POLICY CONSENSUS CENTRE

Policy Brief

Unlocking Seller Autonomy:

Ensuring Transparency and Fair Competition in E-Commerce

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List of Abbreviations

FDI	Foreign Domestic Investment
MRP	Maximum Retail Price
MSMEs	Micro, Small, And Medium Enterprises
ONDC	Open Network for Digital Commerce
UPI	Unified Payments Interface
USD	United States Dollar

1. Background

The Indian e-commerce sector has experienced explosive growth, fuelled by factors such as rising disposable incomes, increasing access to internet and smartphones, and a preference for convenience and variety. According to Statista, the Indian e-commerce market was valued at USD 102 billion in 2023 and is projected to reach USD 163 billion by 2026, and USD 300 billion by 2030.[1] This growth has been driven by the emergence of many major domestic and international marketplaces, which offer a wide range of products and services across categories such as electronics, fashion, groceries, and travel. The rise of online marketplaces has provided consumers with a plethora of choices, competitive pricing, and convenient delivery options, particularly for India's Tier 2, 3, and 4 cities and beyond from where the highest number of orders seem to be originating.[2]

The rapid expansion of e-commerce in India has also introduced new opportunities for many micro, small, and medium enterprises (MSMEs). Offline MSME businesses were often constrained by geographic reach, lack of market information, and poor logistical connectivity. These challenges impeded businesses from scaling, thereby limiting their ability increase their turnovers and earn higher profits. Many of the leading online platforms in India have more than 3 million sellers registered with them, many of them from tier 2 and tier 3 cities.

2. Regulatory Landscape and Classification of Retail Formats in India

India's regulatory landscape for e-commerce is extremely convoluted owing to its classification. In India, regulations vary for online and offline retailers, small retailers and organised retailers, Indian retailers and foreign retailers, and single-brand retailers and multi-brand retailers. As per the current Foreign Domestic Investment (FDI) Policy, 100 per cent FDI is permitted in single brand offline retail, but only 51 per cent in multi-brand retail. Similarly, 100 per cent FDI is permitted in B2B e-commerce and marketplace models, but not in inventory-based e-commerce models. Under the current regulatory framework, a foreign single brand retail offline shop, can sell their inventory online. This is also true for multi-brand offline retailers. It is, therefore, unclear why e-commerce platforms are not allowed parity in this treatment.

In India, there are foreign e-commerce marketplaces and domestic inventory-based e-commerce companies. The biggest different between the two is whether these

[1] https://www.statista.com/statistics/792047/india-e-commerce-market-size/
[2] https://www.investindia.gov.in/team-india-blogs/e-commerce-boom-india-current-trends-and-prospects

platforms are allowed to hold inventory. Marketplaces are not allowed to hold inventory, which also means, that, technically they have no ownership of the products being sold on their platforms. By extension, this also means that they have no direct say over pricing. However, in the case of inventory-based models, the platforms purchase the inventory from their sellers, thereby also gaining ownership of the inventory. This means they also have the right to price the products as they see fit.

Creating differentiated policies for the retail sector based on format type of origin of capital only creates unnecessary regulatory arbitrage and loopholes. India needs a comprehensive cohesive policy for the retail sector.

3. Current Concerns in E-commerce Sector

As online e-commerce businesses continue to grow, new concerns around seller autonomy, pricing, and competition, have emerged.

3.1 Concerns Over Market Dominance

One of the first concerns has been if there is even fair competition in the market in terms of market participants. India has multiple e-commerce platforms, foreign and domestic. Data for market share of e-commerce companies is varied. Statista pegs market share of Flipkart and Amazon at 38 per cent and 35 per cent respectively, as of 2022. Myntra had a market share of 8 per cent and the remaining 19 per cent was that of other platforms[3].

Another report states that, in 2024, Flipkart has almost 50 per cent market share. However, platforms such as Meesho and Reliance Ajio are growing rapidly, with the latter claiming almost 30 per cent of market share in the apparel sector[4].

With the popularity of e-commerce as a channel growing, particularly in non-metro towns, new players and specialty e-commerce platforms are coming up and growing. Moreover, standalone businesses are also exploring e-commerce channels exclusively for their brands as a way to reach more consumers and larger geographies, including cross-border e-commerce orders.

[3] https://www.statista.com/statistics/1426790/india-ecommerce-market-share-by-marketplaces/
[4] https://www.indiaretailing.com/2024/01/26/flipkart-leads-e-comm-mkt-with-48-pc-share/

3.2 Concerns Over Predatory Pricing

Predatory pricing is typically defined as a pricing strategy adopted by a business, where the price of products is set at low rate such that market access for other products is prevented. India's Competition Act defines it as, *"price in purchase or sale (including predatory price) of goods or service. Explanation. --For the purposes of this clause, the unfair or discriminatory condition in purchase or sale of goods or service referred to in sub-clause (i) and unfair or discriminatory price in purchase or sale of goods (including predatory price) or service referred to in sub-clause (ii) shall not include such 3[condition or price] which may be adopted to meet the competition…"*[5]

Concerns over predatory pricing have been raised time and again against e-commerce companies, particularly foreign marketplaces. What is worth addressing is how marketplace platforms can possibly engage in predatory pricing when they have no control over the pricing of the product. On marketplace models, sellers own their own inventory, and therefore have the autonomy to set their own prices. The threat of predatory prices is more likely in e-commerce inventory models, where the platforms actually own inventory and, therefore, have the freedom to set their prices.

Notwithstanding this, one must also remember that predatory pricing is usually plausible as a strategy only when there are very few players in the market or where a monopoly of duopoly exists. In India, there is a healthy mix of e-commerce platforms. Ultimately, unfair or anti-competitive practices adopted by any business, offline or online, will only result in alienating its sellers, who always have the option of moving to platforms that treat them fairly.

3.3 Concerns Over Preferential Treatment of Sellers

In the offline retail market, both small and large retailers prioritise some brands over others in terms of their shelf space and visual display. In the interest of customer acquisition, even today, prominent and popular brands, brands on sale, and sometimes brands that are willing to pay a premium for shelf space, are provided priority position on shelves and in stores. This strategy is not new and continues to be followed by all offline retailers.

While online platforms do not have shelf space per say, their page acts as a proxy shelf. Much like limited shelf space in offline retail stores, the number of primary listings on the e-commerce platform page is also limited. Algorithms are therefore built in such a

[5] https://www.indiacode.nic.in/show-data?actid=AC_CEN_22_29_00005_200312_1517807324781&orderno=4

way that popular sellers' products and sellers that offer competitive prices are usually displayed more prominently or ahead of others. This ensures better "footfall" for platforms and aids in customer acquisition, not just for the platform but also for the seller. A practice which is widely followed in offline retail, which has not raised any concern over preferential treatment so far, must, therefore, also be allowed within reason for online retailers. Parity in the treatment of such issues between online and offline is important.

4. Scope of the Discussion

This webinar envisaged to delve into the complex dynamics of online marketplaces, exploring key issues such as regulatory arbitrage, unfair competition, and the how business practices adopted by online platforms affect or enhance seller autonomy.

Sellers on online platforms are MSME businesses that have chosen to sell online because they see the advantages. Many studies have documented that sellers have seen an increase in both turnover and profits because of their presence on e-commerce platforms.

Good business practices must ensure that sellers are treated fairly, their autonomy in running and managing their business is maintained and protected, and that they have fair choices available to them in terms of how they sell their products, through whom they sell, and at what prices they wish to sell. While there have been many concerns raised by offline small retailers, mostly against foreign marketplaces (and rarely against Indian inventory-based e-commerce companies), one must not forget that the actual competition on marketplace models is actually between Indian MSME sellers and small offline retailers and not just between the platform and the offline retailers. E-commerce is after all only a sales channel, and the consumer must have the prerogative to choose which channel they wish to opt for.

Based on the hypothesis that unfair competitive practices are never sustainable, especially when sellers have multiple options, this webinar aimed to examine both anecdotal and empirical data to assess whether e-commerce platforms are indeed being anti-competitive and compromising seller autonomy.

5. Summary of the Discussion

The discussion traced the fragmented nature of India's retail regulatory landscape, where rules differ by channel, by origin of capital, and by business model, producing arbitrage of the kind by which a single-brand offline retailer permitted full FDI may sell online out of the same inventory while a foreign marketplace is barred from holding inventory at all; the underlying problem was policy drafted along channel and ownership lines rather than around actual business conduct. Online seller autonomy was found to be considerably greater than in traditional offline retail, given multi-homing across platforms and independent websites, though only a fraction of the roughly three million sellers platforms cite actually meet the thresholds needed for meaningful visibility and support. On market dominance, figures varied widely with no consensus reached; narrowing market definitions was flagged as a way of manufacturing apparent dominance, and regulatory attention was seen as disproportionately trained on two or three large, foreign-linked marketplaces, while large Indian conglomerates with substantial combined online and offline retail interests have not had their market share formally measured, notwithstanding that e-commerce itself remains a comparatively small share, put variously at 3 to 8 per cent, of overall retail. On predatory pricing, short-term promotional pricing was distinguished from sustained below-cost pricing meant to foreclose competition; survey data showing that most online shoppers can find comparable deals across platforms, together with a price check across online and offline retailers showing negligible variance, was read as evidence against systemic predatory pricing, and marketplaces without inventory ownership were described as structurally unable to set prices, a capacity that rests with inventory-based models alone.

On day-to-day pricing, sellers retain the freedom to set prices, with commission and fee waivers ahead of sale events negotiated bilaterally and often involving shared cost absorption between platform and seller; newer and smaller sellers get considerably less negotiating leverage since account manager support scales with sales volume, and commissions running as high as 50 per cent for small or onboarding sellers were flagged as compressing margins through repeated cycles of MRP inflation and discounting, while a recent instance of a platform freezing prices against a trailing average was described as a breach of the pricing autonomy agreed at onboarding. Platforms replicating well-selling third-party products under their own private labels, and then privileging that label with visibility no independent advertising spend can match, was raised as a conflict of interest, though this was countered as a long-standing retail practice not unique to large marketplaces, with an outright ban, as attempted under the European Union's Digital Markets Act, cited as having produced adverse and unintended effects elsewhere; disclosure-based transparency was suggested as the more workable remedy. Difficulty registering as a vendor with certain Indian-owned platforms was cited as evidence that access and neutrality concerns are not confined to foreign marketplaces, while views on the Open Network for Digital Commerce were divided between it easing visibility and fulfilment over time, in a manner comparable to what UPI achieved for payments, and concern over where liability falls in a disaggregated fulfilment chain, with an informal poll showing strong preference for the existing integrated model. There was broad agreement, in closing, that competition and unfair trade practice concerns should be examined across the retail sector as a whole rather than trained on foreign or large marketplaces alone, since the foreign and domestic classification under the FDI policy turns on capital structure rather than ownership or control, and that regulatory stability, transparent and evidence-based policymaking, and a stronger collective seller voice are needed going forward.

6. Recommendation

6.1 Regulatory parity and policy coherence

- Move away from differentiated rules based on channel (online/offline), origin of capital (foreign/domestic) and business format (single/multi-brand), towards a coherent retail policy that regulates conduct rather than category.
- Extend competition scrutiny across the retail sector as a whole, including large Indian conglomerates with combined online, offline and joint-venture interests, rather than concentrating attention on two or three large marketplaces.
- Base any regulatory action on market share measured across both online and offline operations, since consumers already shop across both, and avoid market definitions narrow enough to manufacture dominance.

6.2 Predatory pricing

- Draw a clear regulatory distinction between short-term promotional or loss-leader pricing and sustained below-cost pricing intended to foreclose competition; only the latter warrants intervention.
- Direct any scrutiny of predatory pricing towards inventory-based platforms, which hold ownership and pricing power over goods, rather than towards pure marketplaces that do not.
- Ground any restriction on discounting or flash sales in empirical consumer behaviour data, rather than assumption.

6.3 Price freezing and contractual fairness

- Treat unilateral price-freezing or forced margin compression by a platform, outside the terms originally agreed at onboarding, as an unfair trade practice warranting oversight.
- Require platforms to set out seller price-setting rights clearly in onboarding contracts, with a defined grievance or arbitration mechanism for breach.

6.4 Preferential treatment and private labels

- Introduce a disclosure requirement for platform-owned or platform-affiliated private labels, so buyers can identify when a listing is not an independent third-party seller.

- Favour transparency-based remedies over an outright ban on self-referencing, given the adverse and unintended effects such bans have produced elsewhere.
- Apply any private label or self-referencing rules evenly across large online and offline retail groups, rather than to marketplaces alone.

6.5 Seller support, commissions and account management

- Require standard, disclosed commission, shipping and fixed-fee structures, particularly for new and small sellers who currently have the least negotiating leverage.
- Review very high commission rates charged to small or onboarding sellers, since these costs are ultimately passed on through MRP inflation and subsequent discounting, compressing seller margins.
- Ensure a baseline level of account management support is available to sellers regardless of current sales volume, rather than support scaling only with existing scale.

6.6 Platform access and registration

- Ensure that domestic platforms provide seller registration processes at least as accessible as those offered by larger marketplaces, so that ease of access is not itself a source of unequal treatment.

6.7 ONDC and market structure

- Resolve liability and accountability gaps in disaggregated fulfilment models before positioning such models as a substitute for existing marketplace structures.
- Treat ONDC as a complementary protocol to be developed alongside existing platforms, rather than a mandated alternative, given still limited seller and consumer uptake.

6.8 Regulatory process

- Ground future e-commerce and competition regulation in transparent, evidence-based and broad-based stakeholder consultation, rather than closed consultation processes followed by brief public windows.
- Commission or mandate empirical research covering both online and offline, and both domestic and foreign players, before regulatory action is taken.

6.9 Seller awareness and representation

- Support vendor associations and similar collective platforms that help sellers, particularly in tier two and tier three geographies, understand their rights and access recourse against unfair practices.

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About Policy Consensus Centre (PCC)

The Policy Consensus Centre (PCC), founded by Ms. Nirupama Soundararajan and Mr. Arindam Goswami, emerges with a distinct mission: to conduct impactful policy research and drive policy transformations. Our focus encompasses pivotal sectors crucial for India's advancement, along with those that have been underexplored. In the intricate landscape of India, divergent opinions often hinder consensus-building for policymakers amidst diverse stakeholders.

PCC stands dedicated to comprehensive, evidence-driven research, promoting inclusivity and rigor. Our objective resides in cultivating accord among stakeholders through independent, data-centric analysis, a catalyst for meaningful policy shifts. In a climate where some research entities avoid unconventional subjects, PCC remains resolute in advocating thorough exploration across all sectors. Our belief underscores the necessity to scrutinize seemingly unconventional domains, an approach vital for identifying accurate risks and formulating sound policies.

PCC champions the synergy of economic rationale and empirical data, pivotal in fostering consensus and enabling effective policymaker engagement. In essence, PCC embodies a pioneering spirit committed to navigating uncharted territories, propelling well-informed policy decisions for India's holistic growth.

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