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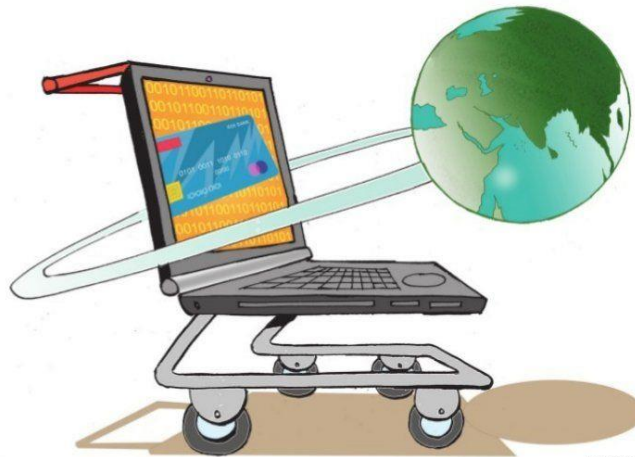


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# India and e-commerce: It's now or never

The government must not get deterred by the narrative against data localisation being perpetrated by some players with one foot in India and another in the developed world. No country in history has prospered by giving away its raw materials to other countries for free

**E**LECTRONIC COMMERCE SHOULD be one of the hot button issues demanding almost immediate attention of the new NDA government. This issue has generated considerable debate and witnessed sharply divergent views. There is an urgent need for the government to evolve a common and consistent approach across all ministries for taking action domestically, as well as on the external front.

So, why is e-commerce critical for India and what is the reality behind the debate on some of the core issues concerning the digital economy? Let us examine both these questions.

Within a short period of time, the salience of economic activities connected with the digital arena has significantly enhanced, both globally and in India. According to some estimates, by 2020, 15-20% of global GDP will be based on data flows. Further, by 2022, the size of digital economy in India is likely to be \$1 trillion, and by 2030 it could constitute almost 50% of the entire economy.

So that the digital economy creates jobs and generates high-value-creating

activities, the government has to get it act together on the core issue, i.e. data flows across borders. A wrong policy choice on this issue can severely dent, and considerably extinguish, India's aspirations from the digital economy.

Why is cross-border data flow at the heart of the digital economy? The reason is not far to seek. Think of some of the businesses in the digital domain that have permeated our everyday lives: platform-based retail trade; advertisement on search engines and social media in the virtual world; online messaging services; online entertainment streaming; credit card transactions; online delivery of services. All of them thrive by leveraging their access to data. New entrants, without having the advantage of access to data, cannot survive for long.

Coming back to India, the country is unlikely to be the source of new technology in the digital sphere in the next few years. The ecosystem required for it just does not exist here. However, India's competitive advantage in the digital sphere is in data. To illustrate, the total number of internet users in India exceeds the combined users in the US and Japan.

Undoubtedly, India is poised to be one of the biggest sources of data in the world. With suitable policies, the country's huge data advantage can be leveraged for economic development. This appears to have provided inspiration for the draft national e-commerce policy formulated by the Department for Promotion of Industry and Internal Trade (DPIIT).

The draft policy strongly advocates retaining flexibility for imposing restrictions on cross-border outflow of data collected by IoT devices installed in public places, and data generated by users in India by various sources. This is aimed at monetising the data and giving a fillip to players in the digital arena within India. However, this has proved to be contentious. We turn to the various grounds of criticism of the proposed policy advocating restrictions on cross-border flows.

First, some players in the digital sector, and a few academicians, are of the view that by advocating restrictions on cross-border flow of data, the draft e-commerce policy is a throw-back to the protectionist model followed by India prior to 1991. Even without going into the merits of this contention, the proponents of this perspective need to be reminded that India succeeded in creating a vibrant domestic automobile industry by going against the prescription of free traders. The government should not uphold trade liberalisation as a dogma to

be followed even if it hurts the country and prevents establishment of new domestic players in emerging segments.

Second, a narrative is sought to be created that if India imposes restrictions on cross-border data flows, then other countries, particularly the US, will retaliate against it by prohibiting outflow of data to India. The critics of the draft policy contend that this will hurt India's exports of IT services, which are about \$100 billion. Anyone with even a rudimentary technical knowledge of the WTO will easily comprehend why this fear is highly exaggerated.

The ability of a country to impose restrictions on outflow of data is not unfettered. It is restricted by the country's existing commitments under the General Agreement on Trade in Services at the WTO. As most developed countries have committed to a fairly open regime under cross-border delivery of services, they would be unable to impose restrictions on outflow of data in most services sectors. This reduces the risks for India's exports of IT services.

It is relevant to mention that unlike developed countries, India has not taken extensive commitments on services. This

provides it considerable elbow room to impose restrictions on outflows of data.

The third strand of criticism is that on account of restrictions on cross-border data flows, SMEs and start-ups in the digital sector will not be able to access cloud computing services and their costs will rise. However, the critics miss the fact that the draft policy provides an exception whereby software and cloud computing services involving technology-related data flows will not be subject to restrictions on data flows.

Fourth, some commentators fault with data localisation by stating this would restrict competition in the domestic market and the Indian consumer would be subject to monopoly abuse. It is not difficult to spot flaws in this criticism. Given the market size in India, MNCs cannot afford to abandon the market. Localisation of data will compel them to undertake their operations from India, instead of servicing the Indian market from abroad. Also, data localisation may give a fillip to new firms emerging in India. Thus, competition is unlikely to get reduced.

In sum, the case against restrictions on cross-border data flows is not persuasive. The government must move forward quickly and finalise the national e-commerce policy.

So far, we have focused on domestic issues, but what about developments on the external front? Deliberations on e-commerce at two important international platforms merit attention.

At the WTO, even without any multilateral mandate, 75 countries have initiated negotiations on e-commerce. It should not come as a surprise that prohibiting restrictions on cross-border data flows is at the centre of these negotiations. This is a blatant attempt by global players in the digital arena to continue to have access to data generated in other countries for free, and preventing countries like India from leveraging their data advantage.

It is almost a foregone conclusion that the rules emerging from the negotiations among a sub-set of WTO members will prohibit countries from imposing restrictions on data flows. India has rightly refused to join the negotiations. However, in a determined bid to prevent India from enforcing restrictions on data flows, developed countries are seeking to use the G20 platform to commit India to join the negotiations on e-commerce.

Shinzo Abe, Japan's PM, has announced that during the G20 Leaders' Summit to be held in Japan later this month, he would "set in train a new track for looking at data governance—call it the Osaka Track—under the roof of the WTO." Joining the Osaka Track would commit

India to joining the WTO negotiations on e-commerce. All efforts must be made by the government to resist this pressure.

In conclusion, the government must not get deterred by the narrative against data localisation being perpetrated by some players with one foot in India and another in the developed world. No country in history has prospered by giving away its raw materials to other countries for free. In the context of data flows, this is what is being demanded of countries at the WTO negotiations. India must strongly resist this, even if it has to stand alone at G20 and WTO meetings. Let it not be said a decade down the line that India missed the digital revolution and the country became merely a consumer of digital products because it shied away from enforcing restrictions on cross-border data flows. If we want a vibrant digital economy to flourish in India, then a bold and clear-headed decision is urgently called for.

*Post-script:* The Centre for WTO Studies has not received funds from any entity operating in the digital domain. For the sake of transparency, we urge think tanks writing articles on e-commerce to make a similar disclosure.

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