

Policy creep

Overregulation risks retarding growth and job creation in the e-commerce sector

Barely 11 months after the Government notified the Consumer Protection (E-Commerce) Rules, 2020, the Department of Consumer Affairs has mooted a set of sweeping amendments, ostensibly “to protect the interests of consumers... and encourage free and fair competition in the market”. Among them is a norm stipulating the appointment of a chief compliance officer, a nodal contact person for 24x7 coordination with law enforcement agencies, and another requiring e-commerce entities offering imported goods or services to ‘incorporate a filter mechanism to identify goods based on country of origin and suggest alternatives to ensure a fair opportunity to domestic goods’. A third mandates a fall-back liability on online marketplaces in the event of non-delivery of goods or services to the consumer. Registration has also been made mandatory for all e-commerce players; specific ‘flash sales’, including ‘back-to-back’ ones, are set to be banned; and all entities must provide information within 72 hours on any request made by an authorised government agency probing any breach of law including cybersecurity issues. While on the face of it none of these new rules appears exceptionable, especially when e-commerce tops the National Consumer Helpline’s complaints chart, there is still a distinctly discernible pattern to the changes. Following on the heels of the recent IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, the draft e-commerce amendments show the Government’s increasing keenness to exercise greater oversight over all online platforms.

The Centre also appears to be signalling its intent to dig in its heels in an intensifying stand-off with Walmart’s unit Flipkart, and Amazon, which are both now in court battling an attempt by the Competition Commission of India to reopen a probe into their business practices. The two large e-commerce players have had to contend with accusations that their pricing practices are skewed to favour select sellers on their platforms and that their discounting policies have hurt offline retailers. The fact that the latest changes expressly seek to ensure that none of an e-commerce entity’s ‘related parties and associated enterprises is enlisted as a seller for sale to consumers directly’ could also impact several platforms that retail products supplied by vendors with arm’s length ties. The enforcement of many of these norms is bound to spur protracted legal fights. Asserting that the amendments were not aimed at conventional flash sales, the Government said it was only targeting certain entities engaged in limiting consumer choice by indulging in ‘back-to-back’ sales wherein a seller does not have the capability to meet an order. In trying to address shortcomings in its rules from last year, the Government appears to be harking back to an era of tight controls. Overregulation with scope for interpretative ambiguity risks retarding growth and job creation in the hitherto expanding e-commerce sector.