RESPONSE TO OPEN NETWORK FOR DIGITAL COMMERCE CONSULTATION PAPER

BUILDING TRUST IN THE ONDC NETWORK

The Open Network for Digital Commerce (ONDC) has invited public comments on its Consultation Paper "Building Trust in the ONDC Network"[1]. This is done to collect useful inputs for developing effective mechanisms for building trust in the ONDC Network and performing early course corrections. The paper discusses the various stages in the life cycle of a transaction under the ONDC model, explaining what measures ONDC has taken to foster trust at each stage and posing specific questions to solicit feedback.

CUTS, welcoming the initiative, has the following comments.

A. Search and Discovery

1. **What more can ONDC do to make the process of search and discovery fair for both the buyer and seller?**

    1.1. Search does not begin at the buyer making a conscious choice of entering a query, but before that, during different browsing options visible on the app, and at times, choosing from such listed options. Consequently, while listing search queries is an issue, listing and prioritising options on buyer apps before the buyer places a query is also important and needs to be transparent, fair, and impartial. The paper says that a search can be initiated by "clicking on a recommendation or featured listing on the Buyer App's homepage". Still, it does not explain how the principles of fairness and transparency are incorporated while featuring different products.

    1.2. The paper focuses on the role of buyer and seller apps but not other entities involved in the transaction. For instance, the gateway performs the critical function of looking into the ONDC registry to identify seller apps. The gateway also collects responses from seller apps and relays them back to buyer apps. Gateways have the potential to act as gatekeepers by restricting the search to only a specific seller app and relaying responses only from such apps. The paper does not discuss who can be a gateway, its responsibilities, accountability and grievance redress procedures.

    1.3. While ONDC network policy might have provisions to prevent bad behaviour by the gateway, it is not clear how such responsibilities will be enforced (enforcement in

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[1] ONDC Consultation Paper, Building Trust in the ONDC Network, available at: https://res.cloudinary.com/daea2fs3n/image/upload/v1664541553/ondcwebsite/files/ONDC_Building_Trust_Consultation_Vf_utbodw.pdf

general – of responsibilities of all entities is also a concern), or how will anti-competitive agreements between buyer apps, gateways, and seller apps will be avoided. While gateways cannot operate buyer and seller apps, nothing prevents them from being related parties or indirectly connected, which is a critical issue with the existing platform-based model. Thus, it is unclear how ONDC addresses the challenges posed by the existing platform-based model of e-commerce.

1.4. The paper providers that buyer apps can also operate seller apps and can allow sellers to boost rankings in the priority of listing (whether for payment or otherwise). While the ONDC model requires disclosure of such arrangements, it is unclear how it will prevent misuse of such arrangements, and more importantly, how is all this an improvement over the current e-commerce model.

1.5. The ONDC model allows a buyer app to have some minimum standards for the quality of responses they will display to the buyer. There is a need to ensure that these are reasonable and fair and do not discriminate against or impose an unreasonable cost on smaller sellers. Such standards must be driven by buyers and not out of the whims of buyer apps or select seller apps. Big sellers can invest significantly in marketing, advertisement, and placement, raising the bar/threshold so high that it becomes impossible to match for smaller sellers. This also became critical given the rise of the metaverse and enhanced AR/ VR experience, which improves buyers' online selection and choice experience. There is a need to promote balance and ensure that buyers and sellers with limited resources are not left out.

1.6. The ONDC model allows buyer apps to use proprietary algorithms to sort the sellers in the response listing. They must publish the broad parameters/factors used for sorting and general guidance for sellers who want to be ranked higher in priority. While the use of proprietary algorithms is fine, there is a need to ensure that such algorithms comply with the principles of fairness, transparency, and accountability and are not built on biased data. They must also be interoperable and allow users to port their data efficiently.

1.7. ONDC needs adequate mechanisms to prevent the creation and circulation of paid and fake sales and review numbers. Without proper enforcement, it may not be possible to curb such practices, which entities with deep pockets may have perverse incentives to adopt. While a legal framework to tackle such practices exists, it has proven inadequate in facing emerging challenges. It might be fatal for ONDC to ignore the ground realities regarding the sub-optimal nature of legal and regulatory frameworks, their enforcement, information asymmetry and capacity constraints amongst which stakeholders operate in the real world.

1.8. Given that existing large platforms can participate in the ONDC ecosystem as buyer and seller-side apps, it is unclear how putting smaller players in direct competition

with such platforms will benefit the market and consumers. After all, while preferential treatment of similarly placed players distorts competition, so does a similar treatment of differently placed players. It must be acknowledged that there is already trust that consumers have built on existing platforms, and there might be a few reasons for consumers to shift to other platforms. The smaller and newer competitors may need to emerge as niche/specialised entities in specific sectors to carve out their dedicated and loyal customer base. Such newer entities may need to drive competition away from price to factors like comfort, convenience, time, efficiency, quality, and safety, or cater to specific consumers or operate in specific sectors. If ONDC can foster such competition on niche indicators, thereby driving consumer interest, it may be able to address the challenges in the existing model and add value.

1.9. There already are a host of laws covering e-commerce, including regulations around foreign direct investments in the e-commerce sector, which are not listed in the whitepaper. These are supplemented by various decisions of regulatory and judicial agencies, most recently being the Competition Commission of India against Google. These regulations and judgments cover listing search results, self-preferencing, paid searches/ advertisements, predatory pricing, exclusion of competitors, tied selling, lock-in of customers, and unfair business practices, among others. Despite such legislative, regulatory, and judicial actions, there have been concerns about the behaviour of platforms in e-commerce. ONDC model claims that it will remain subject to the prevailing frameworks. However, it does not highlight how it works around or addresses deficiencies in such frameworks. Moreover, it does not dwell on the risks of the model that it suggests and, consequently, is not in a position to recommend any measures to address such risks.

2. What is the best way for ONDC to enforce its algorithmic accountability requirements from Buyer Apps?

2.1. Enforcement without an empowered enforcement agency is always a challenge, and this is not limited to algorithmic accountability requirements. In such a situation, disclosure and transparency requirements; robustness and effectiveness of grievance redress processes; incentivising bug bounty hunters and whistle-blowers; can aid in enforcing algorithmic accountability requirements.

2.2. The buyer apps, either at an entity level or association level, could be nudged to disclose and comply with algorithmic accountability standards. The association of enterprises could also monitor compliance with standards. The failure to comply could invite disassociation, public shaming, and a fall in credibility.

2.3. Independent, credible third-party rating, ranking and scoring agencies can dive deep and compare and contrast training data sets, processes, modules, and decision-

making processes. This will help users identify entities that rank algorithm accountability high in their business practices. Like in the case of ESG ranking and reporting, it may be possible to compare and rank entities based on their algorithm accountability robustness.

2.4. In addition, using the principles of blockchain, smart contracts, supervisory technology, and regulatory technology, it may become possible for the existing regulators to identify instances of violation of algorithmic accountability principles through access to entities' application programming interfaces.

3. To what degree of detail should Buyer Apps be required to publish their listing prioritisation algorithms?

While an optimal standard will evolve, the detail should be guided by: the need to reduce information asymmetry, provide sufficient guidance to consumers for decision-making, enable experts to review and identify areas of improvement, protect sensitive business information, and ensure competition in the market.

B. Placing an Order

4. What are the considerations in selection and order placement that ONDC has not considered?

4.1. According to the whitepaper, the product information, description, price, terms of sale, and fulfilment terms will be displayed after a buyer clicks on a listing to navigate the product page. While the search responses can only display limited information due to space and other constraints, some of this information could be crucial for the consumer to proceed with the transaction. Thus, it would be useful if critical information about the product (particularly the red flags, if any – such as no cash on delivery, delivery, price range) is displayed (either directly or while hovering) along with search results. Also, the role of the gateway, if any, is not clear in this process, given it initially relayed the responses received from seller apps to buyer apps.

4.2. The Protocol allows the buyer app to deliver the order if it chooses, and the seller app can also do this. Does not this integration of different services with one service provider go against the principle of promoting decentralisation and unpacking the e-commerce chain? They may give an undue advantage to large buyer apps over their competitors, who have well-developed logistics arms and on whom smaller players may eventually need to depend. There is a need to ensure adequate competition exists in the logistics, warehousing and delivery space and that the contract between seller/buyer apps is on fair terms. Consequently, the consumer should have the right to choose the delivery provider.

4.3. The whitepaper informs the buyer of the logistics/delivery charges, convenience fees, and packing charges, if any after the item is added to the shopping cart. It appears that it is quite late when consumers get complete information about prices and other charges. This should ideally happen before the item is added to the shopping cart, as it could be a critical purchase-determining factor for the consumer.

4.4. There is a need to ensure that is informed of relevant terms and conditions, particularly those which can affect the buyer, of the transaction level contract between the buyer and the seller app. While this contract is between entities which do not include a buyer, given that these are about goods/ services procured by the buyer, it would be essential to ensure that buyer is informed of all relevant terms and conditions.

4.5. In addition to buyer and seller apps, the transaction involves logistics between buyer and seller. The whitepaper does not delve into the responsibilities and obligations of the logistics providers, which are crucial as they would be the consumer and seller-facing entities.

4.6. Managing the order life cycle is time-consuming and complex because it requires several functions, such as catalogue management, order management, invoicing, warehousing and inventory management, logistics, customer support, returns management, and payments. Given the limited resources, small network participants may find it challenging to manage all of these functions and the associated risks. To overcome this challenge, small players may need to reach out to either larger participants or have a developed ecosystem. This may lead to the creation of smaller closed clubs or walled gardens rather than the large interoperable ecosystem that ONDC envisages creating. It may therefore be essential to think of a model wherein network participants that cannot be substituted for the completion of the transaction must provide the necessary service to another network participant at fair, reasonable and non-discriminatory (FRAND) terms. For instance, when a logistics arm of a large network participant is the only operator in a particular region/time/sector, and another network participant is fulfilling the rest of the components of the order, such logistics service provider will need to offer its services on FRAND terms to complete the transaction.

5. What are the disclosures, other than prices/fees/charges, that are necessary to be made to the buyer?

In addition to price, fees, and other charges, disclosures that are required to be made to the buyer should include: the quality of products; comparison with other similar products in terms of quality and price; if a similar product is available with other sellers at lower prices; refund, return and cancellation policies; customer review and ratings; grievance redress process; any other essential terms and conditions.

6. Which of the proposed measures can be further improved and how?

The proposed measures can be further improved by involving expert consumer and seller-facing agencies in reviewing market practices, designing and enforcing principles, identifying potential areas of concern, and working together to develop solutions.

C. Fulfilment

7. What are the concerns around the linked orders and on-network logistics that ONDC should be aware of?

Unavailability of service providers, contingent contracts, difficulty in specific performance, transaction time out and failure, inability to fix accountability, redress grievance, and entry of suspicious entities are some concerns that should be watched out for.

8. How can both the buyer and seller's interests are fairly protected in such back-to-back contractual arrangements?

8.1. It is critical that the contract terms clearly state roles and responsibilities and make the process less complicated, troublesome, and more transparent. Smart contracts, which contain terms in code and trigger actions automatically through blockchain technology when pre-defined conditions are met, can be used to protect buyer and seller interests in back-to-back contractual arrangements.

8.2. Technology and open APIs can be utilised to monitor performance and trigger red flags in case of delays or a likelihood of non-compliance. The use of RegTech and SupTech may be beneficial in this regard.

8.3. Self-regulation by industry associations and co-regulation in association with consumer representatives and civil society can also help protect stakeholder interests.

8.4. In back-to-back contractual arrangements wherein performance among parties in a contract is contingent upon successful performance by other parties in a separate contract, the option of nomination, guarantee, and insurance can be explored. Network participants should be able to nominate another entity that will complete the task if they fail to do the needful.

8.5. Market-based services like underwriting, guarantee, and performance insurance can also be promoted to create disincentives against non-performance. Also, remedies like specific performance, disgorgement of benefits, and compensation to consumers, can be considered to protect interests.

D. Payment and Settlement

9. What are the issues in the system proposed by ONDC for payments and settlements?

9.1. The paper suggests that collector network participants can be either the buyer or seller apps. Similarly, any network participant can perform the roles of reconciliation service providers (RSP) and settlement agents (SA). They also act as logistics service providers. This possibility of a single entity wearing multiple hats, which might be easier for large service providers, but difficult for smaller entities could result in consolidation and creation of multiple closed platforms in the ONDC model. Thus, the model that aims to disrupt the *status quo* by taking away the power of large closed platforms to create a town hall where everybody can enter and operate may create multiple small but exclusive clubs.

9.2. All these entities, particularly the RSP and SAs, will need to comply with applicable laws, particularly in the financial sector. It is unclear if RSP and SAs will reconcile and settle dues with all recipients (in which case the buyers' financial service providers (FSPs) will need to have arrangements with all such FSPs). It is unclear if the ONDC model promotes bilateral arrangements for reconciliation and settlement or if a system-wide solution will be implemented.

9.3. The online payment is typically between buyers' FSP and sellers FSP and intermediaries in between, including the RSP. So in the TLC to which the buyer and seller apps agree, not only will RSP have visibility, and so will all other entities. This will be a multiple-party contract covering different parties with their commissions/incentives.

9.4. In addition, the processing of refunds should involve prior disclosure and agreement with the consumer and not just pre-determined non-negotiated terms and conditions.

10. What, if any, are the risks of allowing these intermediaries to participate in the payment and settlement process?

10.1. Allowing multiple entities in the payment and settlement process increases the counterparty and settlement risk, risk of transaction failure, misuse of funds, inability to highlight the point of breach or misuse, difficulty in fixing accountability, and complications in the grievance redress process.

10.2. in addition to funds, data related to the transaction travels through different entities involved in the chain. Consequently, risks of privacy violation, leak, breach and misuse of data by entities and third parties, phishing and cyber-attacks exist.

11. How can these risks, if any, be mitigated?

11.1. Some of these risks can be mitigated by adopting appropriate risk-based standards for network participants to become eligible and operate as reconciliation and settlement agents.

11.2. In addition, real-time monitoring of activities, use of technology, visibility of funds at all times and raising of timely red flags, efficient and effective accountability and grievance redress process could aid in risk mitigation.

11.3. Development and enforcement of fair, transparent, and non-discriminatory protocols and standards through self-regulation and co-regulation could also mitigate such risks.

11.4. Better coordination between existing regulatory agencies and ensuring compliance with prevailing regulatory standards can mitigate risk.

E. Returns, Refunds, and Cancellations

12. What, if any, are the gaps or issues in the proposed approach to returns, refunds and cancellations?

12.1. In the ONDC model, return, refund, or cancellation requests will be treated as an independent process from the original transaction. The seller's terms of sale will process the return, refund, or cancellation request at the time of sale. There is a need to ensure that such terms and conditions are not one-sided or stacked against buyers. Buyers' interests and perspectives must also be considered while determining the terms and conditions.

12.2. Consumers should be able to compare and contrast different return, refund and cancellation terms offered by different sellers. That should be a decision-making factor to help a buyer decide which seller to proceed with. Clear, effective, informed consent must be taken from buyers while determining the terms and conditions of returns, refunds, and cancellations.

12.3. It also needs to be ensured that returns, refunds, and cancellations, are carried out in a consumer-friendly manner and as per the prescribed procedure in a timely and effective manner. Effective grievance redress mechanisms need to be put in place in this regard.

12.4. Data regarding returns, refunds, and cancellations should also be disclosed in the public domain to enable consumers to compare and contrast different service providers' performance and make critical purchase-related decisions.

13. What mechanisms can ONDC and Network Participants put in place to avoid issues related to returns, refunds and cancellations from escalating into disputes?

13.1. To prevent the escalation of issues into disputes, it is necessary to ensure that regular and timely updates to buyers are given about the progress of the issues under consideration. These should include clarifications, information, reassurances, advice, and keeping consumers informed about the resource they can pursue in due course.

13.2. To this end, credible consumer organisations should provide their assistance. Several consumer organisations run consumer assistance centres to provide necessary information to consumers, clarify doubts, work with service providers to resolve issues, and avoid complaints from escalating further.

13.3. In addition, technology-based monitoring of issues, effectiveness of grievance redress and dispute resolution mechanism, disincentives in case of violation, prompt corrective actions, disclosure and transparency, public naming and shaming of defaulters, compensation and disgorgement of gains to consumers, are some mechanisms which can nudge network participants to work towards effective resolution in reasonable time frame.

F. Issue and Grievance Management

14. What, if any, are the gaps or issues in the proposed IGM system?

14.1. While the unbundling of the value chain democratises the entire e-commerce ecosystem, the network's decentralised nature makes the grievance redressal system challenging.

14.2. It will make fixing accountability and resolving grievances difficult, potentially reducing trust within the network. Considering that ONDC will only act as a technology facilitator and bear no responsibility in the process, an important question from a consumer standpoint is who would enforce the accountability of network participants' responsibility for resolving grievances. In the ONDC model, no single player may want to take responsibility because one or more players could cause the problem, so diagnosing, locating, and resolving the problem could take time.

14.3. The consultation paper includes scenarios in which failure to provide timely resolution may result in disciplinary action, a drop in ratings in the scoring and badging system, or both. It also states that the quality of grievance/dispute resolution (in terms of timeliness, satisfactory resolution, pendency rate, and so on) will be published as part of ONDC's Open Data Initiative, with appropriate anonymisation. However, these initiatives in the right direction need to be attached with accountability, without which they may not be able to nudge good behaviour from network participation.

14.4. In addition, more clarity is required on who will be responsible for enforcing good behaviour from network participants and punishing bad behaviour. More clarity is required on who will take disciplinary actions and other details, like how the quality of grievance /dispute resolution will be assessed.

15. What mechanisms can ONDC and Network Participants put in place to avoid issues from being escalated to disputes in the first place?

15.1. For effective grievance redressal at the internal resolution level, experts must operate it with adequate representation from both the buyer and seller sides. This ensures that it considers different perspectives before arriving at a possible resolution. It is also important to highlight that resolution should be to the consumer's satisfaction and not just a tick box exercise by the service provider.

15.2. The success rate of the resolution process should also be made public so that experts can independently verify it. The option of publicly naming and shaming non-compliant players should be available in the system. Further, all such information should be made available to customers on the network before they make a purchase. ONDC's portal should also include a list of all the Grievance Redressal Officers from different network participants who have joined DC.

16. What are the challenges in implementing and getting redressal from the system being designed by ONDC?

16.1. The online dispute resolution mechanism under the ONDC model will be offered by third parties who will also be network participants. The question is how much power they will have and how effective their adjudication will be.

16.2. If either party refuses to recognise the ODR provider's authority and jurisdiction, these network-provided grievance redressal methods would be rendered ineffective. The customer will then have no alternative but to turn to the formal redress mechanism, which is already overwhelmed with the caseload.

16.3. There are additional concerns about the inability of ODR providers to conclude the process in a reasonable time frame. And that parties would go through and finally accept the procedure.

16.4. Also, the incentives for ODR providers are also not clear. If service providers compensate them, conflict of interest concerns may arise.

G. Other Network-Wide Initiatives

17. How can ONDC effectively drive the adoption of a common taxonomy?

17.1. Adoption of common taxonomy can be driven through incentives and recognition for entities willing to do so.

17.2. Such common taxonomy should be simple to use, and ONDC should support entities interested in adopting such taxonomy.

18. What systems can be put in place to make the taxonomy extensible and adaptable, and yet stable and reliable?

To make taxonomy extensible, adaptable, and stable, it should be designed with local sensitivity in mind. The taxonomy should support different language options and other alternatives to text search, such as audio or video-supported search. Also, for the taxonomy to be genuinely extensible, it must be designed through mutual consultations.

19. How can ONDC encourage better catalogue management among sellers?

19.1. To encourage better catalogue management among ONDC network sellers, a system of recognition and reward should be implemented for those actively practising and improving their catalogue. To further encourage effective catalogue management among sellers, some incentive schemes should be implemented, providing support for those who may want to adapt to the practice but are faced with constraints.

19.2. Additional support may be required by smaller sellers who might be interested but may not necessarily be aware of the knowledge, benefits, process, or resources for cataloguing.

20. What mechanisms should be put in place in the scoring and badging system to avoid/remove fake reviews and scores?

20.1. Artificial intelligence and machine learning technologies could be useful in identifying and weed out fake reviews.

20.2. Additional mechanisms for constant review and cross-checking of details for such reviews can be incorporated into the system. Regular system audits can prevent fake reviews. Some basic determinants that can be used to detect fake reviews include using more first-person pronouns to appear legitimate, using more verbs, and using vague language because they lack real information about the product being reviewed. These mechanisms can help avoid/ remove fake reviews and scores.

20.3. However, scoring and badging entities and network participants must operate at arm's length and independently. Any financial or other relationship between these entities may result in a conflict of interest claim.

H. Enforcement and Compliance

21. How can ONDC streamline policy compliance monitoring and enforcement without centralising responsibilities and power within itself?

21.1. Streamlining policy compliance monitoring and enforcement can happen through SupTech and RegTech and putting in place protocols and smart contracts which can act as alert systems and highlight course correction.

22.2. Incentivising watchdogs like civil society organisations, whistle-blowers, and consumer organisations, to monitor compliance and performance of network participants could be helpful.

23.3. Nudging players to adopt self-regulation and standards could also help.

24. What kinds of data should ONDC publish to cultivate transparency and trust?

24.1. ONDC should publish data about itself, its ownership, key personnel, policies, standards, direction to market participants, action taken against them, grievances and disputes resolved and that remained unresolved, transactions fulfilled and failed, customer and seller feedback, conflict of interest concerns addressed, actions by regulatory agencies, and its committees, among others, to cultivate transparency and trust.

24.2. To succeed, ONDC will need to consider the comfort and trust consumers have built over time with platforms and the high switching costs and efforts they may need to make while selecting and coordinating with entities in the ONDC ecosystem. Thus, interoperability and portability aspects from seller and user need more focus and practical thought, and the mere assumption that these would happen without effort may not be realistic.

24.3. Massive amounts of personal, sensitive, commercial and business interest data will transfer through the ONDC ecosystem. Having excellent privacy and data protection standards and combating cyber threats will be crucial for ONDC to succeed and engender trust in users and sellers.

24.4. ONDC also proposes a mechanism for audits and the provision of mystery shopping (surprise inspections). While these steps are laudable and in the right direction, enforcement capacity to conduct such checks, audits, and inspections, will need to be built.

24.5. There are concerns around conflict of interest between network participants and empanelled certification agencies, which will need to be addressed. There is a need for an institutionalised periodic mechanism for network participant compliance monitoring.

24.6. There is a need for an enforcement mechanism of policies and standards, and a proportionate audit should be a periodic (annual) process and not just based on complaints. In addition, consumer and seller representatives must be present in an independent disciplinary body.

24.7. Incentives, role and governance structure of ONDC also need transparency and discussion.

I. Community Governance and Network Evolution

25. How can ONDC better engage with stakeholders, bearing in mind that it itself is a small organisation?

25.1. ONDC can better engage with stakeholders by issuing whitepapers, obtaining feedback, taking help from external expert agencies to conduct a cost-benefit analysis of proposals, and brainstorming different options.

25.2. It can also engage with experts in obtaining and analysing feedback, synthesising and deducing learnings and charting action plans.

26. What other functions should the User Council perform for greater participation and responsiveness?

The ONDC's User Council should be given some enforcement authority rather than just having an advisory capacity. To ensure that it remains effective, there should also be a system for periodic disclosures on how many of the council's suggestions is being implemented.

Consumer Unity & Trust Society (CUTS) expresses gratitude to ONDC for inviting comments and suggestions on the Consultation Paper on Building Trust in the ONDC Network. CUTS looks forward to ONDC accepting the above suggestions and assisting in its efforts to empower consumers and private sectors and bring economic reforms through research.

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