

Research Paper on To issue a New Press Note to clarify the FDI Policy in the e-commerce sector and take stringent action against foreign e-commerce companies violating the FDI Policy.

1. We would like to place on record the immense pain and hardship of over 40 crore Indians who are directly and indirectly dependent on the Indian retail sector. This pain and anguish stems from the fact that despite our continuous calls for help and action against these foreign e-commerce entities, the DPIIT has not initiated any action whatsoever till date. It is becoming seemingly clear to our members and their families that the department exists solely for the purpose of serving the interests of global behemoths like Amazon and Walmart to the detriment of small merchants and Kiranas. It is shocking to see that despite the blatant violations by these foreign e-commerce entities, the DPIIT has chosen not to initiate action and prohibit these illegal activities.
2. We requests to the DPIIT to issue a fresh/new Press Note to clarify the provisions of the FDI Policy is only intended to prohibit the continued violations of the FDI Policy at the hands of these foreign e-commerce entities who are causing grave harm to small merchants/Kiranas.
3. Amazon and Flipkart have been violating the FDI Policy (especially Press Note No. 2 of 2018) in various ways for a long time. However, most recently Amazon and Walmart have been at the helm of violating and **blatantly disregarding lockdown measures** of various State Governments across the country. It is shocking to see that even in such difficult times, these foreign e-commerce entities have continued to exploit the law and put public safety at risk. These foreign entities have been gaining undue advantage by making illegitimate gains through **supplying of non-essential items** which are strictly prohibited by most state administrations. In the wake of the pandemic, retail stores selling non-essential items are either not allowed or allowed to be open only for few hours daily while Amazon and Flipkart have been flouting lockdown orders by selling all kinds of non-essential goods e.g. mobile phones, electronics and kitchen appliances etc and delivering them throughout the day.
4. **E-commerce is only the way of ordering the non-essential items. The actual goods are sold, packed, transported, delivered, and received by human being who need to be isolated by the way of lockdown due to ongoing pandemic. The purpose of lockdown is to reduce such exposure by limiting the interaction only for essential goods and services. It is beyond our comprehension that if it is risky for the customers and the shopkeepers to buy and sell non-essential goods, then how it is not risky for delivery boys and the warehouse/sales staff to engage in the sale of non-essential goods through e-commerce. If at all the aim is to reduce the exposure to virus to the public, then it must be done for e-commerce companies also.** Amazon and Flipkart and few other e-commerce companies are trying to take advantage of the national crisis arising out of current pandemic and have been growing exponentially while small merchant/Kiranas have been languishing and closing.
5. Notwithstanding with their exploitative behaviours in the time of national crisis, the most subsisting violation by these foreign e-commerce entities has been the creation of a complex web of affiliated entities, by way of equity control or economic participation, to control inventory and indulge in inventory-based model of e-commerce, which is expressly prohibited by the FDI Policy. Amazon and Walmart have structured their affiliated companies to act as sellers on their respective marketplace platforms, a practice that has not only given them control over inventory but also subsequently on prices. This has allowed **Amazon and Walmart to indulge in predatory pricing by capital dumping** because of their deep pockets. Recently, Amazon infused ₹915 crore into its marketplace entity in furtherance of its predatory market practices and unauthorized control over the inventory of the sellers. It is important to keep in check such infusion because it will only add to the troubles of small merchants/Kiranas.
6. In furtherance of creation of a complex web of affiliated entities, Amazon and Walmart have also given preferential treatment to a 'few preferred sellers', mostly entities in which they hold equity control or economic participation directly or indirectly. This practice has resulted in large-scale discrimination against other third party sellers on the marketplace platforms of these foreign companies. Additionally, Amazon and Flipkart also regularly provide preferential listing spots for their private label products which gives them added visibility at the cost of goods and services of third party sellers.
7. Attention to be drawn on how the foreign e-commerce marketplace entities have also violated the FDI Policy by selectively reading and misconstruing Clause 5.2.5.2 and indulging in inventory based model of e-Commerce for Grocery (Food Products) Retail.

The FDI Policy permits 100% FDI through Government Route in wholesale and retail trading, including e-commerce, of products manufactured or produced by manufacturers themselves. It is our understanding that this provision is intended to incentivize investments in manufacturing and not to allow foreign entities like Amazon to create a PPP **backdoor entry in Multi Brand Retail Trade (MBRT)** in food products by allowing retail trading of third party manufactured/produced products. It is important to note that Grocery Retail forms the largest chunk of Retail Trading and if foreign entities like Amazon are allowed to indulge in grocery retail, it would result in a blatant violation of the very spirit of the FDI Policy and would be a direct contravention with the provision of the FDI Policy with regards to MBRT and inventory based e-commerce.

9. A new Press Note clarifying the FDI Policy must be issued ASAP and strict action against foreign e-commerce marketplace entities for their ever-increasing attacks on the FDI Policy and the law of the land. It is not only pertinent that strict action is initiated against these entities but also initiated at the earliest so that small and medium merchants/Kiranas do not suffer any more, at the hands of these foreign e-commerce entities. The law of the land must not only apply to small and medium merchants but also equally to **global behemoths like Amazon and Walmart who have so far enjoyed almost full impunity for their actions.**