

ISSUE BRIEF

# E-Commerce Policy for a New Digital India

APRIL 2022

ANAND RAGHURAMAN

## EXECUTIVE SUMMARY

The South Asia Center serves as the Atlantic Council's focal point for work on greater South Asia as well as relations between these countries, the neighboring regions, Europe, and the United States. It seeks to foster partnerships with key institutions in the region to establish itself as a forum for dialogue between decision-makers in South Asia, the United States, and NATO. These deliberations cover internal and external security, governance, trade, economic development, education, and other issues. The Center remains committed to working with stakeholders from the region itself, in addition to partners and experts in the United States and Europe, to offer comprehensive analyses and practicable recommendations for policymakers.

India's digital economy is undergoing a historic transition, with e-commerce playing a central role in advancing the country's tech ambitions. Yet, recent years have also seen growing efforts to overhaul regulation of the e-commerce sector to address government concerns related to competition, disruption to small retailers, and digital sovereignty. As India looks to revise its e-commerce frameworks, policymakers in New Delhi have a unique opportunity to articulate core principles and processes that can lay a strong foundation for a competitive digital economy that advances India's national interests and reduces friction with trade partners. This issue brief contributes to that effort by: identifying key political dynamics shaping India's approach to e-commerce regulation; surveying recent Indian attempts to regulate e-commerce and promote competition; clarifying key themes and lessons learned from past policies; and outlining principles and processes that can shape new e-commerce rules going forward.

## INTRODUCTION

### What makes Digital India tick?

Rising connectivity and smartphone adoption are key structural drivers. Digital payments and e-governance offer vital catalytic sparks. But, the heart of Digital India—what gives it life, reach, and vigor—is its e-commerce ecosystem: the constellation of apps, marketplaces, mobile payments, and logistics services that help Indians bridge their online and offline worlds.

Over the past eight years, India's e-commerce ecosystem has experienced significant transformation and growth, rising from an estimated \$21 billion in 2014 to \$55 billion in

2021.<sup>1</sup> COVID-19 has only accelerated the use of e-commerce services, with online retail and grocery delivery emerging as critical lifelines for Indians facing pandemic lockdowns and supply-chain disruptions. Today, e-commerce services have expanded to nearly every Indian city and pin code, and 60 percent of all e-commerce transactions and online orders now come from shoppers residing in Tier II Indian cities.<sup>2</sup> This flurry of activity has also catalyzed new job creation across India's digital economy and retail sector, where hybrid models of "online-offline" commerce are estimated to create twelve million jobs over the next eight years.<sup>3</sup> Still, e-commerce accounts for only 4 percent of India's overall retail market at present, with physical retail holding strong.

Taken together, the profound shifts across India's e-commerce landscape—as well as the global digital economy—have created new realities in India that were unthinkable even five years ago: groceries arriving fully paid for within fifteen minutes of an order, rideshares zooming Indians to every corner of bustling towns, e-pharmacies delivering medicine straight to a family's doorstep, and marketplaces bringing village textiles to online buyers at home and overseas. Of course, these transformations are not without tension. Small firms and traditional retailers fear e-commerce undermining prices and eliminating jobs. Domestic tech companies and homegrown startups call for a "level playing field" against foreign competitors armed with large-scale capital.<sup>4</sup> Government officials are eager to rein in "Big Tech," just as leading politicians look to promote a "self-reliant" India, scale homegrown platforms, and build a \$1-trillion digital economy by 2025.

For their part, Indian policymakers have sought to respond to these complex and competing political imperatives, while crafting new policies to regulate and grow the e-commerce ecosystem. In practice, however, recent policy initiatives have concentrated largely on curbing the market power of foreign e-commerce platforms, without necessarily clarifying

principles that should govern the broader e-commerce landscape and the multiplicity of actors operating within it.

As India looks to revise its e-commerce frameworks, policymakers in Delhi have a unique opportunity to articulate core principles and processes that can deliver practical, inclusive, and durable policy solutions. This issue brief contributes to that effort by: identifying key political dynamics shaping India's approach to e-commerce regulation; surveying recent Indian attempts to regulate e-commerce; identifying key themes and lessons learned from past policies; and outlining principles and processes that can shape new e-commerce rules going forward.

## I: POLITICAL DYNAMICS ANIMATING INDIA'S E-COMMERCE POLICY DEBATES

Cross-cutting political dynamics shape India's e-commerce policy debates and make e-commerce regulation one of the most closely watched and hotly contested spaces within Digital India. Understanding the range of political concerns facing Indian policymakers is critical to assessing India's recent approaches to regulating e-commerce. These concerns include the following.

**Curbing the Influence and Advantages of Foreign Tech Players:** Foreign-owned companies have traditionally held significant market share within India's e-commerce sector, particularly with respect to e-retail and ridesharing. While the Narendra Modi government has welcomed investment by foreign players, it remains concerned about their outsize influence, access to Indian data, and alleged use of anticompetitive business structures and pricing practices. Indeed, leading Indian officials routinely warn that foreign players leverage scale and access to "large pools of low-cost capital" to undercut domestic competitors and small offline retailers.<sup>5</sup> Domestic companies and Indian startups have reinforced these concerns, highlighting the risks of "data

1 "Ecommerce Industry in India," Redseer, May 2018, <https://redseer.com/reports/e-commerce-industry-in-india/>; "E-Commerce," Invest India, last visited March 8, 2022, <https://www.investindia.gov.in/sector/retail-e-commerce/e-commerce>.

2 "E-Commerce."

3 "Retail 4.0: India Story," Technopak and NASSCOM, March 2021, <https://www.technopak.com/wp-content/uploads/2021/08/Retail-4.0-India-Story-Report.pdf>.

4 "Ensure Ecommerce Rules Are Not Relaxed: CAIT to Centre," Indo-Asian News Service, January 2, 2022, <https://www.deccanherald.com/national/ensure-e-commerce-rules-are-not-relaxed-cait-to-centre-1067242.html>.

5 Manoj Kumar, "Arrogant! US E-Commerce Firms Flout India's Laws, Piyush Goyal Says," Reuters, June 27, 2021, <https://economictimes.indiatimes.com/tech/tech-bytes/foreign-e-commerce-companies-violated-indian-laws-piyush-goyal-says/articleshow/83893161.cms?from=mdr>.

colonization” and stressing the importance of India developing its own homegrown alternatives.<sup>6</sup> Savvy competitive strategy no doubt informs the public posture of well-capitalized domestic firms, but the result is a clear constituency supporting greater “self-reliance” within the e-commerce ecosystem and support for homegrown platforms.

### Addressing Concerns of Small Players and Offline Retailers:

Vocal interest groups representing small traders and offline retailers have called for sharper government scrutiny on e-commerce marketplaces, ridesharing apps, foodtech apps, and other aggregators. Influential groups—such as the Confederation of All India Traders (CAIT)—have repeatedly pressed government officials to crack down on e-tailers’ use of “deep discounts” or business practices that skirt existing foreign direct investment (FDI) norms.<sup>7</sup> A central concern that has been raised is the use of big data and analytics by large e-commerce platforms to gain a competitive edge. E-commerce marketplaces have also been accused of using platform intelligence to develop and promote private-label products at competitive prices, and at the expense of other sellers on the marketplace. More broadly, however, interest groups have pushed central and state governments to ensure a “level playing field” between offline and online players. With leading interest groups increasingly threatening boycotts of foreign e-commerce players, the Modi government faces strong and consistent pressure to avoid liberalizing e-commerce policy and engaging with foreign players.

**Securing Compliance with the “Spirit of the Law”:** Over the past five years, Indian leaders and bureaucrats have repeatedly criticized foreign e-commerce marketplaces for exploiting “loopholes” in India’s existing FDI rules in ways that run counter to the “spirit of the law.”<sup>8</sup> In particular, policymakers allege foreign e-tailers use complex business structures to skirt rules preventing marketplace operators from exercising direct or indirect control over inventory. They also accuse these platforms of using “deep discounts”

to undercut competition and drive traffic on their platforms.<sup>9</sup> While foreign marketplace operators argue they follow all existing Indian law, senior Indian officials have often taken a different view. This has resulted in policymakers repeatedly adjusting existing e-commerce rules to force changes to marketplace operators’ business practices.

**Scaling “Population-Size” Platforms:** The success of India’s Aadhaar ID program and Unified Payments Interface (UPI) platform has inspired Indian policymakers to explore new “population-size” initiatives, including in the e-commerce space. Foremost among these is the new Open Network for Digital Commerce (ONDC), which seeks to unbundle e-commerce as a service and promote greater competition at each stage of an e-commerce transaction. But, looking beyond the specifics of ONDC, a grander political ambition looms large: India believes it is pioneering a unique model for digital commerce that allows fluid competition within a framework that safeguards national sovereignty. The Modi government is keen to position India as a leader in digital governance, and is even interested in exporting its new platforms abroad.<sup>10</sup> However, this will require officials to first test, troubleshoot, and scale platforms at home, which has added urgency and strong visibility to ONDC.

### Strengthening Trade Relations with Key Partners:

After shying away from regional trade deals such as the Regional Comprehensive Economic Partnership (RCEP) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), India is looking to ink bilateral deals with key strategic partners, such as the United States, United Kingdom, and Australia. This newfound ambition on trade has forced India to carefully examine, if not quite alter, its approach to a range of digital issues—especially data protection, data localization, and national treatment in the electronic-payments sector. While e-commerce has yet to feature prominently in US-India trade talks, policymakers across the Donald Trump and Joe Biden White Houses have raised issues with India’s

6 “Paytm Founder Vijay Shekhar: ‘We Are Not Third World in the Digital Age,’” NDTV, February 3, 2021, <https://www.ndtv.com/india-news/paytm-founder-vijay-shekhar-we-are-not-third-world-in-the-digital-world-1273236>.

7 “Traders Would Be Compelled to Shut Businesses in Absence of Level Playing Field: CAIT to Piyush Goyal,” *Financial Express*, January 2, 2022, <https://www.financialexpress.com/industry/sme/msme-eodb-traders-would-be-compelled-to-shut-businesses-in-absence-of-level-playing-field-cait-to-piyush-goyal/2396433/>.

8 “Stop Giving Advice Which Is Not in Spirit of Law: Goyal to Industry,” ENS Economic Bureau, June 22, 2019, <https://indianexpress.com/article/business/economy/stop-giving-advice-which-is-not-in-spirit-of-law-goyal-to-industry-5793946/>.

9 “DPIIT Received Some Complaints of E-Commerce Firms Offering Deep Discounts: Piyush Goyal,” Press Trust of India, November 22, 2019, <https://retail.economicstimes.indiatimes.com/news/e-commerce/e-tailing/dpiit-received-some-complaints-of-e-commerce-firms-offering-deep-discounts-piyush-goyal/72183382>.

10 “Bloomberg Partners Government of India, International Financial Services Authority (IFSCA) and Gujarat International Finance Tec-City (GIFT City) to Launch the ‘Infinity Forum,’ a Flagship Financial Technology Event,” Bloomberg, press release, November 24, 2021, <https://www.bloomberg.com/company/press/bloomberg-partners-government-of-india-international-financial-services-authority-ifsc-and-gujarat-international-finance-tec-city-gift-city-to-launch-the-infinity-forum-a-flag/>.

recent e-commerce frameworks in discussions with Indian counterparts.<sup>11</sup> They have also highlighted market-access issues created by India's data-localization mandates and attempts to regulate nonpersonal data, all of which impact global e-commerce companies.

## II: INDIA LOOKS TO OVERHAUL E-COMMERCE REGULATION

In the face of these complex policy drivers and political pressures, India has advanced several parallel initiatives to overhaul e-commerce regulations and tighten oversight of large e-commerce players. Major policies that have emerged over the past four years—a period of tremendous evolution—include the following.

**FDI Press Note 2:** In December 2018, India's erstwhile Department for Industrial Policy and Promotion (DIPP) revised FDI rules governing e-commerce marketplaces.<sup>12</sup> While framed as a clarification of existing policy to enforce the “spirit of the law,” Press Note 2 forced significant changes to e-commerce marketplaces' business models. Specifically, the Press Note prohibited foreign-funded e-commerce marketplaces from exercising ownership or control over inventory, listing products from associated group companies, striking exclusive tie-ups with sellers, and indirectly influencing the sale price of goods and services. The underlying objective was to enforce India's distinction between “marketplace” and “inventory” models of e-commerce, extend the restrictions on FDI in multi-brand retail to the digital domain, and address concerns of small traders.

**Draft National E-Commerce Policy:** First put forward in February 2019, India's Draft National E-Commerce Policy took an expansive approach to regulating India's digital economy, going beyond the scope of e-commerce to cover

data, infrastructure, e-commerce marketplaces, consumer protection, taxation, and export promotion.<sup>13</sup> The central objective of this policy was to break the monopoly power of foreign e-commerce companies and “develop capacities of the domestic industry.”<sup>14</sup> Accordingly, the policy placed heavy emphasis on asserting India's digital sovereignty, proposing sharp measures favoring data localization, source-code disclosure, algorithmic disclosure among others that generated significant criticism from foreign firms. While the draft policy has gone through several iterations since 2019, a revised public draft has yet to be released for consideration almost three years later. Media reports note that leaked drafts focused on regulating marketplaces' approaches to discounting and algorithmic rankings.<sup>15</sup>

**CCI Market Study on E-Commerce in India:** In January 2020, the Competition Commission of India (CCI) released a landmark study exploring trends, features, and competition issues observed in the market. The study focused largely on the conduct and market power of e-commerce marketplaces, citing potential barriers to competition created through discounting policies, platform-to-business contract terms, search rankings, exclusive-seller agreements, and platform parity-price clauses. While the CCI refrained from deeming any one business practice “anti-competitive” per se, it stated clearly that “any potentially anti-competitive unilateral conduct of platforms or platforms' vertical arrangements with sellers/ service providers will receive enforcement action.”<sup>16</sup> In a similar vein, the CCI reserved the right to take actions to improve “transparency over certain areas of the platform's functioning,” even without a formal determination of violation of competition law. Nonetheless, even as it widened the aperture for competition-policy enforcement, the CCI study endorsed “self-regulation by marketplace platforms” along with a “case by case assessment” as the

- 
- 11 Pranab Dhal Samantha, “Collaboration, Not Tug of War, Key to Trade Ties: America's Katherine Tai,” *Economic Times*, November 24, 2021, <https://economictimes.indiatimes.com/news/economy/foreign-trade/collaboration-not-tug-of-war-key-to-trade-ties-americas-katherine-tai/articleshow/87878783.cms>.
- 12 “Press Note No. 2 (2018 Series),” Government of India Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, December 26, 2018, [https://dpiit.gov.in/sites/default/files/pn2\\_2018.pdf](https://dpiit.gov.in/sites/default/files/pn2_2018.pdf).
- 13 “Draft National E-Commerce Policy,” Government of India, February 23, 2019, [https://dpiit.gov.in/sites/default/files/DraftNational\\_e-commerce\\_Policy\\_23February2019.pdf](https://dpiit.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf).
- 14 Ibid.
- 15 “Draft Ecommerce Policy, Rules to Be Released Together Soon,” *Economic Times*, December 30, 2021, <https://economictimes.indiatimes.com/industry/services/retail/draft-ecommerce-policy-rules-to-be-released-together-soon/articleshow/88578236.cms?from=mdr>.
- 16 “Market Study on E-Commerce in India: Key Findings and Observations,” Competition Commission of India, January 8, 2020, [https://www.cci.gov.in/sites/default/files/whats\\_newdocument/Market-study-on-e-Commerce-in-India.pdf](https://www.cci.gov.in/sites/default/files/whats_newdocument/Market-study-on-e-Commerce-in-India.pdf).

preferred solution to solving issues related to discounting, search ranking, data sharing, user reviews, and business-to-business (B2B) contracting.

### **E-Commerce Consumer-Protection Guidelines:**

With the draft national e-commerce policy still under development, India's Ministry of Consumer Affairs issued e-commerce consumer-protection guidelines in July 2020, and proposed further amendments to the guidelines in August 2021.<sup>17</sup> The initial guidelines took a narrow approach, focused largely on customer-grievance redressal, as well as fraud and counterfeiting. The proposed amendments, however, took a more broadly restrictive lens. They would establish more robust grievance-redressal mechanisms and prohibit market-distorting discounts and flash sales. They would also require e-commerce marketplaces to list the country of origin for each good sold on their platform. Amendments to the draft rules have drawn strong opposition from domestic and foreign e-commerce players, as well as elements of the Indian government, such as NITI Aayog and the Ministry of Finance.<sup>18</sup>

**Nonpersonal Data Regulation:** India's long-standing push to develop federal data-privacy legislation has also raised the possibility of policymakers regulating nonpersonal data. In 2020, an expert committee empaneled by the Ministry of Electronics and Information Technology highlighted the privacy risks created when nonpersonal data are aggregated and data sets are combined.<sup>19</sup> However, the expert committee also noted

the importance of breaking platforms' control over nonpersonal data, and proposed new data-sharing requirements that would have profound implications for e-commerce firms and their proprietary tools and algorithms. While the expert committee recommended creating two separate pieces of legislation—one for personal data and one for nonpersonal data—Indian parliamentarians have recently favored creating a single “Data Protection Bill” and unitary Data Protection Authority that would govern both domains.<sup>20</sup>

**Open Network for Digital Commerce:** As one of India's newest and most ambitious digital initiatives, the Open Network for Digital Commerce (ONDC) aims to “control digital monopolies and make the industry more inclusive for buyers and sellers alike.”<sup>21</sup> Building on the success of India's UPI platform, ONDC would create common interoperable frameworks and protocols that enable buyers and sellers to transact across different e-commerce platforms. Central to this vision is unbundling each stage of the e-commerce transaction, allowing consumers to order items and manage delivery through separate service providers. ONDC leaders stress that participation in the network would remain voluntary, and that incumbent e-commerce marketplaces would continue to operate.<sup>22</sup> However, they note that the size and growth potential of ONDC will prove to be an attractive proposition for foreign and domestic companies—particularly those operating in the digital-payments space that have yet to fully migrate into e-commerce.

---

17 “G.S.R. 462(E),” Government of India Ministry of Consumer Affairs, Food, and Public Distribution, July 23, 2020, <https://consumeraffairs.nic.in/sites/default/files/E%20commerce%20rules.pdf>; “No.J-10/3/2018-CPU,” Government of India Ministry of Consumer Affairs, Food, and Public Distribution, [https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Comments\\_eCommerce\\_Rules2020.pdf](https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/Comments_eCommerce_Rules2020.pdf).

18 Subhayan Chakraborty, “E-Commerce Consumer Protection Rules May Drop Contentious Clauses on Deep Discounts, Flash Sales,” *Money Control*, December 30, 2021, <https://www.moneycontrol.com/news/business/economy/exclusive-e-commerce-consumer-protection-rules-may-drop-contentious-clauses-on-deep-discounts-flash-sales-7882561.html>.

19 “Report by the Committee of Experts on Non-Personal Data Governance Framework,” Government of India Ministry of Electronics and Information Technology, 2020, <https://ourgovdotin.files.wordpress.com/2020/07/kris-gopalakrishnan-committee-report-on-non-personal-data-governance-framework.pdf>.

20 Nidhi Singal, “JPC Report on Personal Data Protection Bill Tabled in Parliament after Two Years' Wait,” *Business Today*, December 16, 2021, <https://www.businesstoday.in/latest/policy/story/jpc-report-on-personal-data-protection-bill-tabled-in-parliament-after-two-years-wait-315879-2021-12-16>.

21 “Open Network for Digital Commerce: Revolutionising Revolution,” Invest India, October 29, 2021, <https://www.investindia.gov.in/team-india-blogs/open-network-digital-commerce-revolutionising-revolution>.

22 US-India Strategic Partnership Forum (USISPF) webinar with ONDC team.

### III: KEY THEMES

While the policy initiatives described above are in various stages of development—from embryonic to already enacted—they reveal much about the India’s government’s approach to regulating e-commerce. Four cross-cutting themes stand out.

#### Curbing Market Power and Integrated Structures is Central to India’s E-Commerce Push

At the heart of India’s e-commerce regulation is a theory of the case: break incumbents’ market power, integrated structures, and ability to leverage global capital to cement competitive positioning. Indeed, references to these three elements feature prominently across almost all of the e-commerce policy documents and new initiatives undertaken by the Indian government. The most notable is ONDC, which fundamentally aims to disrupt existing e-commerce networks by promoting interoperability and unbundling of e-commerce services. Yet, even as the focus on monopoly, integrated structures, and network effects drives large strategic initiatives, it also shapes tactical rules governing e-commerce pricing and discounts. Indian officials are particularly concerned that large global players use “capital dumping” to fuel discounts, gain users, and consolidate market share before slowly raising prices within a captive market segment. Discounts are no longer a standard tool for winning business, but a central plank of a business strategy that tilts the playing field toward multinational players armed with global capital.

#### E-Commerce Policies Continue to Differentiate Between Marketplace and Inventory Models

Given their historic role within India’s e-commerce landscape, marketplace operators are often the focus of Indian policymakers’ attention. This is reflected through high-level political scrutiny on Amazon and Flipkart, but also through India’s distinction between “marketplace” and “inventory” models of e-commerce. While this mental model may have once described India’s e-commerce landscape, the ecosystem has shifted significantly. Domestic companies such as Reliance and Tata—once minor players in e-commerce—are now rising challengers with hybrid e-commerce offerings. Indeed, these companies’ plans to build and roll out “super-apps” in 2022 would eliminate the distinction between marketplace and inventory models entirely.<sup>23</sup> Likewise, Indian and global startups are pioneering new e-commerce models: hyperlocal

delivery, social commerce, live commerce, and group buying. Many traditional Indian businesses—from tire makers to hospital chains—are also going digital for the first time or forging exclusive tie-ups with niche marketplaces through new online-offline strategies. These diverse models are not captured neatly within the existing categories of marketplace or inventory e-commerce.

#### Multiple Government Actors Asserting Jurisdiction Over the E-Commerce Ecosystem

Though DPIIT is designated as the nodal department for e-commerce, recent efforts to regulate e-commerce have involved multiple government actors with different policy equities and priorities. This is understandable, and perhaps even inevitable, given the wide range of issues intersecting within the broad heading of “e-commerce,” but it raises risks of policy misalignment in the absence of close interministerial consultation. These risks are perhaps best illustrated by the bureaucratic battles over the revisions to the E-Commerce Consumer Protection Guidelines, where the Ministry of Consumer Affairs’ attempts to regulate discounting and product liability have run counter to existing rules such as Press Note 2 and regulatory approaches favored by DPIIT, the Ministry of Finance, and NITI Aayog. In a similar vein, recent initiatives to regulate nonpersonal data through DPIIT’s Draft National E-Commerce Policy also sit alongside efforts to expand the scope of the Personal Data Protection Bill across personal and nonpersonal data. For e-commerce companies—foreign and domestic—the overlapping policy processes generate significant uncertainty that affects not only compliance planning, but also long-term investment decisions.

#### FDI Rules Cement Two-Tier Regulatory Framework

Indian policymakers have often used foreign-investment rules to regulate the structure and business practices of large e-commerce marketplaces, particularly Amazon and Walmart-owned Flipkart. Accordingly, Press Note 2 and the draft e-commerce policy place restrictions on platforms exercising control over inventory, signing exclusivity agreements, or indirectly influencing the price of goods. While certain consumer-centric restrictions have been reflected under consumer-protection laws applicable to both foreign and domestic entities, there remains a disparity with respect to seller-centric obligations laid down under foreign-investment

23 Laxitha Mundhra, “Tata Digital’s Super App to Be Called ‘TataNeu,’ Launch Set for Early 2022,” *Inc42*, September 30, 2021, <https://inc42.com/buzz/tata-super-app-to-be-called-tataneu-launch-set-for-early-2022/>.

rules. As new Indian e-commerce players rise and gain strength, a natural question arises: is New Delhi concerned about the underlying seller-centric business practices of self-preferencing, exclusivity agreements, and inventory control or only when foreign players engage in such conduct? Indian policymakers will have to confront this question as they craft new e-commerce policies or risk cementing a two-tier regulatory framework that, on its face, challenges the notion of a “level playing field” within the e-commerce sector and the broader retail sector. This two-tier system takes on added significance as India looks to encourage level competition and equal participation within the ONDC framework over the long term, and also strengthen digital-trade engagement with international partners, such as the United States, European Union, and United Kingdom.

#### IV: PRINCIPLES TO DRIVE NEW E-COMMERCE FRAMEWORKS

As India overhauls its e-commerce frameworks and updates data-governance regulations, it can draw upon a core set of principles that cover both process and substantive aspects of e-commerce policy. Developing these principles and integrating them across policy documents and engagements with corporate and diplomatic interlocutors will help India craft durable frameworks and dispel tensions with its key trade partners.

**Inclusive Policy Processes:** Inclusive policymaking is essential to crafting sound e-commerce frameworks that keep pace with the emerging shifts and new challenges facing stakeholders in the market. The Indian government can promote inclusivity by: ensuring both foreign and domestic firms are able to provide inputs on draft policies before they are published; making a conscious effort to consult with diverse e-commerce players, particularly new e-commerce startups beyond traditional aggregators or marketplace operators; engaging academics and civil-society groups at the outset of the policymaking process; and building clear interministerial mechanisms to coordinate policy execution.

**Policy Certainty and Stability:** Indian officials should aim to craft durable policy frameworks that give businesses of all sizes—foreign and domestic—predictability in the regulatory environment. As a general target, new policies for the e-commerce sector should be envisioned as five-

to-ten-year frameworks (which industry experts cited as the rough timeline for companies to conceptualize, plan, implement, and double down on big-ticket investments in the market). Once a policy is put in place, ministries and regulators should prioritize efforts to enforce compliance, rather than update policy repeatedly in short succession. Recent attempts to craft e-commerce policies offer important lessons and cautionary tales in this regard. Though no national e-commerce policy has emerged since 2019, the multiple fits and starts in the policy process have reinforced perceptions of volatility in the e-commerce landscape.

**Neutral Criteria for a Level Playing Field:** India’s desire to create a “level playing field” within the e-commerce ecosystem is both timely and urgent, given the new business models and market dynamics emerging in the post-pandemic era. To achieve this goal, India must move away from the old dichotomies of “foreign” vs. “domestic” platforms or “marketplace” vs. “inventory.” Indeed, the regulation of “marketplace” entities was originally designed to ensure a level playing field, and to protect the interests of smaller domestic players and consumers from the pricing power and business practices of large foreign players looking to establish themselves in India. These concerns needed to be balanced with the obvious benefits of such platforms—including providing a platform for smaller domestic sellers and increasing the variety and quality of goods and services available to Indian consumers. In parallel, the regulation of inventory entities also became relevant due to industry demands for a level playing field between online and offline retailers, with respect to trade practices and consumer-protection requirements.

Now that India has several large domestic platforms that have also developed hybrid models of e-commerce, the neat “marketplace” vs. “inventory” distinctions may not serve present policy concerns. Policymakers could instead tailor regulation to directly address the issue of size and market power. One pathway Indian policymakers should consider is classifying all e-commerce platforms as either “significant e-commerce platforms” or “standard e-commerce platforms” based on a set of neutral criteria that correlate with scale or market power (perhaps revenue size, user base, or market-share percentage).<sup>24</sup> Significant e-commerce platforms would have to meet a stricter set of compliance requirements, reflective of their market

24 “Executive Order on Promoting Competition in the American Economy,” White House, July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

power, while standard e-commerce platforms would enjoy a looser regulatory regime that would enable them to grow and scale. This system would build upon a theory of regulation that India has pioneered, and would roughly mirror India's approach of regulating "significant social media platforms" (those having more than five million registered users) differently than regular social media platforms. It would also enable India to tightly regulate large platforms—including foreign marketplaces—without having to rely upon FDI rules that inherently raise national treatment concerns in trade discussions with the United States and other key trading partners.

**"Fit to Purpose" Policy and Self-Regulation:** India's desire to curtail anticompetitive effects arising from monopoly is sound, and in line with policy concerns emerging across jurisdictions—including in the United States under the Biden administration. Yet, in seeking to tackle this broad challenge, Indian policymakers should strive to use a range of tools, and to clearly demarcate issue areas that will be governed by policy and other areas where self-regulation will suffice. The CCI market study recommends self-regulation for discounting, search ranking, data sharing, user reviews, and B2B contracting. National e-commerce policies should seek to build around this framework, filling in gaps that require a clear set of policy guidelines. Meanwhile, as India scales the ONDC to decentralize and promote competition with the e-commerce space, it should recognize that forced participation in the scheme will produce significant disruption to India's existing e-commerce system. Accordingly, participation in ONDC (like UPI) should remain voluntary, which will, in turn, promote healthy competition between unbundled and bundled e-commerce marketplaces and aggregators. This will allow policymakers to test empirically whether the ONDC model can deliver on its promise: improving consumer and seller welfare, and serving as a new model for other jurisdictions.

**Potential Regulation of B2B Contracting:** B2B contracting has not been specifically regulated in India to date.

However, globally, several jurisdictions have introduced regulations to ensure the interests of sellers are adequately protected against marketplaces, and any forthcoming Indian e-commerce policy is likely to explore these topics as well. Key areas of focus for Indian authorities could include creating clear and predictable rules or self-regulatory codes to prevent self-preferencing, skewed search rankings, placements, and reviews, and a lack of transparency with respect to the use of consumer data.

**Growth Orientation:** Even as India seeks to guard against monopolies in the e-commerce sector, it should recognize that accelerating the growth of digital commerce is, in fact, in the country's best long-term interest. To date, much of e-commerce policy has emerged out of a defensive posture—animated by a desire to place guardrails around foreign e-tailers and protect small traders from the disruptive effects of digitization. Yet, as India looks to scale e-commerce, it will need to devote more attention to creating enabling frameworks that promote the growth of e-commerce and the Internet economy at large. Key areas of focus could include finalizing a long-awaited National Logistics Policy, overhauling tax frameworks, addressing the cost disabilities in terms of freight and tariffs for air and land connectivity, implementing the "Gati Shakti" multi-modal connectivity plan, assessing gaps to prevent supply-chain disruptions, cutting down on lead time for shipments, and boosting incentives and opportunities available to micro, small, and medium enterprises (MSMEs) or registered startups seeking to participate in the e-commerce space or promote skilling. Equally important is to focus on digital payments, which are one of the key drivers of e-commerce. The pandemic has encouraged mass adoption and use of digital technologies and applications, including in the payments space. Merchants and stakeholders in the ecosystem need a framework within the Reserve Bank of India for addressing the challenges in terms of integration of platforms and technologies. Signaling commitment to growing the e-commerce sector and scaling the adoption of e-commerce services will boost investor confidence and draw domestic investment.



## ACKNOWLEDGEMENTS

The author would like to thank all the members of the Digital Commerce and Competition Working Group, of the Atlantic Council's US-India Digital Economy Task Force, for their time and expertise in multiple Chatham House Rule discussions about these issues. A special thanks to Vivek Abraham, Susan Ritchie, and Smriti Parsheera for participating in the working group, and to Rahul Matthan for providing perspectives on the issue brief. Finally, the author would like to thank Irfan Nooruddin, Capucine Querenet, and the rest of the Atlantic Council's South Asia Center for their support. The author's views are their own and do not necessarily reflect those of the working-group members.

## ABOUT THE AUTHOR

**Anand Raghuraman** is a vice president at The Asia Group, where he helps lead the firm's client servicing and growth in South Asia, with a focus on the Internet, e-commerce, and payments sectors. He is also a nonresident fellow at the Atlantic Council South Asia Center, where he helps drive the US-India Trade Initiative and serves on the US-India Digital Economy Task Force. Previously, he was a member of the Joe Biden-Kamala Harris campaign's South Asia Policy Working Group and a visiting fellow at the Observer Research Foundation, one of India's leading think tanks. Anand is a graduate of Duke University.

## Atlantic Council Board of Directors

### CHAIRMAN

\*John F.W. Rogers

### EXECUTIVE CHAIRMAN EMERITUS

\*James L. Jones

### PRESIDENT AND CEO

\*Frederick Kempe

### EXECUTIVE VICE CHAIRS

\*Adrienne Arsht

\*Stephen J. Hadley

### VICE CHAIRS

\*Robert J. Abernethy

\*C. Boyden Gray

\*Alexander V. Mirtchev

### TREASURER

\*George Lund

### DIRECTORS

Stéphane Abrial

Todd Achilles

\*Peter Ackerman

Timothy D. Adams

\*Michael Andersson

David D. Aufhauser

Barbara Barrett

Colleen Bell

Stephen Biegun

Linden P. Blue

Adam Boehler

John Bonsell

Philip M. Breedlove

Myron Brilliant

\*Esther Brimmer

Richard R. Burt

\*Teresa Carlson

\*James E. Cartwright

John E. Chapoton

Ahmed Charai

Melanie Chen

Michael Chertoff

\*George Chopivsky

Wesley K. Clark

\*Helima Croft

\*Ankit N. Desai

Dario Deste

\*Paula J. Dobriansky

Joseph F. Dunford, Jr.

Richard Edelman

Thomas J. Egan, Jr.

Stuart E. Eizenstat

Mark T. Esper

\*Michael Fisch

\*Alan H. Fleischmann

Jendayi E. Frazer

Meg Gentle

Thomas H. Glocer

John B. Goodman

\*Sherri W. Goodman

Murathan Günal

Frank Haun

Michael V. Hayden

Tim Holt

\*Karl V. Hopkins

Ian Ihnatowycz

Mark Isakowitz

Wolfgang F. Ischinger

Deborah Lee James

\*Joia M. Johnson

\*Maria Pica Karp

Andre Kelleners

Brian L. Kelly

Henry A. Kissinger

\*C. Jeffrey Knittel

Franklin D. Kramer

Laura Lane

Yann Le Pallec

Jan M. Lodal

Douglas Lute

Jane Holl Lute

William J. Lynn

Mark Machin

Mian M. Mansha

Marco Margheri

Michael Margolis

Chris Marlin

William Marron

Christian Marrone

Gerardo Mato

Timothy McBride

Erin McGrain

John M. McHugh

Eric D.K. Melby

\*Judith A. Miller

Dariusz Mioduski

Michael J. Morell

\*Richard Morningstar

Georgette Mosbacher

Dambisa F. Moyo

Virginia A. Mulberger

Mary Claire Murphy

Edward J. Newberry

Franco Nuschese

Joseph S. Nye

Ahmet M. Ören

Sally A. Painter

Ana I. Palacio

\*Kostas Pantazopoulos

Alan Pellegrini

David H. Petraeus

W. DeVier Pierson

\*Lisa Pollina

Daniel B. Poneman

\*Dina H. Powell McCormick

Michael Punke

Ashraf Qazi

Thomas J. Ridge

Gary Rieschel

Lawrence Di Rita

Michael J. Rogers

Charles O. Rossotti

Harry Sachinis

C. Michael Scaparrotti

Ivan A. Schlager

Rajiv Shah

Gregg Sherrill

Ali Jehangir Siddiqui

Kris Singh

Walter Slocombe

Christopher Smith

Clifford M. Sobel

James G. Stavridis

Michael S. Steele

Richard J.A. Steele

Mary Streett

Gil Tenzer

\*Frances M. Townsend

Clyde C. Tuggle

Melanne Verveer

Charles F. Wald

Michael F. Walsh

Ronald Weiser

Maciej Witucki

Neal S. Wolin

\*Jenny Wood

Guang Yang

Mary C. Yates

Dov S. Zakheim

### HONORARY DIRECTORS

James A. Baker, III

Ashton B. Carter

Robert M. Gates

James N. Mattis

Michael G. Mullen

Leon E. Panetta

William J. Perry

Condoleezza Rice

Horst Teltschik

William H. Webster

*\*Executive Committee  
Members*

*List as of April 6 2022*



The Atlantic Council is a nonpartisan organization that promotes constructive US leadership and engagement in international affairs based on the central role of the Atlantic community in meeting today's global challenges.

© 2022 The Atlantic Council of the United States. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means without permission in writing from the Atlantic Council, except in the case of brief quotations in news articles, critical articles, or reviews. Please direct inquiries to:

Atlantic Council

1030 15th Street, NW, 12th Floor,  
Washington, DC 20005

(202) 463-7226, [www.AtlanticCouncil.org](http://www.AtlanticCouncil.org)