



Revisiting Draft e-Commerce Rules

Why in News

Amid criticism from industries and some sections of government, the Department of Consumer Affairs is learnt to be revisiting some provisions pertaining to [draft e-commerce rules, 2021](#).

- Earlier, the **Ministry of Consumer Affairs, Food, and Public Distribution** notified and made effective the provisions of the [Consumer Protection \(E-Commerce\) Rules, 2020](#) under the [Consumer Protection Act, 2019](#).
- Further, the Department for Promotion of Industry and Internal Trade (DPIIT) has issued orders appointing an advisory committee for its [Open Network for Digital Commerce \(ONDC\)](#) project that is aimed at curbing “digital monopolies”.
 - This is in the direction of **making e-commerce processes open source**, thus creating a platform that can be utilised by all online retailers.

Key Points

▪ Key Provisions of Draft e-Commerce Rules 2021:

- **Mandatory Registration:** There is a need for mandatory registration for e-commerce entities with the Department of Promotion for Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry.
 - E-commerce entity means persons who own, operate or manage a digital or electronic facility or platform for electronic commerce.
- **Limiting Flash Sales:** Conventional e-commerce flash sales are not banned. Only specific flash sales or back-to-back sales which limit customer choice, increase prices and prevent a level playing field are not allowed.
- **Compliance Officer:** The e-commerce sites are also directed to ensure appointment of Chief Compliance Officer (CCO) and a nodal contact person for 24x7 coordination with law enforcement agencies.
- **Restricting Related Parties:** To tackle growing concerns of preferential treatment, the new rules propose to ensure none of the related parties are allowed to use any consumer information (from the online platform) for ‘unfair advantage’.
- **Clause of Country of Origin:** The entities will also have to identify goods based on their country of origin and provide a filter mechanism at a pre-purchase stage for customers.
 - They will also have to offer alternatives to these imported goods to provide a “fair opportunity” to domestic sellers.
- **Reporting Cybersecurity Issues:** All e-commerce entities must provide information within 72 hours on any request made by an authorised government agency, probing any breach of the law including cybersecurity issues.

▪ Major Issues Pertaining to Draft Rules:

- **Definition of ‘Related Party’:** The draft rules state that “**none of an e-commerce entity’s ‘related parties** can be enlisted **as a seller for sale to consumers directly**.”

- This “broad definition” of ‘related party’ can **potentially include all entities** such as those involved in logistics, any joint ventures, etc.
- Due to this, it will be **difficult not only for foreign players like Amazon and Flipkart**, but **even homegrown companies** to have their various brands such as 1mg, Netmeds, Urban Ladder, etc. sell on their [super-apps](#).
- **Issue over Fall-back Liability:** Industry players have argued that on the one hand the [FDI \(Foreign Direct Investment\)](#) policy prohibits companies such as Amazon and Flipkart from having control over the inventory sold on their platforms.
 - On the other hand, the rules introduced the concept of **fall-back liability, which makes the e-commerce firms liable** in case a seller on their platform fails to deliver goods or services due to negligent conduct, which causes loss to the customer.
- **Overreaching Jurisdiction:** The [NITI Aayog](#) has raised concerns that many of the provisions in draft rules were “beyond the realm” of consumer protection.
 - This creates a perception of “overreach” by the Consumer Affairs Department.
- **Case of Tight Regulation:** Some of the proposed provisions like having a compliance officer, adherence to law enforcement requests, etc., follow in the footsteps of the [Information Technology \(Intermediary\) Rules, 2021](#).
 - These IT rules are facing legal challenges in several High courts.
 - Thus, the rules reflect the increasing Government’s will to exercise greater oversight over all online platforms.

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