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Roundtable Brief

Stakeholder Consultation on Draft E-Commerce Policy

Thursday, March 07, 2019
New Delhi

1. Introduction[1]

The Dialogue, in partnership with CUTS International and Adyopant Legal, organized a Consultation Roundtable at the Constitution Club of India on Thursday, March 07, 2019. The roundtable saw a full house participation, with more than 70 attendees in the room, consisting of representatives from Indian and foreign e-commerce, technology, software, digital payments, and cyber security companies. Additionally, the event witnessed participation of leading civil society and digital rights institutions as well as leading strategic and public-policy consultancies. Media houses, representatives from trade bodies, internet associations, and business councils were also present for the discussion, as were government representatives. The consultation followed the rules of Chatham House and was a closed-door exercise between all stakeholders.

The consultation was divided into two sessions. The first session revolved around the first two chapters from the Draft Policy, that focus on 'Access to Data Generated in India' while the second session discussed the part of the Draft Policy that focuses on marketplace and e-commerce regulation. This Brief captures the broad talking points from the discussion, while at the same time, the organising team has taken cognizance of all inputs and details discussed during the meeting and will be deliberating the same as part of our final submission to DPIIT.

Dr. Narendra Jadhav, Member of Parliament, Rajya Sabha, chaired the session and gave opening remarks. Hon'ble MP emphasized on the potential of India's e-commerce sector, that is expected to reach USD 64 Billion by 2020. He iterated that India's young demographic profile, mobile revolution, growing internet penetration in tier-II and tier-III towns and a multitude of other factors helped attract large investments, resulting in an exponential growth of the sector. As the sector grows, there is a need to create a fair regulatory environment for different players in the sector, he stated.

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[1] Disclaimer: The organising team would like to state that the views expressed in the roundtable are part of an on-going process of developing a position and preparing a submission for DPIIT, and therefore, are not the final views of the organising team. We thank all our participants for providing us with inputs, that are now being deliberated as we work to develop our position on the Draft E-Commerce Policy towards the consultation exercise.

2. Session1: Data Strategies

In the first session, participants discussed issues around ownership and control of data, that brought in multiple views comprising of privacy and data protection viewpoint, the economic perspective and whether data should be classified as a natural resource. While the majority of the house raised concerned over the way user's data have been dealt with in the draft policy (particularly treating it as natural resources and empowering government as its custodian), there were few voices conforming to the draft policy as well. The scope of the draft policy was also brought into debate, as the policy identifies issues ranging from cloud computing to emails, and whether this was beyond its defined scope.

On one hand, it was argued that while Sri Krishna Committee has dealt with the human rights aspect of users' data, the draft e-commerce policy would look into the business/economic aspects. Since, 'individual' users may find it difficult to negotiate on their data with tech corporates due to asymmetry of powers, it was thought that a 'collective' (of Indian users) approach would be better option, and the 'state/government' would be ideal to negotiate on behalf of the Indian users.

On the other hand, however, the majority view took note of the fact that first and foremost, citizens have the right over their data, with regards to the purpose and method of collection and processing of the same, which is as per the Supreme Court judgment that guaranteed privacy as a fundamental right to citizens of India. It was also argued that "customers owning their data" is a non-negotiable, cannot be diluted at any cost and Government should limit itself only to regulation. Privacy, security, and ownership are the three main pillars to this entire debate.

3. Session 2: E-Commerce Regulations

The second session started with discussions around the need for a level playing field for all players, be it Indian or MNCs, as well as providing enough opportunities for all players to grow and thrive in India's e-commerce market. Participants also took cognizance of the fact that the draft policy is an extended version of the new FDI policy, as the inventory-based model only applies to MNCs and thereby the domestic players have been left out of it. This, the majority noted, may hamper small players or MSMEs and is potentially discriminatory in nature. It was also pointed out that the American and Chinese market grew due to deep internet penetration and a strong logistics infrastructure, where the government invested heavily. India should focus on placing the building blocks of the requisite infrastructure as it aims to become a key market in the coming years.

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