

## Electronic Commerce in India: Draft National Policy Framework

### **Background**

1. Within a short period in the recent past, the significance of economic activities in the digital space has grown substantially, both globally and in India. According to some estimates, by 2020, 15 -20 percent of global GDP will be based on data flows. It has been reported that by 2022, the size of digital economy in India will be approximately \$ 1 trillion and by 2030, it could constitute almost 50 percent of the entire economy. Vast opportunities by way of job creation, productivity improvement and enhanced consumer choices will result from globalization. However, for India to fully benefit from the opportunities, it is important that policy makers are aware of the underlying challenges and exercise prudent choices from available options.
  
2. Elements of the envisaged policy framework are already in place with policies on some aspects of the digital economy already in place, some as flagship programmes of the government. In addition, the Justice Srikrishna Committee constituted by the Ministry of Electronics and Information Technology (MEITY) is at an advanced stage of making its recommendations regarding the data protection framework and protection of privacy in the digital environment. While these developments will provide the policy and legal framework in respect of some crucial aspects of the digital economy, many gaps related to other areas of the digital economy will remain to be bridged to address various challenges that exist. The objective of this document is to identify and facilitate bridging of this gap. It seeks to provide for consideration and discussion, a possible policy framework that will enable the country to benefit from the rapid digitalization of the domestic, as well as the global, economy.
  
3. Formulating a comprehensive policy for the digital economy, referred to as e-commerce in this document, is beset with multiple challenges. Two challenges stand out – first, how to create a facilitative environment for e-commerce, including a fair environment for domestic digital firms to find their rightful place, while enabling

innovation and access to latest technology; and second, how to ensure balance between conflicting interests, especially where some of the strengths and gains of India's services exports in this sector are impacted. Further, any attempt at making policies on e-commerce has to be undertaken within the confines of India's commitments and obligations under various agreements governing international trade. The proposed obligations at a global level in respect of e-commerce appear to be onerous, and attempts are being made through negotiations on regional trade agreements and multilateral discussions to make the commitments more comprehensive and stringent. If these attempts were to succeed, governments, particularly in developing countries, may be left with little flexibility to take measures for nurturing the domestic digital economy and bridge the divide to reach a more balanced dispensation. It is, therefore, imperative that the approach the Government takes on issues related to e-commerce in international trade negotiations and discussions is fully cognizant of the need to preserve flexibility and create a level-playing field to enable formulation and implementation of appropriate policies in the future for encouraging domestic innovation and boosting the domestic digital economy to find its rightful place with dominant and potentially non-competitive global players.

4. There is no commonly accepted definition of digital economy or e-commerce. Further, there is inadequate data on the trade of digital products. Both these shortcomings hinder effective policy making in the country. This document seeks to address this challenge as well.
5. While Digital India is already unfolding, its pace needs to be accelerated by providing a facilitative ecosystem for spurring digital innovation within the country and stimulating the digital economy. This document seeks to achieve this goal through a multi-pronged approach, including the following: creating a facilitative regulatory environment for leveraging access to data, building better understanding of real and

financial flows for future innovation by promoting the use of RuPay, creating a level playing field for foreign and domestic players in the Indian market by addressing some of the challenges confronting domestic players especially start-ups, addressing non-competitive practices and stimulating the participation of micro, small and medium enterprises in the digital economy.

6. It is often said that data is the oil of the digital economy. A few illustrations should suffice to highlight the critical importance of data for the digital economy. The burgeoning on-line retail trade through platforms has data flows at its foundation. Communication over mobile phones using mobile applications and other real-time exchanges, not only generates a vast array of data, including physical location, financial details and consumer preference, but also creates a dynamic profile of the individual user. The individual's profile can be used for a variety of commercial purposes, such as precision marketing, targeted advertisements and credit worthiness assessment. The history of browsing and search by consumers also generates rich information on consumer preferences and, at times, their potential purchasing power. By tracking the search history, online retail websites are able to target consumers with tailor-made marketing content. Data generated by activity in one area can provide a competitive edge for a new business in another area. Further, algorithms can mine vast amount of unstructured data generated from diverse sources, including Internet of Things (IoT), for identifying trends and patterns which have considerable commercial value. Facebook and Google convert data into many cognitive services, including translation and visual recognition. These will not only generate new streams of revenue, but can be sold to other firms for use in their businesses. Future growth in artificial intelligence is likely to depend on algorithms that are increasingly self-teaching. The more the data flow, the better artificial intelligence approaches would be in performing their intended task. Thus, access to data has emerged as one of the main determinants of success of an enterprise in the digital economy. As India is likely to become one of the largest sources of such commercially useful data in the world, it

is imperative that the policy understands and protects the inherent ownership rights to data, and leverages it to ensure that domestic new players are also able to leverage this strength for economic gains by creating innovative digital products.

7. It is increasingly being recognized that ensuring competition in e-commerce is fraught with problems arising from certain unique characteristics of the digital economy, including network effects and access to data posing a significant barrier to market entry of new firms. In some jurisdictions, the competition authorities have found substantial evidence of anti-competitive practices in the e-commerce sector. This document identifies options for addressing anti-competitive practices effectively in India, so that small market players and ultimately the consumers are not adversely impacted by unfair practices of a few large operators.
8. This document seeks to identify strategies for addressing two additional goals. First, strengthening the regulatory regime for protecting the consumer in the context of e-commerce; and second, facilitating Digital India through e-commerce.
9. The overall objective of the national electronic commerce policy is to prepare and enable stakeholders concerned to fully benefit from the opportunities that would arise from the progressive digitalization of the domestic and global economy.

## Electronic Commerce in India: Draft National Policy Framework Options

### Goal: Creating a robust information base on e-commerce for making policies in India

#### Strategies

1.1 A common definition of electronic commerce for the purposes of domestic policy-making and international negotiations would be adopted. *May refer to Annex I.*

*(Implementing Ministry/ Department: MEITY)*

1.2 Separate and uniquely identifiable codes under the Harmonised System of Nomenclature (HSN) for recording data related to the trade in digital products would be developed.

*(Implementing Ministry/ Department: DOR and DOC)*

1.3 The reporting of imports and exports of digital products in the GST Returns and in RBI's Foreign Exchange Transactions Electronic Reporting System (FETERS), would be streamlined.

*(Implementing Ministry/ Department/ Agency: DOR, and RBI coordinated by DOC)*

### Goal: Creating a facilitative eco-system for nurturing digital innovation and stimulating domestic digital economy

#### Strategies

2.1 Steps would be taken to develop capacity for and incentivize domestic data storage in India through creation of facilitative data infrastructure by making domestic data storage economically attractive, including by way of the following:

- Data centres/ server farms would be accorded infrastructure status
- Provision of physical infrastructure for setting up data centres (power supply, connectivity etc.)
- Provision of direct, indirect tax benefits and Customs duties rebate.

- There could be, say a 2-year, sunset period for industry to adjust before localisation becomes mandatory.

*(Implementing Agency: MEITY, DoR)*

2.2 The following categories of data would not be subject to any restrictions in terms of their cross-border flow:

- Data not collected in India;
- B2B data sent to India as part of commercial contract between business entity located outside India and an Indian business entity;
- Software and cloud computing services involving technology-related data flows, which have no personal or community implications;
- MNCs moving data across borders, which is largely internal to the company and its ecosystem; and
- Start-ups that meet specified criteria, such as turnover up to Rs.50 crore.

*(Implementing Ministry/ Department: MEITY)*

2.3 However, the following categories of data would be required to be stored exclusively in India and suitable framework developed for sharing the data within the country (this would be guided by ongoing exercises, including the forthcoming Report of the Justice Srikrishna Committee):

- Community data collected by IoT devices in public space; and
- Data generated by users in India from various sources including e-commerce platforms, social media, search engines etc.

*(Implementing Ministry/ Department: MEITY)*

2.4 The development of cutting-edge and innovative technologies in India would be promoted by ensuring access to data through the following:

- The Government would have access to data stored in India for national security and public policy objectives subject to rules related to privacy, consent etc.
- Data stored in India should be shared with start-ups meeting the stipulated criteria (turnover of Rs.50 crore etc.)
- At the request of the consumer, data generated by her in India through various channels, including e-commerce platforms, social media, search engines etc., would be allowed to be portable amongst platforms in India.

*(Implementing Agency: MEITY)*

2.5 In the context of international trade negotiations, policy space for granting preferential treatment to digital products created within India would be retained.

*(Implementing Ministry/ Department: DOC)*

2.6 In the context of international trade negotiations, the policy space to impose Customs duties on electronic transmissions in the future would be retained.

*(Implementing Ministry/ Department: DOC and DOR)*

2.7 The creation of innovative digital products within India would be promoted, including by fast tracking work on National Encryption Policy.

*(Implementing Ministry/ Department: MEITY)*

2.8 Steps would be taken to build financial intelligence for future innovation using RuPay, including the following:

- Enhancing the visibility and adoption of RuPay by consumers by mandating its listing as an option for payment in e-commerce transactions;
- Identifying deficiencies in infrastructure, providing budget and addressing quantitative deficiencies in service, if any, for wider use of RuPay;

- Enhancing the visibility of RuPay in market at par with its competitors by various states/RBI through Shops and Establishment Act;
- Budget would be allocated for branding and promotion of RuPay card. At present, the perception is that RuPay is a poor man's card.

*(Implementing Ministry/ Department: DFS and RBI)*

**2.9** The regulatory vigilance for payment systems would be strengthened through the following:

- Adopting AI-based strong authentication mechanisms such as biometric information-based authentication, tokenisation (substituting sensitive data element with a non-sensitive equivalent), and risk-based authentication technology;
- Creating a fraud intelligence mechanism for early detection of frauds linked with payment systems

*(Implementing Ministry/ Department: DFS and RBI)*

**2.10** A level playing field would be provided to domestic players by ensuring that foreign websites involved in e-commerce transactions from India also follow the same rules, including procedures for payment systems, such as two-factor authentication, as in case of domestic companies.

*(Implementing Ministry/ Department: DFS and RBI)*

**2.11** A centralised agency for KYC data would be set up in order to decrease the burden of KYC for payment operators. If any payment operator requires KYC for a new customer, it would be available through the central registry by paying a nominal charge. This will reduce the KYC cost for individual operators and burden on the consumer.

*(Implementing Ministry/ Department: DFS and RBI)*



**2.12** Steps would be taken to promote the healthy development of digital lending (such as NBFC-P2P and crowd funding). For this purpose, steps would be taken for the possible creation of a Social Credit Database through PPP, using data from JAM Trinity, which would, in turn, facilitate digital lending.

*(Implementing Ministry/ Department: DFS and RBI)*

**2.13** Blockchain technology would be made use of for furthering financial inclusion, which is essential for deeper spread of e-commerce in the country.

*(Implementing Ministry/ Department: DFS and RBI)*

**2.14** Steps would be taken to enhance the participation of micro, small and medium enterprises in electronic commerce, including the following:

- Establishing an e-commerce retail platform (in public-private partnership mode) exclusively for MSME vendors and suppliers;
- Implementing pilot initiatives for online sale of products from MSME clusters, such as Moradabad, Ludhiana, Aurangabad and Meerut;
- Addressing issues of financing of MSME for online participation by facilitating collateral-free funding, financial institutions adopting SBI's supply chain financing portfolio, P2P lending and crowd funding;
- Incentivizing online platforms and aggregators to engage MSME vendors and simplifying on-boarding procedures and related compliances;
- Enhancing the technical capability of MSMEs in key activities related to e-commerce, including digital sales and data analytics; and
- Enhancing capacity of MSME vendors by creating a portal with details of registered professionals along with skill sets and establishing mechanisms for linking them to MSME vendors.

*(Implementing Ministry/ Department: Ministry of MSME)*

**2.15** The enforcement of the provisions of Press Note 3 would be strengthened by creating a separate wing in the Directorate of Enforcement to handle grievances related to implementation of Press Note 3.

*(Implementing Ministry/ Department: Enforcement Directorate and DIPP)*

**2.16** The sale of domestically produced goods through online platforms would be promoted by allowing limited inventory-based B2C model, wherein 100% made in India products would be sold through platforms whose founder/ promoter would be a resident Indian, the platform company would be controlled by Indian management and foreign equity would not exceed 49 percent.

*(Implementing Ministry/ Department: Enforcement Directorate and DIPP)*

**2.17** The domestic manufacture of innovative products required in e-commerce such as smart devices and IoT devices would be stimulated by formulating and implementing domestic standards for these devices.

*(Implementing Ministry/ Department: DOT and MEITY)*

**2.18** A facilitative environment for e-commerce enterprises to raise funds domestically would be created through the following:

- Amending the 36-month post-listing liquidity restriction on promoters compared to relatively shorter duration in some major jurisdictions;
- Incentivizing investment by large Indian companies in start-ups;
- Expanding the source of funding for venture capital by raising the cap on pension funds for investing in venture capital<sup>1</sup>;

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<sup>1</sup> Globally, venture capital comes from pension funds, sovereign wealth offices. It is understood that in India, current regulations permit investment into Category I and Category II (Alternate Investment Funds) AIFs, which pretty much cover all kinds of venture capital, infrastructure and other private equity funds. The present limits as a percentage of Assets Under Management (AUM) are 3% for life insurance companies, 5% for general insurance companies and 2% for National Pension System (NPS) schemes. The cap may be removed to ease up funding.

- Creating the possibility for e-commerce start-ups in the growth stage to raise funds through alternate platforms, such as listing on well-trade bond markets through criteria, such as 50 percent investment by Class A Foreign Venture Capital Investor; and
- Creating a facilitative environment for angel investors by appropriate amendments to the tax laws and by providing incentives to them.

*(Implementing Ministry/ Department: DOR and DEA)*

**2.19** The need to amend the relevant provisions in the Companies Act so as to facilitate founders to have control over their e-commerce companies, despite having small shareholding, would be examined in the light of the experience of their utilization by e-commerce companies.

*(Implementing Ministry/ Department: DEA and MCA)*

**2.20** Bulk purchase of branded goods such as electronic products (especially mobile phones), white goods, branded fashion by related party sellers which lead to price distortions in a market place would be prohibited.

*(Implementing Ministry/ Department: DIPPP)*

**Goal: Addressing anti-competitive issues in e-commerce effectively**

**Strategies**

**3.1** The restriction imposed on e-commerce marketplace, to not directly or indirectly influence the price of sale of goods and services, would be extended to group companies of the e-commerce marketplace.

*(Implementing Ministry/ Department: DIPPP, MCA and CCI)*

3.2 A sunset clause, which defines the maximum duration of differential pricing strategies (such as deep discounts) that are implemented by e-commerce platforms to attract consumers, would be introduced.

*(Implementing Ministry/ Department: DIPP, MCA and CCI)*

3.3 Appropriate modification of the fundamental concepts and rules on competition which arise on account of characteristics distinct to e-commerce including network effects, access to data constituting an entry barrier etc., would be undertaken in order to address anti-competitive practices in the digital space.

*(Implementing Ministry/ Department: DIPP, MCA and CCI)*

3.4 The Competition Commission of India would consider suitably amending the thresholds so that potentially competition-distorting mergers and acquisitions below the existing *de minimis* also get mandatorily examined by them in case of e-commerce entities. For such entities, thresholds based on other variables (such as access to data) which are more relevant in this area, would be considered.

*(Implementing Ministry/ Department: DIPP, MCA and CCI)*

**Goal: Strengthening the regulatory regime for consumer protection in e-commerce context**

**Strategies**

4.1 The rules related to e-commerce under the Consumer Protection Bill, 2018 would be finalised in a timely manner.

*(Implementing Ministry/ Department: Ministry of Consumer Affairs)*

4.2 E-commerce entities would be mandated to make a full disclosure to the consumer regarding the purpose and use of data collection upfront in a simplified and an easily understandable form on their websites.

*(Implementing Ministry/ Department: MEITY and Ministry of Consumer Affairs)*

4.3 E-commerce entities would be mandated to share with the consumers, the main features of their terms and conditions in a simplified and an easily understandable form.

*(Implementing Ministry/ Department: MEITY and Ministry of Consumer Affairs)*

4.4 E-commerce marketplaces would be required to disclose to the consumers the terms and conditions governing their arrangement with the vendors.

*(Implementing Ministry/ Department: MEITY, DIPP and Ministry of Consumer Affairs)*

4.5 The Central Consumer Protection Authority (CCPA) would be established to undertake the following functions:

- To act as the nodal agency for intra-government coordination;
- Mandatory registration of all e-commerce operators, domestic or foreign;
- To provide a platform for e-commerce operators for complaints regarding fraudulent activities;
- To provide a forum for consumers to register unresolved complaints; and
- The National Consumer Helpline would be designated as the interim agency, till CCPA comes into force.

*(Implementing Ministry/ Department: MEITY and Ministry of Consumer Affairs)*

4.6 The exemption from liability given to *Intermediaries* under Section 79 of the IT Act would be revisited and suitably modified.

*(Implementing Ministry/ Department: MEITY)*

4.7 The legal framework governing unsolicited commercial SMSs and calls would be strengthened, through the following:

- Finalising the Consultation Paper on "Unsolicited Commercial Communication (UCC)"; and
- Finalising the Telecom Commercial Communication Customer Preference Regulation 2018.

*(Implementing Ministry/ Department: MEITY, DOT and TRAI)*

4.8 A law/ regulation to govern unsolicited commercial e-mails would be framed.

*(Implementing Ministry/ Department: MEITY)*

4.9 The legal redressal mechanism for consumer complaints would be made more effective by assessing the feasibility of establishing e-consumer courts as a part of e-Court Mission Mode Project.

*(Implementing Ministry/ Department: Ministry of Law and Justice, MEITY and Ministry of Consumer Affairs)*

4.10 The grounds for seeking disclosure of source code to government would be expanded to include situations of unfair trade practise, fraud and compliance with domestic regulatory requirements.

*(Implementing Ministry/ Department: MEITY and DOT)*

4.11 The policy space to seek disclosure of source code would be retained, by not taking any commitments on this issue in international trade negotiations.

*(Implementing Ministry/ Department: DOC, MEITY and DOT)*

- 4.12 A suitable legislation for providing adequate legal protection to Domain Name owners from lookalikes of trademarks and copyrights would be enacted.

*(Implementing Ministry/ Department: DIPP)*

**Goal: Facilitating Digital India through e-commerce**

**Strategies**

- 5.1 Online Customs clearance would be facilitated by adopting Customs EDI platform, linking all the concerned Departments of the Government, such as Department of Posts, DGFT and RBI, and the stakeholders.

*(Implementing Ministry/ Department: DGFT, DOR, DOP, DOC, RBI)*

- 5.2 E-commerce would be included in the National Integrated Logistics Plan being prepared by the Department of Commerce.

*(Implementing Ministry/ Department: DOC)*

- 5.3 The existing limit of Rs. 25,000, under the Courier Imports and Exports (Clearance) Regulation 1998, would be enhanced.

*(Implementing Ministry/ Department: DGFT, DOR)*

- 5.4 All international airports and other export/ manufacturing hubs would be permitted to accept export shipments in order to promote e-commerce exports from India, and customs validation be enabled where required to benefit from schemes like duty drawbacks.

*(Implementing Ministry/ Department: DGFT, DOR)*

- 5.5 Awareness on procedural formalities would be increased by Department of Post and DGFT conducting cluster specific programmes for exporters.

*(Implementing Ministry/ Department: DGFT, DOR and DOP)*

5.6 Provision would be made to source Export Data Processing and Monitoring System (EDPMS) data from RBI for confirmation of payment proceeds, instead of Bank Realisation Certificate, with DGFT being given access to the data.

*(Implementing Ministry/ Department: RBI, DGFT, DOR, DOC)*

5.7 Steps would be taken to prevent the violation of existing rules to circumvent Customs duties, including the following:

- Mandating shipper KYC by providing a unique code and national repository to identify foreign exporters and to track suspicious activities, such as sample shipping, gifting etc.;
- Capping samples or gifts to a certain value per shipper per month, with any value above the threshold being subjected to duties.

*(Implementing Ministry/ Department: DGFT and DOR)*

5.8 The direct and indirect tax issues in respect of e-commerce would be resolved, particularly with regard to the following:

- The implementation of using the concept of 'significant economic presence' as the basis for determining 'Permanent Establishment' for the purposes allocating profits of multi-national enterprises between 'resident' and 'source' countries and expanding the scope of 'income deemed to accrue or arise in India' under Section 9(1)(i) of the Income Tax Act would be fast-tracked;
- The TCS provisions in GST which impose additional burden on SMEs would be re-examined.
- The relevant GST provisions would be modified in order to create a level playing field between online and offline delivery of goods and services for the purpose of GST (MSMEs below the threshold are not subject to GST in



the offline field, but are liable for GST if the sale is facilitated through e-commerce platform);

- Providing refund of GST for goods exported by courier would be considered;
- A return policy for courier mode of e-commerce would be devised;
- The GST procedures for e-commerce would be simplified by allowing centralized registration instead of local registration and displaying requirement for each place of business; and
- The non-inclusion of certain services in the definition of the Online Information Database Access and Retrieval (OIDAR) Services would be reviewed.

*(Implementing Ministry/ Department: DOR)*

#### **WAY FORWARD**

A single legislation to address all aspects of e-commerce would be enacted and a single regulator would be set up to consider issues such as:

- Addressing the legal fragmentation seen across the various laws governing the e-commerce sector, viz. the Information Technology Act, 2000, the consumer protection laws, and other relevant legislations/ rules and ensuring uniformity in definition of the various e-commerce players and levels of obligation imposed on them.
- FDI implementation issues
- Consumer protection issues
- Central registry/ repository dealing with promoting domestic production, full disclosure by e-commerce entities of purpose and intent etc.
- Reporting and information requirements
- Setting up an accreditation system for vetting e-commerce platforms which adhere to good business practices.
- Any other issue identified by the Think Tank

*(Implementing Ministry/ Department: MEITY, DOR, DOT, DIPP and Ministry of Consumer Affairs)*

## **Annex I: Definitions in relation to Electronic Commerce**

### **1. WTO<sup>2</sup>**

Exclusively for the purposes of the work programme, and without prejudice to its outcome, the term "electronic commerce" is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means.

### **2. OECD<sup>3</sup>**

An e-commerce transaction is the sale or purchase of goods or services, conducted over computer networks by methods specifically designed for the purpose of receiving or placing of orders. The goods or services are ordered by those methods, but the payment and the ultimate delivery of the goods or services do not have to be conducted online. An e-commerce transaction can be between enterprises, households, individuals, governments, and other public or private organisations. To be included are orders made over the web, extranet or electronic data interchange. The type is defined by the method of placing the order. To be excluded are orders made by telephone calls, facsimile or manually typed e-mail.

### **3. UNCTAD<sup>4</sup>**

The concept of ecommerce will cover purchases and sales conducted over computer networks, using multiple formats and devices, including the web and electronic data interchange, using personal computers, laptops, tablets and mobile phones of varying levels of sophistication. E-commerce may involve physical goods as well as intangible (digital) products and services that can be delivered digitally.

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<sup>2</sup> Defined Under WTO's Work Programme On Electronic Commerce (Adopted by The General Council On 25 September 1998)

<sup>3</sup> As Defined in OECD's Glossary of Statistical Terms

<sup>4</sup> As Defined in UNCTAD Information Economy Report 2015 (Page 3)

**4. DIPP<sup>5</sup>, RBI<sup>6</sup>**

E-Commerce means buying and selling of goods and services including digital products over digital & electronic network.

**5. M/o Consumer Affairs<sup>7</sup>**

“e-commerce” means buying or selling of goods or services including digital products over digital or electronic network

**6. MEITY<sup>8</sup>**

E-commerce is a type of business model, or segment of a larger business model, that enables a firm or individual to conduct business over an electronic network, typically the internet.

**7. GST legislation<sup>9</sup>**

“Electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

**8. Possible Alternative**

E-commerce may be understood to mean buying, selling, marketing, distribution, or delivery of:

- Goods and services through electronic means
- Digital products – products which were delivered in tangible form but now can be delivered in electronic form e.g. e-music, e-books, movies, software etc. (activities such as leasing are included in the above definition)

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<sup>5</sup> As Defined in Press Note 3 (2016 Series)

<sup>6</sup> As Under Foreign Exchange Management (Transfer or Issue of Security by A Person Resident Outside India) (Fourth Amendment) Regulations, 2017.

<sup>7</sup> As defined in The Consumer Protection Bill, 2018

<sup>8</sup> As mentioned by MEITY ([Http://Meity.Gov.In/E-Commerce](http://Meity.Gov.In/E-Commerce))

<sup>9</sup> As defined Under CGST Act, 2017.