

DIPP stiffens Ecommerce Guidelines

written by Shruti Jenamaharathy | December 27, 2018

The Department of Industrial Policy and Promotion ("DIPP") has published a press release on 26th December, 2018^[1] clarifying the Ecommerce aspect in Foreign Direct Investment ("FDI") which going to be effective from 1st February, 2019. The said press note emphasise on the distance that e-tailers have to maintain with their vendors in order to effectively achieve fair competition in the market.

The FDI Policy had earlier provided a wider arena to the definition of e-commerce, whereby including computers, television channels and any other internet application used in automated manner.

Moreover,

100% FDI under automatic route is permitted in marketplace model of e-commerce

but at the same time thwarting FDI in inventory based model.

The DIPP has now accomplished in plugging the loopholes in the FDI Policy by tightening the norms around ownership and control over inventory by e-commerce entity in a marketplace service. The online market players are now barred from selling the products online, where they hold considerable stake, whereby, if the marketplace entity or its group companies are controlling more than 25% of the purchases of the vendor, it will

be deemed to be controlled by e-commerce marketplace entity. Thus, the same would not be allowed to sell its products on the platform run by such e-commerce marketplace entities. We are presuming that the same, to a larger extent

may affect the in-house selling of the e-commerce platforms.

Additionally, the major clarification states that

no e-commerce marketplace entity would be allowed to have a price control over

the seller and further stopped from discriminatory cashback. The e-commerce marketplace can only provide support services such as logistics, warehousing and advertisement/marketing. Moreover, such marketplace will provide non-discriminatory arrangement for sellers having parallel businesses and stopping exclusive selling of products and flash sales.

The DIPP has directed that the e-commerce

marketplace to furnish a certificate along with a report of statutory auditor to Reserve Bank of India, confirming compliances of the FDI policies, which is

required to be filed on 30th September, 2018 every year.

Hence, the major implications are:

- No more flash sales and exclusive tie-ups
- E-commerce marketplace are restricted to sell products wherein holding stake
- Restriction on in-house selling
- Annual compliances to RBI

We are presuming that DIPP may come out with fresh draft policies, in order to manage the commercial challenges to be faced by the companies. This move

will not only stringent the activities of e-commerce marketplace but may also prevent some e-commerce entities to raise Foreign Direct Investment.

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[1] <http://pib.nic.in/PressReleseDetail.aspx?PRID=1557380>

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