

GNLU CENTRE FOR LAW & ECONOMICS
Policy Recommendations



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**Comments to the Bureau of Indian Standards on E-Commerce- Principles
and Guidelines for Self-Governance**

Comments on behalf of the Policy Inputs Research Group on BIS, GNLU
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1. INTRODUCTION

In January 2025, the Bureau of Indian Standards invited public comments on their draft standards on E-Commerce- Principles and Guidelines for Self-Governance.

With regards to the underlying purpose for which the Centre for Law and Economics was established at the Gujarat National Law University, the Centre constituted a special Research Group to look further into the proposed set of principles and research on the recommendations so as to suggest changes in order to ensure a robust regulatory framework for E-Commerce in line with competition law jurisprudence.

The principles contained in the draft are broadly of 3 kinds:

- i. **Pre-Transaction Principles:** Governing the initial phase before a customer completes a purchase. The focus is on clear information disclosure, fair seller registration, and product listing transparency.
- ii. **Contract Formation Principles:** Apply at the point of purchase, ensuring that consumers understand their rights and obligations before confirming a transaction. Include guidelines on express informed consent, transaction review and confirmation, reversal policies, and secure payments.

- iii. **Post transaction principles:** Dealing with consumer rights and seller obligations after a transaction is completed, focusing on order fulfillment, dispute resolution, and merchantability.

In addition to the above, the draft standards also contain general principles relating to sale of banned products, data protection, unsolicited commercial communication, fair business practices, anti-counterfeiting, representation of goods, advertisements, and fairness of consumer reviews.

The focus of this policy comment is on the principles relating to fair business practices, with particular emphasis on anticompetitive acts of self-preferencing through private labelling, promoting preferred sellers and restricting access to API (Application Programming Interface)

Platform neutrality is the principle of fair treatment of all users, sellers, and service providers by digital platforms. The CCI has previously mentioned the importance of data in a platforms' ability to perhaps abuse that dominance or cause Appreciable Adverse Effect On Competition. This data gives a lot of control in the hands of platforms which may be used to manipulate consumer choices by preferential listing of sellers on the internet.¹ The notable case of *Delhi Vyapar Mahasangh vs. Flipkart Internet (P) Ltd* is a key examples of the same where vertical agreements or exclusive agreements were made between suppliers which resulted in harm to the market.² This differentiated treatment through preferencing could essentially attract both section 3 and 4 of the Act. Other relevant cases include *Federation of Hotel & Restaurant Associations of India & Anr vs. MakeMyTrip India Pvt. Ltd. & Ors., Case No. 14 of 2019* which mentions skewed listings and exclusive agreements which are also dealt under the Act³⁴.

Algorithmic bias exists in e-commerce in general however, platforms themselves do play a significant role in discriminating between sellers through exclusive agreements and tie in and bundling strategies apart from API restrictions. The CCI had previously conducted a study on e commerce markets and chapter 3 of the study has mentioned about platform neutrality⁵. The

¹ Platform Neutrality by E-Commerce Platforms: A Competition Law Requirement? - IndiaCorpLaw, IndiaCorpLaw (2020), <https://indiakorplaw.in/2020/05/platform-neutrality-by-e-commerce-platforms-a-competition-law-requirement.html> (last visited Feb 11, 2025).

² Delhi Vyapar Mahasangh v. Flipkart Internet (P) Ltd., 2020 SCC OnLine CCI 3.

³ CBCL, *When Platforms Themselves Compete: Preferential Listing and Unfair Contracts* - NLIU CBCL, NLIU CBCL (2023), <https://cbcl.nliu.ac.in/competition-law/when-platforms-themselves-compete-preferential-listing-and-unfair-contracts/> (last visited Feb 11, 2025).

⁴ Sarab Lamba, *Platform Neutrality: An Ignored Manipulation Of Antitrust* | THE CONTEMPORARY LAW FORUM, THE CONTEMPORARY LAW FORUM (2020), <https://tclf.in/2020/06/10/platform-neutrality-an-ignored-manipulation-of-anti-trust/> (last visited Feb 11, 2025).

⁵ COMPETITION COMMISSION OF INDIA, MARKET STUDY ON E-COMMERCE IN INDIA: KEY FINDINGS AND OBSERVATIONS (2020)

study concluded that platform neutrality is not as huge of problem and does not cause any adverse effect on competition. However, with the growth in technology and increase in the number of API restrictions by platforms, it is important to be cautious of the anti-competitive effects that these steps by platforms can cause. The purpose of the Competition Act is to also look into the future probabilities of any action by a player in the relevant market which may cause harm in the competition and with these new issues and challenges, it is necessary that the CCI look into the practices of players in the e commerce market and revise its findings.

The e commerce market is unique in nature as previously established by the authorities like CCI and the concept of market power⁶ is also unique in the case of the software solutions market because of the nature of network effects, linkages between complementary products and competition-for-the-market dynamics. Dominance assessment shall take into account these factors so as to reach the right conclusion. The CCI has also taken into consideration the unique nature of these e commerce markets in the cases it decided.

⁶ Rubtub Solutions (P) Ltd. v. MakeMyTrip India (P) Ltd, Case No. 1 of 2020.

2. GENERAL COMMENTS

Firstly, the principle to stipulating non-discrimination among sellers/service providers by the platform has been recommended to include specific disclosure requirements to combat the issue of algorithmic bias.

Secondly, the principle calling upon e-commerce entities to ban the sale of private label goods, is considered erroneous. Private labels have the benefits of increasing competition and expanding consumer choice. Therefore, it's suggested that the prohibition on the sale of private labels be omitted.

Thirdly, the principle compelling publication of APIs to third party service providers is welcomed, since API restrictions drive out competing service providers and compel businesses to be dependent on platforms imposing such restrictions.

3. SPECIFIC COMMENTS

3.1 PROHIBITION ON SELF-PREFERENCING

The draft standards, under section 4.5.4 (Fair Business Practice Principles) have prohibited acts of self-preferencing by e-commerce platforms through allowing affiliated sellers to conduct business, restricting API access to third party warehousing, logistics and payment service providers, hence, depriving consumers of a wide range of service providers.

3.1.1 PREFERRED SELLERS

The principles contained in clauses (a) & (b) of section 4.5.4 of the draft standards stipulates that there must be no discrimination, direct or indirect, among sellers/service providers and that any directly or indirectly affiliated sellers of the platforms shall be prohibited from conducting business on that platform. It is recommended that the formulation of this principle be revised to incorporate the issue of algorithmic bias displayed in search results. Platforms can justify compliance with such a broadly formulated principle on by justifying rankings on the basis of vague performance metrics.

Therefore, it is recommended that the principle mandate:

- A general description of the main search ranking parameters, drafted in plain and intelligible language and keep that description up to date;
- A description of the main parameters where there is a possibility of influencing ranking against any direct or indirect remuneration paid by business users and of the effects of such remuneration on ranking; and
- Any other relevant information not amounting to disclosure of algorithms or any such information that may enable or facilitate manipulation of search results by third parties.

3.1.2 PRIVATE LABELLING

Private labelling is a business approach in which a corporation purchases products from third-party manufacturers while selling them under its own brand name. Businesses hire outside manufacturers to create things instead of producing them themselves, which are subsequently marketed under the retailer's own brand. Examples in the e-commerce sector include Amazon Basics, Flipkart Smartbuy, etc. Private labels are favoured by platforms over products of third party sellers. The draft standards, under the principle ensconced within clause (b) of Section 4.5.4, calls upon e-commerce entities to stop the sale of private label goods. Such a principle,

if brought in practice, could prove counterproductive since private labels impose competitive constraints on prevailing brands, forcing them to reduce prices and improve quality. Private labels enhance consumer choice according to the Lancaster model of consumer demand⁷.

Hence, it is recommended that there is no requirement for a specific rule on private labels. The effects based approach by the CCI in this regard is the most appropriate.

3.1.3 APIs

APIs are an important aspect in maintaining platform neutrality.⁸ APIs are crucial in modern software development, serving as intermediaries that enable software components to interact, share data, and leverage each other's functionalities. They facilitate data sharing, collaboration, and the seamless integration of diverse systems, thereby enhancing interoperability and efficiency in software ecosystems.⁹ API restrictions significantly increase high entry barriers in the market as they restrict interoperability and such conduct does enhance the inability of new players to enter and sustain their presence in the relevant market.¹⁰ This then affects neutrality of the platform.

The principle contained in clause (c) of Section 4.5.4 of the draft standards, mandating e-commerce entities to publish open APIs for third party service providers. This is an appropriate measure since restricting API access drives out competing service providers in favour of a platform's own services. Such restrictions force businesses to depend on a single platform, which increases switching costs.¹¹

⁷ Reuven Hendler, *Lancaster's New Approach to Consumer Demand and Its Limitations*, 65 AMERICAN ECONOMIC REVIEW 195, 195-196 (1975)

⁸ Jeffrey Jarosch, *Novel Neutrality Claims against Internet Platforms: A Reasonable Framework for Initial Scrutiny*, 59 CLEV. ST. L. REV. 537 (2011).

⁹ Configr Technologies, *APIs in Software Development: Why They're Essential and Which Ones to Use*, Medium (2024), <https://configr.medium.com/apis-in-software-development-why-theyre-essential-and-which-ones-to-use-71ffc0ca6480> (last visited Feb 3, 2025).

¹⁰ In re XYZ v. Google LLC, [2020] Case No. 07 of 2020.

¹¹ Jean-Charles Rochet, Jean Tirole *Journal of the European Economic Association*, Vol. 1, No. 4 (Jun., 2003), pp. 990-1029