MINISTÈRE DE L'ÉCONOMIE, DES FINANCES ET DE LA RELANCE
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En bref

NUMÉRIQUE :

- L'Inde répond aux préoccupations exprimées par trois rapporteurs de l'Organisation des Nations Unies concernant la nouvelle loi numérique.
- Le ministère de la Consommation propose des nouvelles règles plus contraignantes pour freiner le développement des e-commerces en Inde.
- Le gouvernement annonce un soutien de EUR 2,2Mds supplémentaires à BharatNet afin de fournir le haut débit à tous les villages.
- Après Cairn Energy, Devas Multimedia tente de saisir les actifs américains d'Air India pour faire appliquer un arbitrage.

TÉLÉCOMMUNICATIONS:

- Le Département des télécommunications (DoT) indique que les marchés publics de cybersécurité devraient donner la préférence aux produits fabriqués localement.
- Samsung se retire du programme de fabrication des équipements télécoms (Production Linked Incentive scheme).
- Google et la plateforme Jio annoncent Jio Next, leur premier smartphone Android économique.

Revue de presse

1. NUMÉRIQUE

India responds to the United Nations on new IT rules

ET Bureau, 20/06/2021

Bengaluru: India has told the United Nations that the new IT rules were finalised by the government after broad consultations with various stakeholders, civil society, industry associations and organisations, after three special rapporteurs from the UN early this month raised concerns with certain parts of the legislation, and said that "due diligence obligations" placed on intermediaries may lead to "infringement of a wide range of human rights".

"The Permanent Mission of India would also like to highlight that India's democratic credentials are well recognized. The right to freedom of speech and expression is guaranteed under the Indian Constitution. The independent judiciary and a robust media are part of India's democratic structure," the permanent mission of India to the UN and other International Organisations in Geneva told in a statement.

The Permanent Mission of India would also like to inform that the Ministry of Electronics and Information Technology and Ministry of Information and Broadcasting undertook broad consultations in 2018 with various stakeholders, including individuals, civil society, industry association and organizations and invited public comments to prepare the draft Rules. Thereafter an interministerial meeting had discussed in detail the comments received in detail and, accordingly, the Rules were finalized.

The Permanent Mission of India requests that the enclosed information may be brought to the attention of the concerned Special Rapporteurs.

The Permanent Mission of India to the Office of the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the Human Rights Council the assurances of its highest consideration," it said.

Irene Khan, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Clement Nyaletsossi Voule, Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Joseph Cannataci, Special Rapporteur on the right to privacy, in a joint letter on June 11 had raised concerns over India's new IT rules.

The letter says that India's new IT Rules are in violation of rules laid down in the International Covenant on Civil and Political Rights (ICCPR), a key international human rights treaty.

"As a global leader in technology innovation, India has the potential to develop legislation that can place it at the forefront of efforts to protect digital rights. However, the substantially broadened scope of the rules is likely to do just the opposite," the joint letter by the UN Special Rapporteurs said.

India proposes tougher eCommerce rules to address 'widespread cheating' complaints

TechCrunch, 21/06/2021

India proposed on Monday banning flash sales on e-commerce platforms and preventing their affiliate entities from being listed as sellers as the South Asian market looks to further tighten rules that could hurt the future prospects of Amazon and Walmart's Flipkart in the world's second-largest market.

The proposal (PDF), unveiled by India's Ministry of Consumer Affairs on Monday evening, comes at a time when brick-and-mortar retailers in India have ramped up their complaints to raise concerns about what they allege as unfair practices employed by Amazon and Flipkart as they expand their operations in the country.

In its proposal, India's Ministry of Consumer Affairs said that e-commerce firms should not be allowed to hold flash sales in India. These flash sales, akin to Black Friday and Cyber Monday sales in the U.S., are very popular during festive season in the country. During flash sales e-commerce firms have traditionally observed the biggest spikes in customer orders as brands offer heavy discounts on their products.

"Certain e-commerce entities are engaging in limiting consumer choice by indulging in 'back to back' or 'flash' sales wherein one seller selling on platform does not carry any inventory or order fulfilment capability but merely places a 'flash or back to back' order with another seller controlled by platform. This prevents a level playing field and ultimately limits customer choice and increases prices," the ministry said in a statement.

As it has done with its recent IT rules, India is also proposing that e-commerce firms appoint a chief compliance officer, a nodal contact person for 24×7 coordination with law enforcement agencies, and officers to ensure compliance to their orders as well as a resident grievance officer for redressing of the grievances of the consumers on the e-commerce platform.

"This would ensure effective compliance with the provisions of the Act and Rules and also strengthen the grievance redressal mechanism on e-commerce entities," the ministry said, adding that the new proposal also asks every e-commerce entity to provide government agencies with information within 72 hours "for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents."

The new proposal may also prohibit Amazon, Flipkart and other e-commerce players from running their in-house / private labels. The new proposal asks e-commerce firms to ensure that none of their related and associated parties are listed on their platforms as sellers for selling to customers directly. "Ensure that nothing is done by related parties or associated enterprises which the e-commerce entity cannot do itself," the proposal said.

India does not allow e-commerce firms to hold inventory or sell items directly to consumers. To bypass this, firms have operated through a maze of joint ventures with local companies that operate as inventory-holding firms.

Amazon, which has invested over $6.5 billion in its India business, said it was reviewing the proposed policies while Flipkart, whose majority stake Walmart bought for $16 billion in 2018, had no immediate comment.

In a court hearing on Monday, a Flipkart lawyer said the company sees nothing wrong in offering to cut charges for sellers on its platform if they lower product prices.

The ministry said it is making the proposal, for which it plans to seek industry feedback over the next 15 days, after receiving "several complaints against widespread cheating and unfair trade practices being observed in e-commerce ecosystem."

Additionally, the new proposal asks e-commerce firms to introduce a mechanism to identify goods on their platforms based on their country of origin and suggest alternatives to "ensure fair opportunity to domestic goods."

The announcement comes at a time when Flipkart is in talks to raise as much as $3 billion and explore the public markets. Both Amazon and Flipkart are also the subject of an ongoing antitrust probe in India.

This is the second major amendment the Indian government has proposed in recent years. In 2018, too, New Delhi had proposed tougher rules for e-commerce firms that, when enforced in early 2019, left Amazon and Flipkart scrambling to delist hundreds of thousands of items from their stores and made their investments in affiliated firms way more indirect.

Today's proposal comes months after Reuters, citing company documents, reported that Amazon had given preferential treatment to a small group of sellers in India, publicly misrepresented its ties with those sellers and used them to circumvent foreign investment rules in the country.

At the time, the Confederation of All India Traders, an influential India trader group that represents tens of millions of brick-and-mortar retailers, had called on New Delhi to ban Amazon in the country. Around the same time, India's commerce ministry had said it was reviewing the matter.

Centre pumps Digital India with additional Rs 19,041 crore for BharatNet project

ET Government, 28/06/2021

In a major push to the Centre's Digital India programme, the Union finance minister while announcing slew of economic reforms on Monday announced an additional Rs 19,041 crore outlay for better digital connectivity in villages across the country via the BharatNet project.

The Centre's Digital India initiative through BharatNet PPP Model looks to connect each village in the country with broadband connectivity. The project is part of Prime Minister Narendra Modi's announcement on August 15, 2020 to provide broadband connectivity to all inhabited villages in 1000 days.

According to the government data, so far out of 2,50,000 gram panchayats, 1,56,223 gram panchayats have been made service ready with digital connectivity under the project. The BharatNet project is implemented in PPP model in 16 States (bundled into 9 packages) on viability gap funding basis.

With an additional Rs 19,041 crore pledged by the Centre under BharatNet digitisation plan now the total outlay on the project stands at Rs 61,109 crores. This includes the already approved amount of Rs 42,068 crores in 2017.

Meanwhile, among other key economic reforms announced by the Union finance minister also include electronics manufacturing PLI scheme. The Centre has now announced to extend the tenure of the PLI scheme for large scale electronics manufacturing.

As per the announcement by the Union minister now the tenure of the scheme launched in 2020-21 is extended by one year i.e. till 2025-26. With this now companies will get options for choosing any five years for meeting production targets. Also investments made in 2020-21 will be counted as eligible investments.

Among the other key announcements to rescue the worst Covid-19 hit sectors also include:

Loan guarantee scheme for Covid-affected sectors

- Rs 1.1 lakh crore of loan guarantee scheme for Covid-affected sectors announced

- Health sector will gRs 50,000 crore aimed at up scaling medical infra, specially targeting underserved areas
- The guarantee cover is for expansion of new projects under health, in other than 8 metro cities
- Guarantee coverage is of 50% for expansion and 75% for new projects
- Guarantee duration will be up to 3 years
- Interest rate capped has been capped at 7.95%; normal interest rate without guarantee cover is 10-11%
- Other sectors Rs 60,000 crore with interest rate capped at 8.25% p.a.; decisions at later stage based on evolving needs

Devas seeks to seize Air India US assets to enforce Antrix arbitration award

ET Bureau, 30/06/2021

Bengaluru: Devas Multimedia Pvt. Ltd. has filed a petition in a New York court seeking to seize the assets of Air India in the United States as reparation for India's failure to honour an $1.2-billion arbitration award won by the satellite firm in 2015.

This makes it the second company—after Cairn Energy Plc—to target the overseas assets of the beleaguered airline in its bid to enforce an arbitration award on the government.

In its petition to the court, Devas stated that the airline is the "alter ego of the Republic of India" and "therefore jointly and severally liable for the debts and obligations of India itself."

"India's control over Air India is wide-ranging, extending from Air India's legal existence through its day-to-day operations and its financial affairs," the petition read. "India entrenches these powers by making Air India dependent for its financial survival on grants, loans, and guarantees from India."

ET has reviewed a copy of the petition.

The litigation stems from the cancellation of a satellite deal between Antrix Corp.—the commercial arm of the Indian Space Research Agency (ISRO), and Devas Multimedia in 2011 that culminated in the arbitration award.

In Its latest petition to the New York court, Devas stated that Air India, which has its US headquarters in New York, holds property "in this District and State" against which, the plaintiffs expect to enforce their anticipated judgment including, but not limited to, airplanes, cargo handling equipment, airport gate rights, furnishings, artwork, and other property including contractual rights.

Earlier in May, Cairn filed a similar petition in a New York court to seize Air India's assets such as airplanes to recover from the Government of India $1.72 billion, which an international arbitration tribunal had awarded after overturning levy of retrospective taxes.

According to Anirudh Krishnan a partner at AK Law Chambers, who specialises in dispute resolution and arbitration, "private companies go after assets such as aircraft because most other State assets, such as embassy properties, are immune from attachment due to the concept of State immunity."

Botched Antrix-Devas deal

In 2005, Antrix had signed a deal with Devas to build two communication satellites, which were to use the S-band spectrum and offer hybrid satellite and terrestrial communication services throughout India.

However, the deal was soon mired in a political storm after allegations that the S-band spectrum was offered at a throwaway price, resulting in the government cancelling the agreement in 2011 citing national security issues. In response to the cancellation, Devas sought arbitration and eventually won the award, with Antrix losing its case.

In October 2020, the US federal court for the western district of Washington upheld the

International Chamber of Commerce's arbitration award of over $1.2 billion ($562 million plus interest) in 2015.

Later, on 4 November 2020, the Supreme Court of India kept the order in abeyance, at the government's request, which had alleged that it had found a "serious fraud in the entire series of transactions" leading up to the disputes including the arbitration agreement.

In its bid for a solution, Antrix moved the National Company Law Tribunal (NCLT) earlier this year asking to wind up Devas Multimedia, saying it was formed for "fraudulent and unlawful purposes".

On June 16, the Supreme Court dismissed Devas Multimedia's plea to stay the liquidator's hand against it pending proceedings in another case in the Delhi High Court, and instead asked the company to pursue the appeal pending before the National Company Law Appellate Tribunal against liquidation.

"India has subsequently engaged in extraordinary measures to undermine and evade payment of both the BIT Award and the ICC Award, far beyond ordinary applications to set aside each award at the seat of arbitration (in the Netherlands and in India, respectively). Within India, the government has mobilised the investigative, regulatory, taxation and judicial powers of the state in a coordinated scheme to obliterate Devas and undo the ICC Award," the petition by Devas in the NY court stated.

Separately, Deutsche Telekom, a main investor in Devas Multimedia, petitioned another US court in April, asking it to enforce the $1.2 billion compensation award against Antrix Corp.

Legal experts are of the view that if the arbitration award is reasonable, India should comply or negotiate to reach a settlement as it will send out the right message to foreign investors investing in India.

"(The) Government may consider to resolve this issue by resorting to amicable resolution of the dispute and close the issue through mutual dialogue," Professor Balakista Reddy, Registrar of Nalsar University of Law. "Such a resolution would establish that India is always committed to facilitate compliance of International Conventions/BITs whether it is a signatory or not."

"If the award is patently wrong, India is well within its right in challenging it," AK Law Chambers' Krishnan said.

2. Télécommunications

DoT directs all state procurements to be of local cyber security products

ET Bureau, 17/06/2021

The Department of Telecommunications (DoT) has directed all state-owned companies, central ministries and government departments to give preference to locally produced cyber security products in all public procurements.

"Preference has to be given to `Make In India' cyber security products in public procurement by central ministries/departments, public sector undertakings (PSUs) and government organisations," DoT said in a circular, dated March 16.

This, after the Ministry of Electronics & Information Technology (MeitY) earlier this month had said it's awash with complaints from droves of indigenous cyber product companies about the challenges the latter are facing in participating in public procurement of such products. The MeitY, in a circular dated March 4, had said it had received several complaints that the procuring agencies are citing "restrictive and discriminatory conditions such as turnover, Gartner quadrant, and other certifications in their tenders," which is making it tough for local cyber security product makers to participate in the relevant bidding process.

The telecom ministry and MeitY's joint call to all government undertakings to buy locally manufactured cyber-security products comes at a time when cyber security attacks and breaches in the country are reckoned to have jumped by over 500% since the Covid19 lockdowns started a year back.

During the countrywide lockdowns, internet service providers had said they received cyber-attack alerts from corporate clients almost every alternate day compared with an average of once a week, pre-lockdowns.

Back in December 2019, MeitY, in a notification, had described a cyber security product as an “appliance” or “software” produced for protecting information, equipment, computer resources or communication devices from unauthorised access, use, disclosures, disruption and destruction.

It had added that a domestically manufactured cyber security product was one “whose intellectual property is owned by an Indian company/startup”. It has also mandated that the minimum local content of a cyber security product must be equivalent to 60% of its total cost.

MeitY had also notified that the Indian company/startup would require to demonstrate intellectual property (IP) ownership associated with the cyber security products along with the applicable trademarks.

The electronics ministry had said that preference would have to be given to a company incorporated and registered in India or startups that meet the definition prescribed by the Department of Industrial Policy & Promotion (DIPP), provided the revenue from the product and intellectual property (IP) licensing accrues to the firm in India.

It, though, had said that resellers, dealers, distributors, implementation/support services agencies of products with limited rights to IP -- to enable the transfer of rights to use, distribute and modify – would not be eligible for getting preference under the public procurement scheme for cyber security products.

Samsung opts out of India's PLI for telecom gear – report

LightReading, 21/06/2021

In a setback to India's Production Linked Incentive (PLI) scheme, it's been reported Samsung has decided not to participate.

Samsung was a major beneficiary of the PLI for mobile device manufacturing. It has manufactured mobiles in India since 2007, and it runs the world's largest mobile phone plant, in Noida in northern India.

It is also the only company to exceed investment and output goals for PLI in the first year ending March 2021. However, the company is not keen to make additional investment for the PLI for telecom networking equipment because it has only one customer, Reliance Jio, in the country.

Setting up a manufacturing unit in India means an investment of around INR10 billion (US$134 million), and Samsung is not ready to do this with just one customer, when the company has manufacturing units in Vietnam and South Korea.

What further explains Samsung's decision is that it doesn't have to pay any import duty to get the gear from the other manufacturing units.

High hopes

The government recently started inviting applications for the scheme. It is designed to position India as a manufacturing hub for telecom equipment.

It's hoped that the PLI for telecom gear will result in production of around INR2000 billion ($26.98 billion) over the next five years.

Further, the government is aiming to provide incentives of INR121.95 billion ($1.6 million) in the next five years with a target investment of around INR30 billion ($404 million) through this scheme.

Finnish telecom vendor Nokia and India's HFCL have already confirmed their participation. Media reports suggest that Ericsson is also likely to further invest in India as part of the PLI initiative. Dixon, which has recently tied up with Bharti Airtel, has made its intention clear to apply. These firms are already running manufacturing units in India.

Google and India's Jio Platforms announce budget Android smartphone JioPhone Next

TechCrunch, 24/06/2021

Jio Platforms, run by India's richest man (Mukesh Ambani), and Google on Thursday unveiled the JioPhone Next, an affordable Android smartphone, as the top Indian telecom operator and the American giant make further push to expand their reach in the world's second-largest internet market.

The Indian firm, which secured $4.5 billion investment from Google (and another $15.5 billion from Facebook and others) last year and shared plans to work on low-cost smartphones, said the JioPhone Next is aimed at helping roughly 300 million users in India who are still on a 2G network upgrade their gadget to access faster networks.

The phone, which is "powered by extremely optimized Android" mobile operating system, will first launch in India on September 10 ahead of the festive season in the country, and will eventually be made available outside of India, said Mukesh Ambani, chairman of Reliance Industries, at its annual general meeting Thursday.

The JioPhone Next will be an "ultra-affordable 4G smartphone," claimed Ambani, though he didn't reveal the price or the hardware specifications of the handset.

In a virtual appearance at Reliance AGM, Google CEO Sundar Pichai said the company has also entered into a 5G cloud partnership with Jio Platforms. "It will help more than a billion Indians connect to a faster and better internet, support businesses in their digital transformation, and help Jio build new services in sectors like health, education and more — laying a foundation for the next phase of India's digitization," said the chief executive of Google, which last year committed to invest $10 billion in India.

As part of the 5G cloud partnership, Google is also winning a major Google Cloud customer in Reliance, said Pichai.

"They will be able take advantage of Google's AI and machine learning, e-commerce and demand forecasting offerings. Harnessing the reliability and performance of Google Cloud will enable these businesses to scale up as needed to respond to customer demand," he added.

The JioPhone Next will ship with a range of features, including Read Aloud and Translate Now that will work with any text on the phone screen, including web pages, apps, messages and even photos.
It also features a "fast, high-quality camera" which will support HDR, and the JioPhone Next will be protected by the latest Android releases and security updates, Google said, though it didn't share the precise duration for this coverage. (Smartphone vendors typically offer security and new Android software support for about two years after the launch.)

"We have worked closely with the Jio team on engineering and product development on useful voice-first features that enable these users to consume content and navigate the phone in their own language, deliver a great camera experience, and get the latest Android feature and security updates," Google said in a statement.

Even as most smartphones that ship in India are priced at $150 or less, customers looking for a smartphone priced under $100 are left with little choice. And that choice has shrunk in recent years.

Research firm Counterpoint told TechCrunch that the sub-$100 smartphones accounted for just 12% of the Indian smartphone market, down from 18% in 2019 and 24% in 2018. Sub-$50 smartphones represented just 0.3% of the entire market in 2020, down from 4.3% in 2018.

Smartphone makers are aware of this whitespace in the market, but have found it incredibly challenging to meet the demand. Some, including Jio Platforms, earlier explored a range of feature phones to reach people in small cities and towns of India. Jio Platforms' KaiOS-powered feature phone, called JioPhone, had amassed 100 million customers as of late February this year.

In a recent report to clients, analysts at UBS said that after factoring in the recent price surge of memory component, any smartphone priced at or under $50 is likely selling at cost.

"While this move by Jio will accelerate 2G to 4G migration, we evaluated how interesting this space would be for other smartphone manufacturers, especially key players like Xiaomi. Xiaomi, the unit market leader in smartphones in India, is unlikely to follow up with a $50 smartphone, in our view," they wrote in the report, obtained by TechCrunch.

Google, too, has previously made several efforts — $100 Android One smartphones program in 2014 and low-resource intensive Android Go operating system in 2017 — to expand the reach of Android. The company has also backed KaiOS, which powers popular feature phones.

The JioPhone Next is a "momentous step in our Android mission for India, and is the first of many that our Android product and engineering teams will embark on in India," Google said in a statement. "We are also actively expanding our engineering teams in India, as we continue to work on finding ways to answer the unique needs of India's smartphone users."

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Rédacteurs : Feli VISCO

Pour s'abonner : Contacter le SER de New Delhi
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