claims under international investment law. ● The assumption that the mere provision of access to data will proliferate innovation among domestic MSMEs and start-ups is misplaced. The development of new services does not require regulation and incentivized provision of data sets. ● The Policy must promote and encourage innovation, while ensuring that there is a sound legal regime to address privacy, individual rights, societal needs and which reflects public interest. ● The policy needs to create a balance between the need to support start-ups and new businesses, while leaving enough room for those 	<ul style="list-style-type: none"> ● There should be no forced disclosure of source code or transfer of technology. ● The policy should examine means of creating a holistic supportive ecosystem for the proliferation of start-ups through a host of measures including tax reform and incentives, access to capital, infrastructure and the development of skills and expertise in areas such as technology, marketing and creating value proposition. The Policy should also examine means for startups to get greater access to tangible and intangible resources such as equipment, office space, services such as accounting, computing and legal services and the provision of assistance in raising seed funding, mentoring and training. ● DPIIT is urged to harmonize its view on crucial aspects of data governance such as consent, cross border data flows, and data sharing

companies to thrive who have invested in collecting high quality data. The support that India's startup ecosystem needs is more in terms of access to investments, incubation programs and mentorship. Assuming that startups will be able to benefit from data that is shared by other companies is flawed and doing so may in fact lead to a scenario where multiple companies are all building the same business model as opposed to building solutions that solve a customer or market problem (which is the biggest value proposition for a startup). Additionally, mandating companies to share their data can result in the loss of competitive advantage for these companies which can have serious implications on business sustainability.

with the draft Personal Data Protection Bill (PDPB), which once finalised, shall be applicable horizontally across all sectors

Chapter 3: E-Commerce Marketplaces

Clause 3.4

All ecommerce sites/apps available for download in India must have a registered business entity in India as the importer on record or as the entity through which all sales in India are transacted. This is important for ensuring compliance with extant laws and regulations for preventing deceptive and fraudulent practices, protection of privacy, safety and security.

- This a highly trade restrictive requirement, and it would also deprive consumers of the flexibility that has been offered to them through the development of various innovative e-commerce platforms that provide technology services on a cross border basis while connecting consumers and goods/service providers locally.
- There are already multiple laws in India which regulate and govern the import channel.
- When a product is being sold to an Indian consumer using legitimate import routes, wherein all procedures and documentation of import has been complied with, the products follow applicable laws, an appropriate import duty has been paid. Therefore, the need for an additional requirement of having a local importer perhaps may need to be reviewed This is true irrespective of whether such import is being undertaken for B2C or B2B end use purposes.
- Mandating appointment of a local importer on record, will mean that customers currently having the option to purchase selection from offshore sellers/websites for their end-use could not continue to do so, which shall greatly impact the convenience of Indian customers and may restrict them from utilizing a legitimate channel of Import. Also, this may impact the cost, convenience and in some cases choice of services/goods for the end consumers.

- E-commerce sites and apps operating internationally, which may be available for download in India, should be permitted to operate without having the statutory obligation to appoint a local importer on record.
- There should be no incorporation requirement.
- To avoid any misuse of this channel like import of prohibited items, existing govt. mechanisms to deal with them should be strengthened further, without burdening platforms that are merely providing a technology service.

<p>Clause 3.5</p> <p><i>All e-Commerce sites/apps available to Indian consumers (displaying prices in INR) must have MRPs on all packaged products, physical products and invoices. Department of Consumer Affairs would evaluate violations and decide corrective actions for such sites/apps.</i></p>	<p>This is regulated by the Legal Metrology Act and there is no need for additional obligations on platforms in this regard.</p>	<ul style="list-style-type: none"> ● The onus of registering and complying with product liability should not be put on the platform in case of direct imports by the customer.
<p>Clause 3.9</p> <p><i>Seller details should be made available on marketplace website for all products. This shall include the full name of the seller (the name of the legal entity), address and contact details including email and phone number.</i></p> <p>Clause 3.21</p> <p><i>There should be transparency and non-discrimination in publishing of ratings and reviews. All ratings and reviews for verified purchases must be published as registered by the consumer, except those found to be promotional, abusive or inappropriate in a community setting.</i></p> <p>Clause 3.22</p> <p><i>Marketplaces are required to devise mechanisms to prevent fraudulent reviews</i></p>	<ul style="list-style-type: none"> ● To the extent relevant for consumer information and effective consumer protection, such issues are already taken care of by most e-commerce platforms. It is not necessary for the policy to deal with the intricacies of how information should be communicated to the customer by the platform, as this may hamper flexibility between platforms which operate differently. A general mandate of transparent trading practices should suffice in this regard. ● Issues of fraudulent reviews are already dealt with by platforms under competitive pressures to provide a reliable experience to users. An assessment that there needs to be a regulatory intervention in this regard – that too at the granular level of regulating ratings and reviews – is not based on any evidence of consumer protection practices being presently inadequate. ● The level of uniform regulation proposed by the Draft Policy may negatively impact Peer to Peer Markets (<i>PPMs</i>), whose growth in the last few years has led to major innovations in ensuring consumer trust. The intrusive and onerous obligations imposed by the Draft Policy which have a one-size-fits-all attitude by seeking to regulate prices, ratings, reviews etc. could perhaps be anti-innovative and seriously undermine the development of this booming sector of the economy. 	<ul style="list-style-type: none"> ● The mechanisms introduced for ensuring ease of communication between sellers and customers should be left for individual marketplaces to evolve, based on their expertise and understanding of the seller and customer ecosystem. ● Reviews, ratings and other minutiae should be left to market innovation.

<i>and ratings by the sellers and their affiliates.</i>		

Clause 3.11

Trade mark (TM) owners shall be given the option to register themselves with e-commerce platforms. Whenever a trademarked product is uploaded for sale on the platform, the platform shall notify the respective TM owner. This facility shall be put in place by platforms and made available for interested TM owners.

Clause 3.12

In case TM owners so desire, e-commerce platforms shall not list/ offer for sale, any of the owners' products without prior concurrence. However, in case TM owners choose to opt for this, they would have to undertake to respond to platforms within a certain time limit.

Clause 3.13

In case of specified high value (luxury) goods, cosmetics or goods having impact on public health, marketplaces will be required to seek TM owner's authorization (that is, authorized/distributor/reseller agreement) before listing the product.

Clause 3.14

In case a complaint is received about a product being fake/counterfeit, the same shall be conveyed within 12 hours to the owner of the TM. If the owner of a TM informs the platform about the product being sold on its platform to be counterfeit, it shall notify the seller and if the seller is

Clauses in the Policy relating to counterfeiting, while being well intentioned, are onerous and impracticable:

- The sheer volume of goods sold on a marketplace through several lakh sellers makes proactive takedowns and registration with copyright owners onerous.
- There are approximately 35 lakh product offers uploaded per week on marketplaces and at times, there are variances in description and title of the product that make it an impossible task.
- It must be noted that marketplaces do not own inventory therefore are not in a position to exert control over the goods. The title rests squarely with the seller.
- E-commerce marketplace entities operate as intermediaries³.
- Section 79 of the IT Act exempts intermediaries from liability in certain instances.
 - It states that intermediaries will not be liable for any third-party information, data or communication link made available by them.
 - It extends "safe harbor protection" only to those instances where the intermediary merely acts a facilitator and does not play any part in creation or modification of the data or information.
 - The provision also makes the safe-harbor protection contingent on the intermediary removing any unlawful content on its computer resource on being notified by the appropriate Government or its agency or upon receiving actual knowledge.
 - Section 79(3)(b) of the Act mandates that an intermediary must remove third-party information from its portal, as and when it receives 'actual knowledge' that such third-party information is in violation of any law.
 - The Supreme Court of India in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1 read down the intermediary's obligation under section 79 and interpreted 'actual knowledge' to mean knowledge by means of a court order or authorised government agency. There is no proactive monitoring mandate on any e-commerce platform, as per Indian law as laid down in *Shreya Singhal* and *Kent RO vs Amit Kotak*.

- The responsibility of monitoring a marketplace for counterfeits and TM violations should rest with the TM owners, as it does in case of offline physical retail. Marketplaces may provide tools to monitor this on a proactive and voluntary basis.
- Marketplaces must work closely with TM owners to develop technological tools and mechanisms to address the tracing and swift takedowns of unlawful listings. Tools such as a dashboard, that allow TM owners to monitor and notify listings that may be in violation, could be developed and deployed. This should be encouraged and incentivized, without putting a proactive, specific, and enforceable obligation on all platforms – as such obligations may contradict existing legal positions on intermediary liability.
- With the existing regulation on the responsibilities of intermediaries being well defined, the same should be retained. No additional liabilities on marketplaces with regard to takedown mechanisms or intimation of TM owners should be introduced.

unable to provide evidence that the product is genuine, it shall take down its listing and notify the TM owner of the same, as per the provisions of law;

3.16

Though post-sale, delivery of goods to the customers and customer satisfaction will be responsibility of the seller, there is a caveat to this. Since counterfeiting is a major concern, in case a customer makes a complaint to that effect, marketplaces would have liability to return the amount paid by the customer. In addition, the marketplace shall cease to host the counterfeited product on their platform, thereby taking down every information related to the product.

<p><i>Clause 3.28</i></p> <p><i>In case it is found that products being sold are prohibited, or a complaint to that effect is received, the platform shall immediately remove the listing or other referenceto the product. The time limit for this shall not exceed 24 hours. Such sellers shall also be blacklisted from the platform and the relevant authorities notified.</i></p> <p><i>Clause 3.29</i></p> <p><i>The liability of the platform in case used for sale of prohibited goods shall be determined as per provisions of law.</i></p>	<p>A proactive obligation to remove content without due and lawful notice violates legal immunity provided to intermediaries – and amounts to separating out liability for a specific category of intermediaries without there being any legal backing to justify the same.</p>	<p>Content takedown should be left to existing law without creation of a separate regime.</p>
Chapter 4: Regulatory Issues		
<p><i>Clause 4.6</i></p> <p><i>One area where this is manifested is the high rates charged for advertising by social media platforms and search engines. Traditional logic states that this should purely be a market driven activity. However, the presence of network implies that a few social media platforms and search engines virtually control access to potential consumers. This puts them in a position to charge monopoly prices also make it very expensive for new firms, small</i></p>	<ul style="list-style-type: none"> • A key concern expressed is that organizations grow in size due to network effects and access to large amounts of data. They may reach levels after where effective competition cannot be re-established. However, this concern ignores the fact that in the digital space, organizations compete in a dynamic environment where market players can be quickly replaced given low entry barriers and multi-homing opportunities. • Companies need to constantly innovate to keep consumers from switching to a new product or service. Displacement of a popular product by an emerging product has taken place several times in the digital world: Slack, Facebook, Snapchat and Tinder being examples. 	<ul style="list-style-type: none"> • The Competition laws are already under review by the Competition Law Review Committee. Hence, the Draft E-commerce policy should perhaps await the outcome of that review. • In view of the arguments made, Advertising costs should be left to market forces rather than government regulating it.

enterprises and start-ups to reach consumers. These firms do not have deep pockets. To reach the market (leave aside finding and maintaining their position there) they would have to allocate an excessively high proportion of their budget and working capital to advertising. juxtapose this with the high rates of capital. Thus, high advertising charges become a barrier to entry. Advertising charges in e-commerce must be regulated, especially for small enterprises and start-ups.

Clause 4.7

The network effect must also be kept in mind while analyzing mergers and acquisitions. World over, the experience has been that e-commerce players like social media platforms have taken over potential competitors early. This prevents the emergence of the threats to market position later on. As discussed elsewhere in this document, the presence of network effect implies that it is virtually impossible for 'second-movers' to enter the market.

Clause 4.8

Data effect and the network effect are the reasons why selling at a loss has emerged as 'sustainable' for enterprises. Leveling of the playing field, must therefore be seen from a data-lens. These are aspects which the antitrust regime must take into

Thus, maintaining a culture of innovation and a regulatory framework that supports it is key to the promotion of competition.

- Data alone does not offer a competitive advantage. It becomes valuable when it is analyzed to bring about a desired outcome. Therefore, the draft suggestion in the policy is perhaps incorrect in its assumptions that mere access to data will give competitive advantages to any company.
- However, multi-homing results in users generating equivalent datasets on competing platforms. Therefore, mere access to data cannot be providing competitive edge to businesses. It is the processing of that data to generate unique insights, and offer more customized services, that results in one business being potentially favoured over another. The ability to generate more customer-satisfying products should not be seen as anti-competitive.
- The concept of networks bringing down transaction costs in present even in the print media. The readership/viewership of the medium affects the revenue generated from advertising. This, in turn, helps the medium to expand its outreach to more viewers/readers. A newspaper publisher sells advertising space; it also supplies newspapers to citizens at a cover price (which could sometimes be free of cost). The publishers' ability to sell advertising space increases according to the number of citizens expected to read the newspaper. Thus, the wider the readership of a newspaper, the more revenues will the newspaper generate from advertising.
- Advertising Charges
- There has been no case made out for imposing pricing controls in the advertising space, as there is no identified market failure, and the argument regarding network effects does not hold water in the digital space. Further, If a first mover is unable to innovate, they will very easily be replaced by those who can. Thus, advertising controls based on the faulty presumption of a first mover advantage is problematic.
- Companies invest capital and resources in building innovative advertising tools that can target consumers on their platform on the basis of their past activities. To control pricing of advertising tools would be an attempt to control their business models.

<p><i>account, to meet the challenges of regulation in the arena of e-commerce.</i></p>	<ul style="list-style-type: none"> • Pricing controls take the incentive away from digital platforms to further improve their advertising platforms. • Regulating may actually decrease competition and hence available options for businesses to advertise. There are various optimum channels which are relevant for different kinds of advertisement and can be leveraged for making advertisement more targeted. • Small businesses are increasingly relying heavily on digital advertising to gain market access which offers them access to a wide audience at a very low cost – something that was not possible at the same level in the era of offline advertising. Absence of innovation in marketing tools would be disastrous for small and medium businesses and new start-ups – which the e-commerce policy apparently seeks to protect. • <u>M&A Regulation</u> • In digital markets, revenue and profit often only come years after the start-up phase, and estimates based on data can be hugely disproportionate to the actual market consolidation/dominance such a merger offers to the companies involved. Predictions and projections on market development are particularly hard to make in this field. Even in the light of M&As of data giants, mere consolidation should not be taken as a presumption of illegal behavior and privacy breaches in the future. 	
<p>Clause 4.14</p> <p><i>Integration of small enterprises and MSMEs in the digital sphere is important. In order to ease the process, of onboarding, for MSMEs and to provide them best practices, platforms, where they already exist, (like elala, Tribes India) will be strengthened.</i></p>	<ul style="list-style-type: none"> • While it is important to strengthen MSMEs and small enterprises there should be neutrality when it comes to promoting one marketplace over the other in the interest of maintaining a level playing field. This will also promote a healthy competition in the long-run. 	<p>The primary focus should be on enabling MSMEs to sell online and benefit from the opportunity that multiple marketplaces have to offer. This will include support being provided to MSMEs in understanding how to market and promote their products to increase online sales, what the market opportunity in different sectors looks like, how should MSMEs focus on logistics and fulfilment and so on.</p>

		To ensure a level playing field with other such platforms and promote more MSMEs to develop them, we request DPIIT to remove specific references to any one particular platform.
<p>Clause 4.15</p> <p><i>The atypical nature of an e-commerce transaction necessitates a consumer protection framework specific to this sector.</i></p>	<ul style="list-style-type: none"> • From the consumer protection perspective, the extant statute i.e. the Consumer Protection Act, 1986 affords equal protection to consumers using e-commerce. It covers all goods and services and all mode of transactions including e-commerce. Under the provision of said Act, a three tier quasi-judicial mechanism, called Consumer Disputes Redressal Commission/ Forum, has been set up at the district, State and National levels to provide simple, quick and inexpensive redressal to consumer disputes. • Further, the proposed Consumer Protection Bill, 2018 specifically includes e-commerce services under its ambit. It seeks to provide for establishment of a Central Consumer Protection Authority to look into, inter alia, unfair trade practices and take remedial action. The Draft Bill ignores significant strides made in this regard. 	<p>Request that DPIIT refrain from creating a new consumer protection law/framework as it is already covered under the existing consumer protection laws.</p> <p>With a new Consumer Protection Bill, which specifically includes e-commerce services under its ambit, already under consideration, it would be better to wait for its implementation, rather than pre-emptively create alternate regulatory structures.</p>
<p><i>Clause 4.17.</i></p> <p><i>Unsolicited commercial messages (on various platforms including but not limited to SMSs, emails etc.) and calls will be regulated. A legal framework for this will be developed.</i></p> <p><i>Clause 4.18.</i></p>	<ul style="list-style-type: none"> • The Draft Policy seeks to subsume several separate regulatory regimes, such as: <ul style="list-style-type: none"> - Removal of prohibited items from sale under Intermediaries Guidelines - Unsolicited commercial communications under Telecom Commercial Communications Customer Preference Regulations - Payment security and other similar issues are addressed by the RBI under various laws and regulations. 	<p>We recommend that the regulatory body, should be aligned to the existing Consumer Protection Act and other Regulatory Bodies(in whose domain some part of the sector falls). They should consult each other on overlapping issues</p> <p>We also believe that deferring to existing regulatory frameworks for these purposes, and not introducing a new regime, may be the</p>

<p><i>Issues related to payment processes and other financial transactions which are inherent to e-commerce will be addressed in order to prevent data-leaks/theft, protect privacy and sensitive data, and enabling secured transactions.</i></p>	<p>While the Draft Policy makes several recommendations that are so broad in their sweep that they could potentially subsume the regulatory authority of the many legal regimes described above, it does not specify how it seeks to achieve this integration. The merits of having one unifying law dealing with all of these aspects have not been examined in any detail. The clear problems with regard to harmonisation of so many different frameworks are not also addressed.</p> <ul style="list-style-type: none"> • <u>Potential for Regulatory Overlaps</u>: The problem of regulatory harmony requires special examination and emphasis in the Indian context, where TRAI and CCI have been in conflict in the past on the issue of overlapping jurisdiction. The RBI is presently resisting the creation of a separate payment regulator as it foresees a possibility of regulatory harmony in the payments space being disrupted. Similar problems could potentially arise in the area of e-commerce, especially if new frameworks seek to replace old ones without any clear distinction in their scope and ways of addressing regulatory overlaps. • <u>Existing Regulators Already Address E-Commerce Issues</u>: The RBI has adequate powers under law to address specific payment related concerns that arise on account of the proliferation of e-commerce. To provide examples, in 2015 the RBI introduced the Online Payment Gateway Service Providers (OPGSP) schemes to ease the processing of export and import related payments – the stated objective being “to facilitate e-commerce.” This is something that has been acknowledged by the Draft Policy. This makes it further unclear as to why any separate regulation is needed in this regard. 	<p>suggested way forward, as that may otherwise lead to regulatory overlap.</p>
<p>General Recommendations</p>		
<p>Chapter IV: Regulatory issues</p> <p>A. <i>Inter-disciplinary nature of e-commerce</i></p>	<ul style="list-style-type: none"> • The Digital India initiative has been instrumental in enabling the transformation of the country into a digitally empowered society, pushing India towards becoming a trillion-dollar digital economy by 2025. The e- 	<ul style="list-style-type: none"> • The formation of the Standing Group of Secretaries is a welcome move as it provides a single entity to monitor, enforce and enable the e-commerce sector. <u>But we also recommend that a</u>

	<p>commerce sector is integral to this growth and a major growth driver of the digital economy.</p> <ul style="list-style-type: none"> • The e-commerce sector will also generate employment opportunities among MSMEs and allied industries such as logistics and warehousing. Any framework that is developed for this sector needs to be holistic in nature and should be developed in consultation with the industry which will be key to the growth of the e-commerce sector in India. • A synergized approach will also ensure that the framework is able to keep up with the fast-changing technological landscape and consumer preferences. 	<p><u>group is formed under the Secretary or the Addl. Secretary to interact with the industry on an ongoing basis.</u></p> <ul style="list-style-type: none"> • This sub-group should work closely with the DPIIT to ensure the National e-Commerce Policy is able to adequately address the changing landscape of the economy, emergence of new technologies and evolving consumer trends. • The constitution of the group, apart from the inter-ministerial representatives <u>should include experts from the industry, academia and other relevant areas.</u> • <u>Creation of a participatory sub group, to tackle sectoral issues has been set up in other sectors too⁴.</u>
<p><i>B. Tax Issues</i></p>	<p><u>GST</u></p> <ul style="list-style-type: none"> • The extant GST regime has provisions which are a hurdle for small sellers/MSMEs in particular, who sell through e-commerce: <ul style="list-style-type: none"> ○ There is an INR 40 lakhs threshold provided by Government of India for registration under the Act to boost the small-scale entrepreneurs in the country. ○ But this does not apply to persons who supply goods or services through e-commerce operators, who in spite of falling below the threshold, have to register themselves under 	<ul style="list-style-type: none"> • In the interest of growth of the sector and MSMEs which is a key objective of the draft National E-commerce Policy, we request the policy to extend the threshold provisions of GST registration to sellers on e-commerce and remove the requirement for Tax Collection at Source. • India should not seek to impose customs duties on digital transmissions.

⁴ Note: These include the High Level Committee Constituted on Corporate Social Responsibility, SEZ policy review and Review of National Policy on Electronics with participation from the private sector including multinational corporations.

	<p>GST and fulfil the compliance thereof because of the above provisions.</p> <ul style="list-style-type: none"> • This mandatory registration for all persons who supply goods or services through e-commerce operators inhibits their ability and has created a disparity. • The tax collection at source (TCS) requirement, applicable to e-commerce marketplaces, also impacts the working capital of MSMEs. These provisions are prohibitive hurdles for small sellers to sell online causing many of them to simply abstain from it. <p><u>Customs</u></p> <p>The proposal to impose customs duties on digital transmissions goes against Indian law on customs and imports, as well as India's WTO commitments.</p>	
<p><i>C. Additional Taxation Inputs</i></p>	<p>Digital Invoices – Remove requirement of unit-level physical invoices for customer shipments for transportation & customer records by moving to a Digital Manifest or Digital Invoices. With the removal of mandatory requirement of physical invoice, sellers will be able to save on multiple costs such as paper, printer and manpower. Overall, this initiative is expected to save a lot of money & resources every year.</p> <p>Manifest to be considered as a tax document instead of individual invoices – A manifest is an internal transport document that is uniformly used by all e-commerce operators and carries a list of all necessary information of the cargo being transported such as consignor, consignee, number, origin, destination, value, weight and other such product information. It captures complete details of all the cargo being carried, and would be far more invaluable from the perspective of compliance in tax matters than individual product invoices. Therefore, it is suggested that the government institute a mechanism whereby the manifest can be uploaded and used for the verification, compliance and other purposes in</p>	<p>The GST Law has provisions for digital invoices, however there is some clarity that is required for the requirements of Audit / Inspection on road during transport. With the implementation of e-waybill, the govt. has taken basic steps towards digitization with a clear callout on the e-waybill number as sufficient documentary evidence during transit. However, within the GST regulation, there are places that create confusion on whether a paper copy is required or a digitally signed PDF is sufficient (refer Chapter 6, Rule 48 in Appendix X).</p>

	<p>the place of individual invoices, thereby ensuring greater operational efficiency and better legal and financial compliance.</p> <p><u>Aligning the definition of ‘place of supply’ under GST for B2C operators with that of the rest of the industry:</u> Under GST, the place of supply is critical in determining whether a transaction is intra-state or inter-state. The e-commerce industry in India is not one that is rooted to a single location; by very nature of its operations, it is one that services customers across the country, and seeks to ensure the same level of efficient customer service regardless of the location. However, the current definition of place of supply (under the GST Act) for B2C operators in the logistics space does not align with that of the rest of the industry. This makes it hard for e-commerce operators to operate return shipments in the B2C sector efficiently. Therefore, there is a need to bring the definition of ‘place of supply’ under GST for B2C operators with respect to logistics, in line with the rest of the industry.</p> <p><u>Making operational the ERN facility as defined under the tax laws:</u> Every generation of an e-way bill leads to the creation / allocation of a unique Electronic Reference Number (ERN), which is then made available to the supplier, recipient, and the transporter of a particular good. The ERN facility has been designed as business-friendly venture under the GST to reduce documentation, environmental friendly, trim logistical costs, and increase efficiency and speed in transportation, all while preventing tax evasion. The system when implemented will ensure greater tax collection and compliance with law, while allowing for faster movement of goods and optimum usage of vehicles for e-commerce operators.</p>	
<p><i>D. Real Estate</i></p>	<p><u>Infrastructure availability:</u></p> <ol style="list-style-type: none"> <i>Power availability & electricity tariffs</i> – Presently, warehouses maintained by e-commerce sites come under the ‘Commercial Category’ power tab which necessitates that they pay commercial tariff rates for electricity usage, which is often far higher than the industrial tariff rates. Ensuring the e-commerce sector warehouses have access to industrial tariff rates can go a long way in encouraging the reach of the industry. 	<p>A possible solution to the above is to create a single window approval system where, when providing licenses for e-commerce platforms to set up their business in a state, the government can ensure that land, power and water for the same are automatically approved and provided.</p>

	<ol style="list-style-type: none">2. <i>Land buying & Business parks</i> – E-commerce is a nascent sector and its growth is facilitated by easier access to amenities, including accesses to adequate real estate, which is often a very basic requirement. If government can designate areas/plots for setting up e-commerce infrastructure – particularly sites that are city-centric or close to or within urban areas - or assist in the acquiring of the same even if it is from a private player, this would make it much easier for e-commerce platforms to establish and run their businesses. Other possibilities that can be explored are the land bank model or the leasing of unused government land.3. <i>Adequate water availability</i> – Access to clean water is a top priority when it comes to infrastructure. When e-commerce platforms are required to depend upon other sources of water, which are not sustainable. This can be yet another issue that the government can solve.4. <i>Fire Safety Norms:</i> According to current norms outlined in the National Building Code of India 2016 with regard to Fire and Life Safety (Part 4), fire exits in a building should be located such that it is not necessary to travel more than 45 meters from any point to reach the nearest exit. Therefore, this requirement must be amended, and building codes for warehouses should allow exit points to be placed at an appropriate distance of 122 meters, as is mandated in the globally accepted and followed norms of the NFPA (National Fire Protection Association) – Form 101. This will enable to build large size (400k to 1 MN sqft.) Warehouses5. <i>Racking & Shelving</i> - Racking and multilevel shelving is a mainstay in the warehousing industry for storage purposes. In the e-commerce industry, they function as critical support systems in meeting customers’ rapid-order fulfillment needs, as proper storage guarantees easy accessibility, reduced pick-up time, and continued durability of goods. Therefore, it is suggested that to ensure maximum adaptability of storage design, racking and multilevel shelving should be considered as free from FAR/FSI of the building.	

<p><i>E. FC Operations</i></p>	<p><u>Availability and cleanliness of power supply:</u> Lack of access to grid power can be a huge problem, particularly when it comes to the maintenance of perishable goods. In addition, where the power isn't clean due to fluctuations and unplanned outages, this can cause significant disruptions to operations due to e-commerce's dependence on IT and connectivity</p> <p><u>Shops & Establishments (S&E):</u> Fulfilment Centers maintained by e-commerce platforms are registered under the Shops & Establishments Act; however, there remains a lack of clarity that often causes them to be mistakenly classified under the Factories Act. This leads to unnecessary procedural roadblocks. Hence, it would be useful to have a ruling from a Labour Department clarifying the same</p> <p><u>Flexibility of working hours and shifts:</u> The growth and sustainability of the e-commerce industry depends on having a system that is always available to redress the concerns of both retailers and customers. This in turn depends on having manpower that can work flexible hours to deal with the same. This is particularly important given how e-commerce is spread across states, and the permitted working hours per day varies by state.</p> <p><u>Protection of internet connectivity:</u> Vandalizing e-commerce infrastructure particularly internet fiber cables are a problem e-commerce companies often confront. This can prove extremely disastrous considering how e-commerce is hinged on digital connectivity. Hence, there is a need to have these lines protected and/or the perpetrators properly discouraged from engaging in this.</p> <p><u>Having secure lay-in spaces & parking areas:</u> Incidents of theft can occur at any point along the e-commerce supply chain, whether at the point of manufacture, on loading docks, rail stations, distribution centers, or potentially anywhere along the transportation route. It is proposed to pre-designate secure lay-in for vehicles, which would help mitigate risks around thefts & pilferages.</p>	
<p><i>F. Security Requirements for Logistics Movement</i></p>	<p><u>Minimum Security Requirements for Trucking:</u> Indian industry incurs \$21.3 billion annually due to transit losses, additional fuel consumption costs and transportation delays. There are no standardized trucking design, locking and other security requirements. Existing measures executed by supply chain industry includes random audits on vehicles,</p>	

introduction of bolt seal for vehicles, driver verification and police action etc. Therefore, it would prove highly beneficial if the government policies can define basic minimum security requirements for trucks, which shall form part of basic compliance requirements across the industry.

Central Database of Crimes in Supply Chain:

The e-commerce industry is expected to create direct employment for around 1.45 million by 2021, as per various reports, particularly in the logistics and warehousing wings of e-retail. Given the huge employment potential it generates, coupled with volume and value of goods/cargo handled by those employed, there is a need to ensure that robust anti-crime systems are in place. The migratory nature of the work and the type of job roles generated by e-commerce often leads to very poor background checks on prospective employees. Those caught at theft and are terminated, have a high chance at being easily re-employed within industry. It is therefore proposed that the government create a central database of criminals so as to enable a pre-hire check which shall benefit all industries

Introducing the 'truck & trailer model' – It is estimated that India will need 1 million new truck drivers every year for the next 10 years to support our GDP growth aspiration. At present Indian norms do not recognize the truck & trailer model, which allows a truck to have different/interchangeable trailers (or wagons) attached to it, which allows greater speed, efficiency and flexibility of delivery.

Implementing RFID systems for bettering transport logistics: Currently, e-commerce transporters who carry goods across state boundaries face regular interception at ground levels, which sometimes lead to delays and increase in delivery times. The GST reforms sought to introduce Radio Frequency Identification (RFID) architecture as part of e-way bills, Instituting such a system at the earliest will prevent delays, reduce the number of stops at check-posts, and ensure the smooth and timely movement of goods, while allowing for proper information capture and compliance under law.

Establishing Truck Terminals: Government policies must facilitate the smooth movement of finished goods to and from underdeveloped and backward interstate locations with logistics infrastructure via the establishment of truck terminals in all the major existing and upcoming industrial parks as well as logistic facilities. In addition to doubling as

	documentation verification counters, these terminals are equipped with basic amenities that allow a truck driver to rest and rejuvenate during the course of his journey.	
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“The above reflects the considered position of Broadband India Forum and represents the majority view of its membership”