16 September 2019

Shri G.C. Rout
Deputy Secretary
Ministry of Consumer Affairs, Food & Public Distribution
Department of Consumer Affairs
Government of India

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to express our sincere gratitude to the Department of Consumer Affairs ("**Department**"), Ministry of Consumer Affairs, Food and Public Distribution, Government of India for the opportunity to submit comments on the Draft Model Framework for Guidelines on e-Commerce for Consumer Protection ("**Guidelines"**). AIC is an industry association comprised of leading Internet and technology companies in the Asia Pacific region with an objective to promote the understanding and resolution of Internet and ICT policy issues. Our current members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, Grab, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Oath), and Booking.com.

We commend the Department of Consumer Affairs on formulating the Guidelines for public consultation, with an objective to prevent fraud and unfair trade practices in the e-commerce sector, and to protect the legitimate rights and interests of consumers. We thank the Department for allowing the industry to provide comments on the same, and would like to take this opportunity to provide our views.

As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Department to consider when reviewing the Draft Guidelines. Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact our Secretariat Mr. Sarthak Luthra at Secretariat@aicasia.org or at +65 8739 1490. Importantly, we would be grateful to offer our inputs and insights on industry best practices, directly through meetings and discussions and help shape the dialogue for the advancement of e-commerce sector in India.

Sincerely,

Jeff Paine
Managing Director,
Asia Internet Coalition
https://aicasia.org

Introduction

The Department of Consumer Affairs ("**Department**"), Ministry of Consumer Affairs, Food and Public Distribution, Government of India on 2 August 2019, issued a Draft Advisory to State Governments and Union Territories regarding the Draft Model Framework for Guidelines on e-Commerce for Consumer Protection ("**Guidelines"**). Under the Consumer Protection Act, 2019 (CPA), the Consumer Ministry has the power to issue guidelines under Section 18(1)(l) and Section 94 of the CPA, and also frame model rules to be adopted by State Governments under Section 102 of the CPA. The stated objective of the Draft guidelines is to prevent fraud and unfair trade practices by B2C e-commerce businesses, and to protect the legitimate rights and interests of consumers.

The e-commerce sector contributes significantly to the Indian economy, with an increasing number of consumers relying on online platforms for the purchase of goods and services. The B2C e-commerce in India was valued at USD 38.5 billion in 2017 and is expected to rise to USD 200 billion by 2026, while B2B e-commerce will be at USD 300 billion.[1]

We recognise the need to protect the interests of consumers and that e-commerce entities should have a responsibility to ensure high quality of products and effective customer service.

Based on a detailed review of the Draft Guidelines, we make the following general observations:

1. The Draft Guidelines does not fully consider the industry practices and business models of different types of e-commerce entities in India and abroad.
2. The Draft Guidelines would impact the ability of Indian consumers to harness the full potential of the digital economy, the consequences of which could lead Indian users with limited access and choice in online services, thereby lagging behind their global contemporaries.
3. The Draft Guidelines impose onerous and prescriptive obligations. Such compliance requirements will create market barriers, stifle business growth and competitiveness and could hurt ease of doing business, which may restrict the overall growth of India's digital economy.

SECTION A

General Comments on the Guidelines

[Clause-wise Submission on the Draft Guidelines Can be Found in SECTION B**]**

1. **Scope and applicability**

   It is unclear if the Draft Guidelines are a mere advisories to State Governments or mandatory in nature. Besides multiple issues and inconsistencies in the Definitions section, the confusion between the marketplace and inventory-based models of e-commerce has resulted in compliance obligations being applied uniformly to both types of e-commerce entities, without an in-depth understanding of industry practices and business models. Further, the inclusion of

[1] https://www.ibef.org/industry/ecommerce.aspx

‘electronic service provider’ in the definition of ‘e-commerce entity’ creates ambiguity for B2B platforms which fall outside the stated objectives of the Draft Guidelines.

***Recommendations*:**

- The Central Government must clarify if the Draft Guidelines must be mandatorily adopted by all State Governments, or if they are discretionary in nature. In both cases, it is recommended that the rules be adopted consistently to avoid business disruption.
- In the definition of ‘e-commerce entity’, the phrase ‘electronic service provider’ should be deleted. Further, the definition of ‘electronic service provider’ should itself be deleted since it is already defined in the CPA.
- Given the stated objectives of the Draft Guidelines (i.e. applicability to B2C services only), certain B2B services like advertising services should be exempted under the proviso to Clause 2(c).
- The Draft Guidelines should clearly distinguish the compliance obligations applicable to the two models of e-commerce, i.e. inventory-based and marketplace, based on existing market practices and the capabilities of each model.
- Delete the reference to “service provider” in the definition of “seller”.

2. Overlap with Consumer Protection Act, 2019

The Consumer Protection Act, 2019 (“**CPA 2019**”) which has been recently enacted (following the issuance of the Guidelines), already provides for the establishment of a Central Consumer Protection Authority (“**CCPA**”) that can issue necessary guidelines to prevent unfair trade practices and protect consumer interest. We note that the stated objectives of the Guidelines overlap substantially with the same. Therefore, it appears that the issue would be better served by being left to the jurisdiction of the CCPA instead of being dealt with by a state level advisory. The state level advisory leaves it to the discretion of each state government to formulate the relevant laws and policies, risking inconsistencies, while the CCPA issuing guidelines under the statutory powers of a central legislation would lead to harmonisation of the principles of consumer protection followed across service providers in the country.

Further, the CPA 2019 already provides for specific liability for manufacturers, sellers, electronic service providers, advertisers, endorsers, etc. recognising that there are varying degrees of control exercised over the product at each level and hence the liabilities would need to correspondingly differ. The Guidelines define “e-commerce entity” broadly, covering any company providing technology connecting buyers with sellers. This would encompass smaller and more informal peer to peer markets in addition to larger entities holding inventory. It may also include advertisement platforms which offer a gateway to the seller. The requirements are detailed, prescriptive and onerous, applying equally to all platforms, instead of allocating liability as per each entity’s specific role.

***Recommendations*:** In light of this, we recommend addressing these issues through the CCPA as and when needed, and deferring to the principles already enumerated in the CPA. This would avoid regulatory overlaps.

3. Registration requirements

The Guidelines refer to all e-commerce entities requiring being a registered legal entity in India. It should be noted in this regard that certain registration, licensing or incorporation requirements are already necessary under various existing laws for e-commerce entities trading in specific subjects (an example being the e-commerce FBO license issued by the FSSAI for food business operators).

The Draft Guidelines are not the appropriate instrument to include a requirement for local registration, since the government neither has the powers to issue such rules under the CPA, nor is there a rational nexus with the objectives of the CPA. Moreover, the obligation on both domestic and foreign e-commerce entities to be registered legal entities in India would adversely impact consumer choice, competitiveness of the market, disrupt business operations and adversely impact the digital economy as a whole, as global platforms would either discontinue their India operations or choose not to enter the Indian market.

Further, it is not clear what kind of additional local incorporation / registration requirements from a consumer protection perspective are envisaged in the guidelines. Therefore, any additional measures without adequate rationale would add to the multiplicity of registration requirements and would constitute an unduly trade restrictive measure which should be avoided.

***Recommendation*:** The requirement for foreign e-commerce entities to be registered in India should be removed, given the onerous compliance burden and lack of relevance of such a requirement to the stated objective of the Draft Guidelines and the CPA.

4. Additional liabilities as intermediaries

E-commerce entities which provide a neutral platform for buyers and sellers to communicate and exchange goods and services, constitute "intermediaries" as defined under the Information Technology Act ("**IT Act**"). Such intermediaries are exempt from liability in respect of the legality of content hosted by them as per the IT Act read with the Information. Technology (Intermediaries Guidelines) Rules, 2011 ("**IG Rules**").

It is the established legal position that intermediaries should not be made to assess the legality of content on their platforms. In ***Shreya Singhal vs. Union of India***[2] the Supreme Court held that an intermediary cannot be required to proactively monitor its platform for unlawful content, and its responsibility is limited to actioning content when notified by court orders or authorized government agencies.

The Guidelines require that an intermediary should exercise "due diligence" over information / goods that are illegal, misleading, paedophilic, defamatory, deceptive or misleading. Read with the broad ambit of the definition of an "e-commerce entity," this imposes an unduly onerous proactive monitoring obligation on the intermediary which is not in line with the legal position enumerated by the Supreme Court. The scope of monitoring extends beyond the scope of "due diligence" covered under IG Rules. Further, it may not be technically feasible for a

[2] (2013) 12 SCC 73.

platform to assess the quality of all goods passing through the platform – particularly in the case of informal peer to peer marketplaces.

The Guidelines also state that e-commerce entities should notify sellers about counterfeit products and take them down. This furthermore, in the case of ***Kent RO Systems Ltd. & Anr. vs. Amit Kotak & Ors***[3] the Delhi High Court had held that the issue of whether an intellectual property right has been infringed by a user on an intermediary platform is a question of law to be determined by the court, and cannot be determined by the intermediaries themselves, within the scope of the IT Act.

***Recommendations*:** Therefore, we recommend that proactive monitoring obligations for intermediaries in the Guidelines should be removed.

5. Secondary liability

The Guidelines hold e-commerce entities guilty of contributory or secondary liability if they make any assurances or vouch for the authenticity of goods sold on their market place. However, the exact nature of the representation and the degree of complicity necessary to implicate an intermediary has not been specified.

It appears that the Department seeks to give effect to the Delhi High Court's decision in ***Christian Louboutin SAS vs. Nakul Bajaj and Ors.*** in 2018. In this case, the Delhi High Court held that an e-commerce website cannot claim exemption from intermediary liability under Section 79 of the IT Act, if it has played an *active* role in the purchase and sale of counterfeit products and *enabled* the violation of intellectual property rights of the original manufacturer. In this specific case, this question arose as counterfeit goods were sponsored, affiliated and approved for sale bearing a trademark, by the platform who was the defendant.

The Delhi High Court stated that liability would arise in respect of "*e-commerce platforms which actively conspire, abet, aide or induce the commission of unlawful acts on their website."*

The Guidelines have not included the caveats provided by the Delhi High Court in its assessment of whether the defendant platform could claim intermediary exemption. To this extent, it is not consistent with law and seeks to impose liabilities without any clear indication of the nature of activity that would draw such liability.

***Recommendations*:** We recommend removing this provision in order to address the ambiguities raised by the manner in which it has been phrased, and instead stating that all intermediaries should comply with applicable law.

6. Disproportionate obligations

We also note that the Guidelines impose certain specific conditions which do not align with the stated rationale of consumer protection, while imposing additional obligations which may be onerous for an e-commerce entities. One such example is displaying the terms of contract between the e-commerce entity and the seller to enable the consumer to make informed decisions. Such contracts take many different forms depending on the platform, and in some cases are simply T&Cs for smaller, peer-to-peer platforms. They may also contain sensitive financial information that is not relevant in any way to the relationship between the consumer

[3] CS (COMM) 1655/2016

and the seller. It is not clear how a consumer would benefit from having access to the content of the contract between the seller and the platform.

The Guidelines are also specific in terms of specifying return policies and other aspects of the e-commerce business. Many platforms offer the flexibility to customers and sellers to determine their own arrangements vis-à-vis delivery, return, cancellation, etc. Requiring e-commerce entities to necessarily be a part of these arrangements may be counterproductive as it may have the unintended impact of impeding the flexibility that allows different business models to flourish.

***Recommendations*:** We recommend that the Guidelines should not deal with such specific requirements as they do not align with the stated goals of consumer protection. The regulatory approach should be one of enabling flexibility and innovations in the sector while building consumer trust.

7. Grievance Officer

The Guidelines require that an e-commerce entity should appoint a grievance officer, publish their name and details, include facilities to register complaints over phone, email, website, and provide tracking numbers to complainant. They also require that complaints should be resolved within a month.

Under the IT Act read with the IG Rules, e-commerce entities in their capacity as intermediaries already have an obligation to appoint a grievance officer. It appears that the Grievance Officer contemplated under the Guidelines have obligations going beyond the scope of such officers under extant law. For those e-commerce entities whose scope of services do not include logistics and delivery services, it may not be feasible to address queries relating to – for instance – tracking and delay.

***Recommendations*:** Thus, the scope of work of the Grievance Officer should be commensurate with the services being provided, a determination that is best left to the operations of the intermediary in question. Therefore, we recommend that the Guidelines should not deal with this issue.

8. Applicability

The Draft Guidelines are intended to address consumer protection concerns for 'business-to-consumer ("**B2C**") e-commerce. However, because of the wide definition of the term 'e-commerce entity', these guidelines also cover entities primarily engaged in 'business-to-business' ("**B2B**") e-commerce with B2C e-commerce forming a [small/incidental/negligible] portion of their overall business. In our view, this is an unintended and undesirable consequence and must be corrected. It would compel such entities to comply with the Draft Guidelines even though B2C e-commerce forms a [small/incidental/negligible] portion of their business, burdening them with a disproportionate level of compliance.

***Recommendations*:** Requiring entities primarily engaged in B2B e-commerce to conform to the Draft Guidelines could adversely affect India's 'ease of doing business' ranking especially considering the exponential growth potential of the Indian e-commerce market.

The Government may consider these options to exempt B2B e-commerce entities from the Draft Guidelines:

- Issue a clarification to exempt entities for whom B2C transactions form a negligible portion of their entire e-commerce business in India; *or*
- Insert a provision in the Draft Guidelines which exempts entities for whom B2C transactions form a negligible portion of their entire e-commerce business in India.

9. **Requirement to ensure authentic ads and prevent counterfeiting**

The Draft Guidelines require e-commerce entities to determine the accuracy of advertisements and the authenticity of listings on their platform. In effect, they require marketplaces to proactively make such determinations, which would be in conflict with the rules laid down in the IT Act and the Supreme Court's decision in *Shreya Singhal* and other recent judgements.

***Recommendations*:** The existing rules under the IT Act, which apply to intermediaries, are sufficient to address the issue of unlawful content. Therefore, this clause in the Draft Guidelines should be deleted. Alternatively, the phrase "upon obtaining actual knowledge" may be included to ensure compliance with the Supreme Court's judgement in *Shreya Singhal*. Any additional requirements under the CPA is likely to conflict with the established standards of due diligence under the IT Act. Further, any requirement mandating marketplaces to play an 'active role' is bound to negate the safe harbour under the IT Act, which would otherwise be available to it.

10. **Prohibition on Influencing Price and Maintaining a Level Playing Field**

The Draft Guidelines prevent e-commerce entities from directly or indirectly influencing the price of the goods or services. This requirement interferes with the freedom of e-commerce entities to carry on their business and undermines their fundamental business models. Further, this is beyond the scope of the CPA, which does not impose such restrictions.

***Recommendations*:** The prohibition against directly or indirectly influencing the price should be deleted. Further, in the requirement to "maintain a level playing field", it should be clarified that the condition only extends to *sellers in similar circumstances*.

11. **Onerous compliance obligations**

The compliance obligations contained in the draft Guidelines are excessive and would raise operational costs for such entities. Compliance may lead to a drop in the quality of service

provided or an increase in prices, thereby limiting the ability of several Indian customers to access such products.

Recommendations: To reduce the compliance obligations based on industry practice, we recommend the following:

- Submission of self-declaration compliance forms should not be mandatory
- The requirement to display terms of contract between e-commerce entity and seller should be removed. Instead, the Central Government can prescribe certain basic information by the product seller that should be published (for eg. warranty details)
- The requirement to disclose complete details of sellers should not be made uniformly applicable to all e-commerce entities.
- The eligibility criteria for directors, promoters etc. should be removed as they are already prescribed under existing statutes
- The requirement to comply with the IT Act and RBI Guidelines should be removed as they are standalone obligations.
- The time period for processing of refunds should be within a reasonable period of time based on industry practice

SECTION B

Clause-wise Submission on the Draft Guidelines

Relevant Clause	Comments	Recommendations
Definitions: **Clause 2(c)** "E-Commerce entity" means a company incorporated under the Companies Act, 1956 or the Companies Act, 2013 or a foreign company covered under section 2 (42) of the Companies Act, 2013 or an office, branch or agency in India as provided in Section 2 (v) (iii) of FEMA 1999, owned or controlled by a person resident outside India and ***includes an electronic service provider*** or a partnership or proprietary firm, whether ***inventory or market place model*** or both and conducting the e-Commerce business **Clause 2(b)**	**Advisory nature of the Draft Guidelines** It appears that the Draft Guidelines have been framed by the Central Government as 'model rules', under S.102 of the CPA. However, they have been issued as an "Advisory to State Governments/Union Territories". Therefore, it is not clear if the Draft Guidelines will have to be mandatorily adopted by all State Governments or whether it is discretionary. Inconsistent e-commerce guidelines adopted by different states will result in business disruption and should be avoided. **Applicability to non-B2C entities** The Draft Guidelines are stated to apply to B2C e-commerce of goods and services only (including digital products). However, the reference to "electronic service provider" in the definition of "e-	• The Central Government must clarify if the Draft Guidelines must be mandatorily adopted by all State Governments, or if they are discretionary in nature. In both cases, it is recommended that the rules be adopted consistently to avoid business disruption. • In the definition of 'e-commerce entity', the phrase 'electronic service provider' should be deleted. • Given the stated objectives of the Draft Guidelines, certain B2B services like advertising services should be exempted under the proviso to Clause 2(c). • Further, the definition of 'electronic service provider' should itself be deleted since it is already defined in the CPA. • The Draft Guidelines should clearly distinguish between the two models of e-commerce, i.e. inventory-based and marketplace, based on

"Seller" means product seller as defined in the Sale of Goods Act 1930 and includes a Service Provider;	commerce entity" creates ambiguity on applicability of these guidelines to electronic service providers who are not in the e-commerce business. For example, online advertising services are in the nature of B2B services and should remain outside the scope of the Draft Guidelines, given the stated objectives. **Marketplace and inventory-based e-commerce entities should be treated differently**. The Draft Guidelines are uniformly applicable to both marketplace and inventory-based models of e-commerce. This approach fails to recognise the inherent and fundamental distinction in their functioning and business models. For instance, under the Draft Guidelines, marketplaces are required to accept the return of any defective goods or if goods are delivered late. However, unlike inventory-based models, marketplaces do not own inventory and would not be able to comply with such an obligation. Marketplaces are intermediaries with respect to content on their platforms. Therefore, under the Intermediary Guidelines, they are generally exempt from liability for any third-party content on their platform. However, the Draft Guidelines place	existing market practices and the capabilities of each model. The compliance obligations in the Draft Guidelines should also be modified accordingly. ● Delete the reference to "service provider" in the definition of "seller" and replace with "product seller", which is the term defined under the CPA

	onerous obligations on all types of e-commerce entities with respect to content monitoring and regulation. The inclusion of 'electronic service provider' in the definition of 'e-commerce entity' creates ambiguity around the applicability of these Draft guidelines to entities that are not in the e-commerce business (for eg. search engines), even though the intent of the Draft Guidelines is to cover entities carrying out e-commerce business only (i.e. buying or selling of goods or services including digital products over digital or electronic network).	
Clause 3(a)(i): Every e-Commerce entity carrying out or intending to carry out e-Commerce business in India subsequent to the publication of this notification in the Gazette, shall within 90 days comply with the following set of conditions for the conduct of e-Commerce business: i. It shall be a ***registered legal entity under the laws of India.***	Local incorporation rule falls outside the scope of the Act The Draft Guidelines are not an appropriate regulatory tool through which to introduce a local incorporation requirement: a. The requirement does not have any direct nexus with the core objectives of the CPA, which is to protect the interest of consumers in the e-commerce space. It is unclear how imposing mandatory registration on foreign companies will meet the stated objective.	The requirement for foreign e-commerce entities to be registered in India should be removed, given the onerous compliance burden and lack of relevance of such a requirement to the stated objective of the Draft Guidelines and the CPA.

	b. The CPA does not provide the Central Govt any power to mandate such incorporation or registration requirements. Therefore, the Central Government is acting beyond its powers by prescribing such a requirement as a part of the Guidelines. As such, this proposal appears to be outside the scope and ambit of the CPA. Negative impact on consumer choice, competition and market access Under the Draft Guidelines, both domestic and foreign e-commerce entities are required to be registered legal entities in India. E-commerce by its very nature is transboundary and operates using the seamless internet. If a local incorporation rule is imposed, several e-commerce entities will find it difficult to enter and operate in the Indian market, and subsequently withdraw from the Indian market. This would adversely impact consumer choice, competitiveness of the market, and the digital economy as a whole. For instance, global App stores have several applications that are created by individuals who reside outside India, as well as global startups that	

	offer unique and cost-effective online services to Indian businesses, airlines, hotels, students and academics. The local incorporation rule would impact the ability of Indian citizens and businesses to access such services. Indian sellers on the global marketplaces would also be impacted by this rule, since several Indian sellers do not have the scale or resources to operate independently, and rely on such global platforms to reach consumers in different parts of the world, and which accounts for a substantial proportion of their revenue. Withdrawal or scaling down of such platforms would have a direct impact on the success of small and medium enterprises, who may struggle to find alternative avenues to generate sales. In certain cases, this requirement could also amount to severe ramifications such as complete cessation of business in India, because domestic registration will require such entities to comply with the FDI guidelines and these e-commerce platforms are neither structured to comply with the FDI e-commerce guidelines nor would it be viable for them to offer their goods/services through 3rd parties (for eg: entities having equity participation in the e-commerce market place or its group companies will	

	not be permitted to sell its products on the e-commerce platform). The unintended consequences include scoping in several prominent international applications/platforms available and widely used in India.	
Clause 4(ii): An E-commerce Entity shall ensure that the advertisements for marketing of goods or services are consistent with the actual characteristics, access and usage conditions of such goods or services. **Clause 4(ix):** If the e-commerce entity is informed by the consumer or comes to know by itself or through another source about any counterfeit product being sold on its platform, and is satisfied after due diligence, it shall notify the seller and if the seller is unable to provide any evidence that the product is genuine, it shall take down the said listing and notify the consumers of the same.	**Ensuring authentic advertisements and prevention of counterfeiting** Marketplace-based entities are merely intermediaries with respect to content on their platforms. Therefore, under the Information Technology Act and the Intermediary Guidelines, they are generally exempt from liability for any content on their platform. Such entities cannot be asked to pass judgment on the legality of any content. In *Shreya Singhal v. Union of India*, the Supreme Court read down S. 79(3)(b) of the IT Act, such that an intermediary is only required to act once it receives 'actual knowledge' in the form of a court order or a notification by the appropriate government or its agency. The Draft Guidelines require even marketplace entities to determine the accuracy of advertisements and the authenticity of listings on their platform. In	The existing rules under the IT Act, which apply to intermediaries, are sufficient to address the issue of unlawful content. Therefore, this clause in the Draft Guidelines should be deleted. Alternatively, the phrase "upon obtaining knowledge by itself, or by an adjudicating authority" may be included to ensure compliance with the Supreme Court's judgement in *Shreya Singhal*.

	effect, they require marketplaces to proactively make such determinations and remove or block access to certain advertisements, listings, etc. The requirement in the Draft Guidelines appears to violate the condition laid down in *Shreya Singhal* and any requirement for proactive removal or blocking of content by the intermediary would be *ultra vires* the IT Act. In fact, the Delhi High Court in several cases like *Amway India Enterprises Pvt Ltd. & Ors.*, (2019 SCC Online DEL 9061) and in *Christian Louboutin SAS V. Nakul Bajaj* j(2018 SCC Online DEL 12215) judgements has held that any active role played by an e-commerce platform in respect of providing actual services with respect to the goods/ services sold on their platform like advertising the products, ensuring the quality of actual goods by way of confirming their physical attributes etc. would deny the platforms of the statutory safe harbour under the IT Act. As such, Any additional requirements under the CPA is likely to conflict with the established standards of due diligence under the IT Act and may result in a loss of safe harbour for intermediaries. With respect to the requirement to prevent counterfeiting, it must be additionally noted that the	

	nature of 'due diligence' required under the Draft Guidelines is unclear. For marketplace based e-commerce entities in particular, exercising a high standard of due diligence in this regard is impractical since they do not have control or possession of the actual physical products. The nature of "evidence" that may be provided by the product seller is vague and defeats the purpose of the safe harbour protections afforded to intermediaries under the IT Act.	
Clause 4(i): An E-commerce Entity shall not directly or indirectly influence the price of the goods or services and shall maintain a level playing field.	This requirement interferes with the freedom of e-commerce entities to carry on their business and undermines their fundamental business models, based on offering discounts. For example, inventory-based entities use pricing strategies as a means to compete with other products in the market and sell their own goods and services at an affordable rate. A requirement to ensure a level playing field goes against their ability to control prices and compete with other sellers. The CPA does not restrict the provision of offers, discounts etc. to consumers (whether by e-commerce businesses or sellers) and is not considered as an unfair trade practice. As such, the Guidelines seek to	The restriction upon directly or indirectly influencing the price under these guidelines should be deleted. Further, in the requirement to "maintain a level playing field", it should be clarified that the condition only extends to sellers in similar circumstances as provided for in the FDI policy.

	prohibit actions which are otherwise permitted under the Act. The proposed restriction on influencing prices creates a disparity in the treatment of online marketplaces and brick-and-mortar stores, which defeats the purpose of creating a level playing field in the first place.	
Clause 3(a) General Conditions for carrying out e-Commerce business (a) Every e-Commerce entity carrying out or intending to carry out e-Commerce business in India subsequent to the publication of this notification in the Gazette, shall within 90 days comply with the following set of conditions for the conduct of e-Commerce business: […] ii. It shall submit a self-declaration to this Department stating that it is in compliance with these Guidelines; iii. The promoter or key management personnel should not have been convicted of any criminal	The compliance obligations contained in the draft Guidelines are excessive and would raise operational costs for such entities, which may lead to a drop in the quality of service provided or an increase in prices, thereby limiting the ability of several Indian customers to access such products. Further, new global entities may decide against entering the Indian market, while existing marketplace players may discontinue operations in India. High compliance costs would significantly impact Indian MSMEs and start-ups, who may not have the resources to adhere to these onerous requirements.	***Submission of self-declaration compliance forms:*** The requirement under this guideline to submit a self-declaration of compliance is unnecessary and onerous. Since every person is required to comply with the law of the land, there is no need to additionally declare compliance with any specific regulations. ***Display terms of contract between e-commerce entity and seller:*** Many of these agreements are subject to confidentiality and cannot be disclosed, unless they have already been published online as part of the Terms of Service. Alternatively, the Central Government can instead prescribe certain basic information that should be published by the product seller (for e.g. warranty details)

offence punishable with imprisonment in last 5 years by any Court of competent jurisdiction; iv. It shall comply with the provisions of Information Technology (Intermediaries guidelines) Rules, 2011. v. Payments for sale may be facilitated by the e-Commerce entity in conformity with the guidelines of the Reserve Bank of India. vi. Details about the sellers supplying the goods and services, including identity of their business, legal name, principal geographic address, name of website, e-mail address, contact details, including clarification of their business identity, the products they sell, and how they can be contacted by customers shall be displayed in the web site **Clause 4(i)** An E-Commerce Entity shall, display terms of contract between e-Commerce entity and the seller relating to return, refund, exchange, warranty / guarantee, delivery / shipment, mode of payments, grievance redressal mechanism etc. to enable consumers to make informed decisions		***Disclose complete details of sellers:*** This requirement does not apply similarly to all types of e-commerce entities. For example, this requirement need not apply to entities where the seller is easily identifiable or well-known (for eg. delivery from established restaurants). Moreover, the disclosure of sellers' details may be impractical since platforms also may not be in a position to verify any of the details furnished by sellers. Some of the information sought from the seller is vague and broad in scope - for eg: "Identity of business" is vague and should be removed since "legal name" is a requirement in any case. Further, the term "supplying" should be replaced with "selling" for clarity. ***Eligibility Criteria for directors, promoters etc.:*** These criteria are already prescribed under existing statutes like the Companies Act along with penalties for non-compliance. Including such requirements in the Draft Guidelines creates parallel and inconsistent requirements. Further, the eligibility requirements laid out in the Draft Guidelines have no nexus with the objectives of the CPA. ***Compliance with IT Act and RBI Guidelines***: The requirement to comply with the Information Technology (Intermediaries guidelines) Rules, 2011,

Clause 4(viii) Effect all payments towards accepted refund requests of the customers within a period of a maximum of 14 days		and the RBI Guidelines already exist and operate separately, along with prescribed penalties for non-compliance. Further, compliance under the IT Act, the RBI Guidelines and any other prescribed laws is outside the legislative scope of the CPA. The creation of any new substantive offences under the scheme of the Draft Guidelines would be an overreach of the Central Government's powers under the CPA. Hence, Clause 3(iv) and (v) should be deleted. ***Processing of Refunds***: Often, several banking and collection entities are involved in the payment process flow, which adds to the processing time for refunds. In such instances, the e-commerce platform itself is unlikely to be in a position to ensure refund payments within the prescribed timeline. Therefore, it is recommended that the period of 14 days should be replaced with the phrase "within a reasonable period of time".