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21ST July, 2021

Shri. Anupam Mishra
Joint Secretary
Ministry of Consumer Affairs
Krishi Bhawan
New Delhi - 110001

Subject: Suggestions on Draft Amendment to Consumer Protection (E-Commerce) Rules, 2020 released on June 21, 2021.

Dear Sir,

1. Confederation of All India Traders (CAIT) is an apex body of the traders of India and strives to protect and safeguard the rights and interests of over 8 crore of its members and their family members and dependents. At the outset, we would like to express our gratitude to your good office for facilitating consultations on the Consumer Protection (E-Commerce) Rules, 2020 by releasing the Draft Amendment and inviting inputs from all stakeholders. We are truly grateful to you and your good office and would like to submit our recommendations for the same.

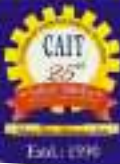
2. The e-commerce industry in India is growing exponentially and is expected to reach USD 99 billion in size by 2024 and to a staggering USD 200 billion by 2026. India's e-commerce industry is growing on the back of grocery retail, apparel retail and ever-increasing smartphone & internet penetration. The necessity and convenience of e-commerce was reinforced in the COVID-19 induced pandemic across the country through making essentials and non-essentials available to the citizens.

3. We would like to thank and congratulate the Government of India for introducing the Draft Amendment at a time when e-commerce in India needs a robust and dynamic regulatory framework. This framework must be consumer-centric such that it increases consumer's trust in the e-commerce industry. Consumer is at the heart of any retail business and their trust in e-commerce will be the most important business driver for the industry and will motivate more people to choose online mode of buying and selling.

4. We believe that for the inclusive growth of the e-commerce sector, it is not only important to boost consumer's confidence towards e-commerce platforms but also motivate more and more small retailers/ MSMEs and other service providers in the value chain to adopt e-commerce, whether it is in the form of their own inventory-based platform or using e-commerce marketplace platforms built by third parties. To achieve this objective the following would be the key enablers: -

- a) Transparent operations of e-commerce platforms;
- b) Easy accessibility and adequate grievance redressal by e-commerce entities;
- c) Non-Discriminatory Access of Marketplace Platforms to all stakeholders of the value-chain;
- d) Avoidance of conflict of interest between marketplace platforms, sellers & various service providers on the platform.





5.While the Draft Amendment includes majority of the enablers and addresses key concerns, we have the following suggestions, intended towards the key enablers, to make it clearer and more impactful.

A.Transparent Operation of E-Commerce Platforms:

Transparency should be the hallmark of any business activity and every e-commerce marketplace must therefore act in a transparent manner with respect to all stakeholders, namely - the customer, sellers, logistics partners and payment gateways. Therefore, all e-commerce marketplace entities:

(i) Shall disclose the complete terms and conditions between the platform and sellers registered on its marketplace platform. All type of charges levied by the platform on the sellers, including the criteria of every discount, should be disclosed transparently on the platform based on which the sellers can register themselves with the e-commerce marketplace.

(ii) Shall disclose all information about the sellers and products to the consumer at the pre-purchase stage. Further, the search algorithm used by the e-commerce marketplace must be transparently disclosed and displayed to the users so that they can make informed choices. The draft rules have attempted to bring more transparency in the operations of e-commerce companies.

Therefore, the changes proposed in **clause 5(11), 5(12), 6 (3) and 6(4)** are rightly placed. To further strengthen the intent and make the rules clearer, we have suggested the revised language of the clauses **6 (3) (a), (b), (f), (g) and 6(4), 8(1)(f)** and in the enclosed Annexure.

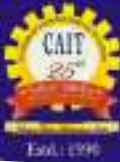
B.Easy Accessibility and Adequate Grievance Redressal by E-Commerce Entities:

Greater accessibility and complete knowledge of the e-commerce entity is essential to build consumer trust and help in increasing consumer adoption to e-commerce. Therefore, the rules must mandate every e-commerce entity to design their systems and processes in such a way that the consumer has complete information of the e-commerce marketplace and sellers on the platform. It must be ensured that consumers can reach out to senior grievance redressal officers of the marketplace entities to resolve their concerns. We, therefore, support the provisions relating to appointment of Grievance Officer, Nodal Officer and Compliance Officer in **Rule 5 (5)**.

Registration of e-commerce companies with DPIIT, as proposed in **Rule 4**, will also go a long way in protecting consumers from rogue/fraudulent e-commerce companies. This will further enable consumers to reach these companies through DPIIT/Ministry of Consumer Affairs in the case of any fraud or deficiency in services.

Further, many e-commerce entities do not have any customer care/call center facility and consumers are unable to reach out to the company in case they need to e.g. in case of late delivery, defective products, after sales service, cancellation etc. Hence, we have suggested modification into clause **6(3)(b) & 8(1)(f)** in the Annexure.





C.Non- Discriminatory Access of Marketplace Platform to all Stakeholders in the Value-Chain:

1)The Consumer Protection Act, 2019 intends to protect consumers from any unfair trade practices by e-commerce companies. Consumers should have a free and fair choice of the seller from whom they want to buy goods or services and no e-commerce marketplace platform should try to influence this choice in favour or against any particular seller or a set of sellers. Therefore, it is extremely important for an e-commerce marketplace platform to act as a neutral platform for third party sellers where every such seller has a non-discriminatory access to:

- i.Their choice of Logistics Service Providers providing services including, but not limited to, delivery and warehousing of goods or services.
- ii.Their choice of Payment Gateways/Payment Service Providers to choose preferred modes/gateways of payment.
- iii.Each seller must have a non-discriminatory access to every customer and every customer must have such access to every seller on the platform.
- iv.It is further recommended that the platform shall not create any discrimination under the garb of differentiation and every differentiation so created must be based on sound reason and must not be arbitrary, in any case.

2)Non-discriminatory access will disable marketplace entities from creating preferential sellers, preferential logistics partners and payment gateways etc.This will further protect consumers from the ill effects of these preferential arrangements such as predatory pricing/deep discounts/capital dumping that are always indulged into to destroy the market to the detriment of consumers and small sellers.**[new rules 6(6), 6(7) & 6(9) have been proposed in the Annexure]**

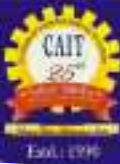
3)E-commerce marketplace entities must afford non-discriminatory treatment to every seller on its platform. For this purpose, we would like to make the following suggestions: -

(a)The marketplace e-commerce entity must not discriminate between sellers of the same category and must provide the same terms and conditions, fee charges, discounts etc. Categorization of sellers should not be arbitrary and must be done in a transparent and objective manner and should be published on the website of the marketplace entity.

(b)To eliminate anti-competitive and discriminatory practices resorted to by some e-commerce marketplace entities including but not limited to huge discounts on fees charged and giving preferential terms in the agreement to the sellers/trading companies managed or controlled by the marketplace entity, no e-commerce marketplace platform should be allowed to give any such preferential treatment.

(c)E-commerce marketplace entities shall disclose the complete terms and conditions of the agreement required for them to become a seller on the platform. The seller fee (like commission and other fees) should be disclosed publicly on the platform. This will enable every seller to know the terms and conditions, discounts etc. which are available to other sellers so as they can take an informed decision. The terms and conditions, fees, discounts, etc. should be uniformly applicable to all sellers in a particular category. No seller on the platform should be given any preferential treatment. This will put an end to the practice of - e-commerce marketplace entities offering huge discounts on platform fees to controlled trading companies and giving preferential agreement terms to them.**[amendment to rules 6(4) have been proposed in the Annexure]**





4) Marketplace entities must not be allowed to provide third party services like logistics including delivery and warehousing, payment services etc. All parties providing these services, including related parties of the E-commerce Marketplace entity, should transparently publish on the platform (i) the terms and conditions for such services; (ii) the delivery charges, warehousing charges, charges for payment services etc.; and (iii) all other commercial terms.

5) Every marketplace company should allow easy and smooth enrollment of all warehousing service provider, logistic service providers and payment service providers through a transparent and non-discriminatory agreement and publish the APIs for quick integration with the platform so that the sellers on the platform can choose their service provider in a transparent manner. This will allow every third-party service provider to register on the e-commerce marketplace platform giving the consumers and the sellers the choice to choose from a wide range of service providers. **[amendment to rule 6(5) and a new rule 6(14) has been proposed in the Annexure]**

6) No E-commerce Marketplace platform must be permitted to deny registration to a service provider for providing services on the E-commerce Marketplace platform. This will help in putting an end to the preferential and differentiated treatment afforded by marketplace e-commerce platforms.

These changes will put an end to the subsidies being extended to controlled sellers by offering huge discounts to them in a differentiated manner. Similarly, the use of affiliated payment service providers to lure consumers and influence them to buy from these controlled trading companies, by giving discounts on payment service charges, would come to an end.

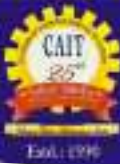
D. Avoidance of Conflict of Interest between Marketplace Platform, Sellers and Service Providers on the Platform.

- 1) In the e-commerce space, there can be two models of e-commerce;
- (i) marketplace model of e-commerce; and
 - (ii) inventory based model e-commerce i.e. 'e-commerce store'.

While e-commerce stores sell goods and services wholly owned by them to the consumers directly through their own e-commerce platforms, marketplace model of e-commerce acts as a shopping mall and provides a bridge for buyers and third party sellers to meet. The role of the e-commerce marketplace entity is limited to listing of sellers, logistics service providers, payment gateways and other service providers on its platform. In the instance that a marketplace platform owns/controls goods or services being sold on the platform, there will be an inherent conflict of interest. Such conflicts of interest have been and will continue to be exploited by marketplace entities and need to be plugged, failing which the platform would start giving preference to its own goods, services over goods or services of other third party sellers.

2) To avoid any such conflict of interest, the e-commerce marketplace or its related entities should not act as a seller on such marketplace platform. Further, the inventory based platform cannot be allowed to act as marketplace e-commerce platform by enrolling third party sellers. Hence, clear and unambiguous definitions of e-commerce marketplace entity and inventory based e-commerce store entity are required in the rules. In order to meet this objective we have suggested modification in the definition of both marketplace e-commerce entity and inventory e-commerce entity in clauses **[amendment in rule 3(1)(i) and 3(1)(j), the definition of inventory-based e-commerce entity and marketplace e-commerce entity has been proposed in the Annexure]**





3) At present many E-commerce Marketplace entities are creating economic disruption by surreptitiously carrying on inventory e-commerce activities on their marketplace platform. The E-commerce Marketplace entities themselves become sellers on the platform by misusing loopholes and are virtually carrying out Multi Brand Retail Trade (MBRT). Not only are they illegally indulging in MBRT, they are even selling goods below the cost to capture market share thereby creating enormous financial strain on small retailers who have no option but to shut shop.

4) In the FDI Regulations, group companies of an e-commerce marketplace entity are not allowed to be sellers on the marketplace platform. The definition of 'group company' is vague and gives rise to loopholes that are often exploited by certain marketplace e-commerce entities. The E-commerce Marketplace entities enter into partnerships with Indian businessman, incorporate a trading company and have shareholding and directorships in such a manner that the trading company is exempt from being considered a 'group company' as under the definitions in FDI Policy. However, the marketplace entities exercise complete control over trading companies by virtue of shareholder agreement between the marketplace entity/its affiliates/associated enterprise and the seller entity. The seller, sells goods freely on the E-commerce Marketplace platform without any restriction.

5) These 'controlled sellers/trading companies' receive huge subsidies and support in various forms from the E-commerce Marketplace entity or its related parties/associated enterprise. Some of such examples are as follows: -

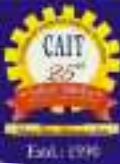
i) E-Commerce marketplace entity itself or any of its associate entity acts as a B2B wholesaler. This B2B wholesaler supplies goods to the controlled sellers (for example, Cloudtail, Appario, Darshini Mobile in case of Amazon) as also to some other sellers, below the cost price. The controlled sellers in turn sell such goods and services on the E-commerce Marketplace platform with zero or very little margin. On the face of it, it would seem that the controlled sellers are incurring losses but the reality is that the B2B wholesaler who incurs, bears and books the loss because such B2B wholesalers are not under any regulatory oversight or scrutiny. Therefore, these controlled sellers sell goods on the marketplace at highly subsidized rates for the purpose of eliminating competition that may arise from small sellers who are left with no option but to finally shut shop. **[the revised rule 6(7) has been proposed as rule 6(10) in the Annexure]**

ii) The E-commerce Marketplace entity designs the platform in such a manner that goods of these controlled sellers are always displayed in the first row against the customer query (for example, goods of Cloudtail and Appario always come first in any consumer query on the Amazon website). This way, consumer is compelled to choose the products offered by these controlled sellers.

iii) Further, the platform fees, i.e. various charges levied by the E-commerce Marketplace entity on the sellers to sell goods on its platform, levied on these controlled sellers is far less than the fee levied on third-party sellers.

iv) Affiliated companies of the E-commerce Marketplace entity are enrolled as the logistics service providers on the platform. These affiliated/related party logistics service providers charge discounted logistics rates to the controlled sellers to enable them to charge lesser delivery charges to the consumers.





7) The E-commerce Marketplace entities create consumer programs (like 'Amazon Prime') where consumers are given benefit of free delivery. But this free delivery is available to consumers only if they purchase from the controlled sellers and not from other third-party sellers. This will naturally compel the consumer to buy from the controlled sellers rather than the small traders enrolled on the platform. This is another way of providing subsidy to preferred sellers of the marketplace platform

8) The E-commerce Marketplace entity allows only one or two payment service providers other than its affiliates who are licensed payment service providers like Amazon Pay, PhonePe, Paytm etc. The affiliated payment service provider gives targeted discounts for purchases from the controlled sellers. Thus, the consumers are made to use only the affiliated payment service provider and at the same time buy only from the controlled trading companies. This is another way of subsidized and predatory selling on the E-commerce Marketplace platform.

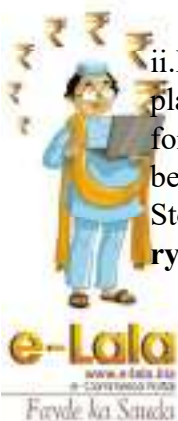
9) The combined effect of all these illegal activities being resorted to is that thousands of crores of subsidy is given to promote sales of the controlled trading companies on the E-commerce Marketplace platform, preventing small sellers from competing on the platform. Nearly 70-80% sales turnover over the platform is through the controlled sellers resulting in the marketplace platform being converted into an inventory-based e-commerce store.

10) E-commerce Marketplace platforms are akin to Crawford Market, Khan Market, DLF Mall or any other mall or shopping complex. E-commerce Marketplace platform is not a shop or a store which sells goods owned by it. E-commerce Marketplace platform must only provide a platform for third parties to sell goods on its platform (like malls provide space to the shops). E-commerce Marketplace platform cannot become an E-commerce Store i.e. inventory based retail, directly or indirectly.

11) In order to stop such practices, there is a need to clearly separate E-commerce Marketplace platform from inventory e-commerce platform. For this purpose, we are proposing the following suggestions that will help plug the loopholes being used by marketplace entities for operating as inventory-based entities by registering their related parties and associated enterprises as sellers on the marketplace platform

i. In the E-commerce Marketplace platform, the platform owner or any of its related parties or affiliates or associated enterprises should not participate in the sale of any product, directly or indirectly. The definition of "indirectly" should be all encompassing and all-inclusive so that there is no loophole. **[the revised rule 3(1)(j), definition of marketplace e-commerce entity has been proposed in the Annexure]**

ii. Manufacturers, brands and direct retailers can use their own inventory based E-commerce Store platform to transact and cater to their consumer base directly. In this case, the E-commerce Store platform owner shall be the only seller (with no third-party seller). The relationship with the consumer will be on principal-to-principal basis and invoices on the consumers will be raised by the E-commerce Store platform owner who is the owner of the goods. **[the revised rule 3(1)(i), definition of inventory-based e-commerce entity has been proposed in the Annexure]**





a. An E-commerce Marketplace entity shall not be allowed to collect bundled fees from consumers for services provided with respect to the e-commerce platform and any other services provided by the entity to the consumers like videos & movies, delivery, etc. This will prevent cross-subsidy and create a level-playing field for all sellers on the platform. **[a new rule 6(8) has been proposed in the Annexure]**

iii. If the same company or its related parties/associated enterprises are operating an E-commerce Marketplace platform as well as an inventory-based E-commerce platform, the two platforms cannot use the same or similar brand name or branding. This is essential so that the consumer is not confused or misled between the marketplace platform and e-commerce store. **[a new rule 5(20) has been proposed]**

iv. To prohibit such conflicts of interest between marketplace e-commerce entities and sellers on the platform, the definition of related party and associate enterprises have been further enhanced to plug all loopholes. The affiliate entities have been included in the definition of associated enterprise. Further, the common ultimate beneficial ownership has been proposed to be 5% instead of 10% proposed in the draft rules. **[the revised rule 6(6) has been proposed in Annexure as Rule 6(9) with amendment in 6(9)(ii) and insertion of 6(9)(g)(h) & (i)]**

6. It is in pursuance of the key enablers suggested by us to the Draft Amendment that we are of the considered view that the intent of the Draft Amendment, coupled with our suggestions, would go a long way in boosting consumer trust and confidence in e-commerce and would safeguard and protect the rights and choice of the consumers. We would like to reiterate that we truly believe that the entire jurisprudence of consumer protection in India must be driven solely by protection of consumer interest and greatest satisfaction of consumer needs.

We shall be happy to provide any further information if the authority so requires.

Thank You. With highest regards
Truly yours

Praveen Khandelwal

National Secretary General

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