MINISTÈRE
DE L'ÉCONOMIE,
DES FINANCES
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Liberté
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Direction générale du Trésor

REVUE DE PRESSE SECTORIELLE NUMERIQUE

UNE PUBLICATION DU SERVICE ÉCONOMIQUE REGIONAL DE NEW DELHI

N° 22 1 -31 mai 2022

En bref

NUMÉRIQUE :

- Le chinois Xiaomi, qui a 24 % du marché indien des smartphones, est accusé par le gouvernement indien d'évasion fiscale et voit 725 MUSD saisis sur ses comptes.
- Le projet de réglementation sur les déchets électroniques propose que 80 % des appareils électroniques soient recyclés en 2025 et l'introduction d'un système de certificats de responsabilité étendue des producteurs.
- Vie privée : le Ministère indien de l'IT oblige les fournisseurs de VPN à conserver les données de leurs clients pendant cinq ans à partir de juin 2022.
- Suite à la publication par plusieurs États de réglementations sur les jeux vidéos en ligne, le gouvernement central crée un groupe interministériel dédié.
- Le MeitY publie la deuxième version de son projet de cadre national de gouvernance des données non personnelles.

TÉLÉCOMMUNICATIONS:

- Le ministère des Télécommunications (DoT) lance un portail visant à centraliser les demandes d'autorisation de droit de passage.
- Bien que l'Inde n'ai pas interdit formellement Huawei et ZTE, les deux entreprises n'ont pas encore obtenu leurs agréements de fournisseurs de confiance, contrairement à leurs concurrents européens et américains.
- Le gouvernement indien lance une enquête sur les sociétés chinoises de télécommunications ZTE et de smartphones Vivo pour fraude financière.

Revue de presse

1. NUMÉRIQUE

Xiaomi Accuses Enforcement Directorate Of Coercing Its Top Executives: Report

Medianama, 09/05/2022

Chinese smartphone maker Xiaomi alleged that its top executives faced threats of "physical violence" and coercion during questioning by the Enforcement Directorate (ED), Reuters reported on May 7.

Late last month, ED seized Rs 5,551.27 crores from the bank accounts of Xiaomi for illegally remitted funds to three foreign-based entities, but on May 6, the Karnataka High Court put on hold the enforcement agency's decision and scheduled the next hearing on May 12. The company is the leading smartphone manufacturer in India with a one-fourth market share.

According to court filings seen by Reuters, officials from the ED warned the company's former India managing director, Manu Kumar Jain, and current Chief Financial Officer Sameer B.S. Rao, and their families of "dire consequences" if they did not submit statements as desired by the agency. The executives "were able to resist the pressure for some time, (but) they ultimately relented under such extreme and hostile abuse and pressure and involuntarily made some statements," it added.

ED refuted these charges as "untrue and baseless," saying that the company executives had deposed "voluntarily in the most conducive environment."

Earlier story (May 2):

The Enforcement Directorate (ED) has seized Rs 5,551.27 crores from the bank accounts of Xiaomi India under the Foreign Exchange Management Act, 1999 (FEMA) as part of an ongoing investigation into the company's financial activities, the agency said in a press release on April 29.

Xiaomi India distributes Android OS phones under the popular brand name 'Mi'. It is a wholly-owned subsidiary of the Chinese Xiaomi Group. This action comes just a few weeks after the ED summoned Xiaomi Group's former India head and current global vice-president Manu Jain for questioning on April 13. The agency has been probing Xiaomi over alleged forex violations since February 2022.

What are the allegations?

According to the press release, since commencing its India operations in 2014, "the company [Xiaomi] has remitted foreign currency equivalent to Rs 5,551.27 crore to three foreign-based entities which include one Xiaomi group entity, in the guise of royalty." The agency has further alleged that these royalty payments were made under the instructions of the parent Xiaomi Group.

"The amount remitted to the other two US-based unrelated entities were also for the ultimate benefit of the Xiaomi group entities," the ED alleged.

Citing the fact that Xiaomi India procures all its phones and other products readymade from Indian manufacturers, the investigation noted that none of these three royalty recipient groups had done any business with Xiaomi India. It has allegedly violated Section 4 of FEMA by shuffling thousands of crores in foreign exchange within its own parental entities. "The Company also provided misleading information to the banks while remitting the money abroad," the ED said.

What is Section 4 of FEMA?

FEMA 1999, allows foreign exchange trading in India but with many caps, checks, and balances. One can trade in foreign exchange only via the three official channels: the Bombay Stock Exchange, National Stock Exchange, and Metropolitan Stock Exchange. Specifically, Section 4 of FEMA deals with the holding of foreign exchange:

"Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India."

Royalty fees paid to foreign entities cannot exceed 5 percent on local sales and 8 percent on exports while a lump sum payment cannot cross USD 2 million, according to a circular issued by the RBI. In Xiaomi's case, the ED alleged that the company has violated FEMA by using loopholes in the RBI's guidelines to accumulate foreign exchange reserves in its subsidiaries' offshore banks.

Xiaomi pleads innocence, is there a pattern?

Xiaomi India has continued to maintain its innocence in the matter. "We have studied the order from government authorities carefully. We believe our royalty payments and statements to the bank are all legit and truthful," the company said in a statement released following the raids. "These royalty payments that Xiaomi India made were for the in-licensed technologies and IPs used in our Indian version products. It is a legitimate commercial arrangement for Xiaomi India to make such royalty payments. However, we are committed to working closely with government authorities to clarify any misunderstandings," it added.

However, Xiaomi is not the only Chinese company facing the heat. Over the past six months, other smartphone manufacturers like Huawei, Oppo, and Taiwan-based Foxconn have all faced the brunt of the Indian government's investigations. In March 2022, Huawei faced a similar accusation as Xiaomi where the Income Tax Department alleged that the former had made inflated payments worth over Rs 500 crores against receipt of technical services from related parties outside India.

Xiaomi was also raided earlier in January by another arm of the Indian tax administration, the Directorate of Revenue Intelligence, on the basis that the "royalty and license fee" paid by Xiaomi India were not being added to the transaction value of the goods imported by the company and its contract manufacturers. The DRI issued three show-cause notices to Xiaomi, demanding the recovery of taxes worth Rs 653 crore. The ED's investigation of the company began shortly thereafter.

Why are Chinese tech companies under scrutiny in India?

Ever since Indo-China border tensions reignited in 2020, the Indian government has cracked down on Chinese tech companies and banned several apps including ByteDance-owned TikTok and the Tencent-published version of PUBG within a few days of the border skirmishes.

However, the Indian government has made it clear that this newest round of tax raids is not targeting Chinese entities in particular. The raids have also elicited a response from Beijing. A Communist Party member has stated, "The Indian authorities concerned have taken a series of measures to suppress Chinese companies and their products in India, which seriously damages the legitimate rights and interests of Chinese companies."

Although, bilateral trade figures speak to the contrary. In 2021, the bilateral trade volume between the two countries reached $125.7 billion, a 43 percent year-on-year increase.

E-waste rules specify recycling targets, 'trading' in certificates

The Hindu, 24/05/2022

Consumer goods companies and makers of electronics goods have to ensure atleast 60% of their electronic waste is collected and recycled by 2023 with targets to increase them to 70% and 80% in 2024 and 2025 respectively, according to a draft notification by the Environment Ministry made public this week.

The rules also bring into effect a system of trading in certificates, akin to carbon credits, that will allow companies to temporarily shore up shortfalls.

A wide range of electronic goods, including laptops, landline and mobile phones, cameras, recorders, music systems, microwaves, refrigerators and medical equipment have been specified in the notification.

India, which is unique among South Asian countries, in that it has a formal set of rules for electronic waste management, first announced these rules in 2016 and amended it in 2018. The latest rules, which have been put up for public feedback, are expected to come into effect by August.

Along with specifying targets, the rules also lay out a system of companies securing Extended Producer Responsibility (EPR) certificates. These certificates certify the quantity of e-waste collected and recycled in a particular year by a company and an organisation may sell surplus quantities to another company to help it meet its obligations. "The earlier rules stressed on collection targets. Now we are emphasising on the EPR, recycling and trading. This follows from the government's objective to promote a circular economy," Naresh Gangwar, Additional Secretary, Environment Ministry, told The Hindu.

Companies will have to register on an online portal and specify their annual production and e-waste collection targets. The chief entity that will coordinate the trade of EPR certificates and monitor if companies are meeting their targets is the Central Pollution Control Board (CPCB).

Specifically, a Steering Committee (SC) to be headed by the Chairman of the CPCB will oversee the overall implementation of these regulations. Companies that don't meet their annual targets will have to pay a fine or an 'environmental compensation' but the draft doesn't specify the quantum of these fines. In fact, companies that fall short can meet a year's target, even after three years. Those that meet their targets with a year's delay will be refunded 85% of their fine, after two years, 60% and 30% after the second and third year respectively.

In March 2020, the government said it more than doubled the electronic waste (e-waste) it recycled in 2018-19 over 2017-18. This translated to a 10% recycling rate in 2017-18 rising to a little over 20% in 2018-19.

E-waste exchange facilities

The EPR also requires producers to set up e-waste exchange facilities to facilitate collection and recycling, and assign specific responsibility to bulk consumers of electronic products for safe disposal. The State governments have been entrusted with the responsibility of earmarking industrial space for e-waste dismantling and recycling facilities, undertaking industrial skill development and establishing measures for protecting the health and safety of workers engaged in the dismantling and recycling facilities for e-waste.

The e-waste produced in India as per the data provided by the government is lower than estimates by international agencies. According to the Global E-Waste Monitor 2017, India generates about 2 million tonnes (MT) of e-waste annually and ranks fifth among e-waste producing countries, after the U.S., China, Japan and Germany.

Most of India's e-waste is recycled by the informal sector and under hazardous conditions and a thrust of the e-waste rules is to have more this waste be handled by the formal sector..

With VPN Order, the Government Shows It'll Leave Virtually Nothing Private

The Print, 27/05/2022

"In directions issued on April 28 by the Ministry of Electronics and Information Technology and the Indian Computer Emergency Response Team (CERT-In), amidst a lush forest of legalistic whereases, nestled an order to Virtual Private Network (VPN) providers to perform a KYC ('know your customer') on their users and maintain usage logs for five years. The rules become enforceable next month.

The order confirms that the Modi government wants an information-asymmetric surveillance society. It wants its affairs to be perfectly opaque (think electoral bonds, the stonewalling on Pegasus) and the doings of the public to be perfectly transparent.

For VPN providers, the order is a poison pill. They sell privacy through end-to-end encryption and masking location. Requiring them to file KYCs and maintain usage logs defeats the purpose.

In fact, the order is a clever way of putting VPNs out of business in India without actually banning them, like China and Russia did. A ban would needless excite the Western press and institutions like Human Rights Watch and the UN, which are already concerned about restrictions on free speech in India, whether by internet throttling and shutdowns as in Kashmir, or by straightforward arrest, as in the case of Jignesh Mevani.

Market leader NordVPN has threatened to pull its servers out of India rather than comply. For them, it's probably not a big deal. They have only one accessible server located in Mumbai, while there are 16 in the US and four in the UK. The one-server deal is common in markets much less important than India, like Thailand and Argentina. Other providers like SurfShark say that it is technically impossible for them to store user data because it is routinely overwritten in server RAM. Others like ExpressVPN are speaking out about a "worrying attempt to infringe on the digital rights of citizens".

Who uses VPNs? A wide spectrum, from rights workers on hostile ground to criminals, for the same reason – to fly under the radar. Free speech proponents want to protect the former, while CERT-In wants to go after the latter. Corporates are power users, but seem to be tacitly excluded from the government's order.

In between are regular citizens, tired of being tracked by platforms, or just trying to access the Netflix US catalogue from India. Internet technologies are dual use, because technology is morally agnostic. Before VPNs were a thing, there was The Onion Router (Tor), which bounced traffic across at least three servers to shake off trackers. Tor was created for activists in authoritarian countries, but criminals soon made it the gateway to the Darknet, where stores sold contraband from homemade drugs to assassination services (it was sobering to discover, on an assassin's rate card, that the life of a top newspaper editor is cheaper than a minor politician's).

In 2016, the FBI led Operation Hyperion against the Darknet's illegal storefronts and their customers. The onion network was compromised and Tor lost trust. The state and businesses moved in. Checking the ownership of its exit nodes, where traffic is decrypted, one found security agencies, spammers and scammers, who were obviously snooping on plaintext as it left Tor.

VPNs are like Tor, but on the question of security, the resemblance to BlackBerry is even stronger. Once Canada's most valuable product, it closed down very quietly this January, shouldered aside by iPhones and Droids. But the fall of the cult device with the fiddly little keys and cast-iron security began in 2008, when the Manmohan Singh government demanded access to its network. There was an immediate reason: the terrorists in the Mumbai attacks had used

BlackBerrys and the Indian security forces couldn't break the encryption.

In 2013, BlackBerry buckled to keep the India market and gave real-time access to users' mail, BBM messages and browsing data. The internet, as its name suggests, is inter-networked, and nothing happens in isolation. Users understood that if the security of one was compromised, so was the security of many. The withdrawal of trust was palpable, and if VPNs buckle to the government's demands, they will repeat history – without even the excuse of a 26/11, because no special threat is now visible.

Government forms interministerial panel to regulateonline gaming

PTI, 27/05/2022

The government has set up an inter-ministerial panel to work on regulations for the online gaming industry and identify a nodal ministry to look after the sector, an official source said on Thursday.

The seven-member panel includes government think-tank Niti Aayog's CEO as well as secretaries of home affairs, revenue, industries and internal trade, electronics and IT, information and broadcasting and sports.

The panel will look into various aspects to promote online gaming and frame regulatory mechanisms for the segment, protection of gamers, ease of doing business, among others, the source said.

The Federation of Indian Fantasy Sports (FIFS) appreciated the government's decision to set up the inter-ministerial task force (IMTF) for online gaming.

"This step indicates the impetus that the government is willing to provide for the growth of India's online gaming industry. The task force is a big step in creating regulatory certainty for the nascent and fast-growing online gaming industry," FIFS said.

Online gaming and fantasy sports industry leaders -- FIFS chairman Bimal Julka, Fantasy Akhada co-founder Pratik Gosar, Khelo Fantasy founder Santosh Smith, among others -- met Minister of State for Skill Development, Electronics and IT Rajeev Chandrasekhar for discussions.

FIFS said the task force has been entrusted with examining issues faced by the online gaming industry, understanding global best practices in legal and legislative frameworks, and bringing in a comprehensive and uniform regulatory regime for a responsible, transparent and safe online gaming environment.

It said the formation of the task force is in line with Prime Minister Narendra Modi's vision of making India's digital gaming sector a global powerhouse.

"A unified regulation will go a long way in removing the complexities and compliance burden on the online gaming platform operators. We feel the regulatory actions in the right direction will positively impact India's sunrise industry," FIFS said.

MeitY issues draft National Data Governance Framework

ET CIO, 30/05/2022

The Ministry of Electronics and IT (MeitY) has issued a draft National Data Governance Framework to mobilise non-personal data of citizens for use by both public and private entities to improve services. The draft policy proposes the launch of a non-personal data based India datasets program and addresses the methods and rules to ensure that non-personal and anonymized data from both government and private entities are safely accessible by the research and innovation ecosystem.

Minister of State for Electronics and IT Rajeev Chandrasekhar said the National Data Governance Framework is of interest for artificial intelligence (AI) startups, AI research entities and government departments.

"Its imp piece of policy framework thats being devlopd to catalyze #India's $1 Trillion #DigitalEconomy," he tweeted.

Asking stakeholders to comment on the draft framework, the minister said the National Data Governance Framework will also accelerate digital government and digitisation of government with common standards, rules and guidelines for data storage and management across all departments.

The draft said during the COVID-19 pandemic, digital governance played a big part in India's resilient response to the pandemic and its impact on lives, livelihoods and the economy.

In the post-COVID era, digitisation of government is accelerating faster and data generation is also increasing exponentially which can be used in turn to improve citizens' experience and engagement with the government and governance as a 'Digital Nagrik'.

The digital government data is currently managed, stored and accessed in differing and inconsistent ways across different government entities, thus attenuating the efficacy of data-driven governance, and preventing an innovative ecosystem of data science, analytics and AI from emerging to its full potential, the draft said.

"The power of this data must be harnessed for more effective Digital Government, public good and innovation, thus requiring a National Data Governance Framework Policy (NDGFP)," draft said.

The proposed policy will be applicable to all government departments and entities and rules and standards prescribed will cover all data collected and being managed by any government entity.

It proposed to cover all non-personal datasets and data and platform, rules, standards governing its access and use by researchers and startups.

"State Governments shall be encouraged to adopt the provisions of the Policy and rules, standards, and protocols as applicable," the draft said.

The draft also proposes setting up of an 'India Data Management Office (IDMO)', under the Digital India Corporation, which shall be responsible for framing, managing and periodically reviewing and revising the policy.

"The IDMO shall be responsible for developing rules, standards, and guidelines under this policy that shall be published periodically," the draft said.

MeitY has fixed June 11 as the deadline for submission of comments by stakeholders on the draft available on its website.

2. Télécommunications

India's DoT launches centralized right of way portal

Lightreading, 11/05/2022

The Department of Telecommunications (DoT) has launched a centralized right of way (RoW) portal, Sugam Sanchar (translated as accessible connectivity), which will provide single-window clearance for stakeholders to apply and track applications.

Operators and infrastructure providers have been asking for this for a long time. India suffers from complicated and inconsistent RoW policies for deploying telecom infrastructure like towers and optical fiber cables, among other things.

Telecom services providers (TSPs), infrastructure providers and Internet services providers (ISPs) all have to get approvals from several authorities and the rules vary from state to state, leading to delays.

The national portal aims to streamline this. It will allow providers to submit applications to regional governments and local bodies and track their status.

'Ease of doing business'

According to the RoW dashboard, 33 states/union territories have been on-boarded, with 53,184 applications received so far – of which 27,739 have been approved, 14,781 rejected, 8,090 pending and 2,572 sent back.

The Sugam Sanchar website claims it will bring "transparency, accountability and responsiveness to all stakeholders while processing the application" to ensure "Ease of Doing Business."

It should address a key challenge in extending the benefits of connectivity to remote and yet-to-be-connected areas, part of the government's vision for Digital India.

The portal will soon be integrated with RoW portals for central ministries and departments across government including the Ministry of Defence, Ministry of Environment Forests and Climate Change, Ministry of Road Transport and Highways and others. This should help streamline the process across different ministries and departments.

5G: End of the road for Huawei and ZTE in India?

ET Telecom, 30/05/2022

NEW DELHI: Chinese telecom gear makers Huawei and ZTE appear to be struggling to meet requirements under India's latest security directive on supply of network equipment.

This is the key reason why the two Chinese firms have not yet been given the 'trusted sources' tag, virtually ruling them out of the country's 5G auctions.

Both Huawei and ZTE have yet to complete paperwork to seek trusted sources approval, India's national cybersecurity coordinator Rajesh Pant told ET.

He, however, did not elaborate on the specific requirements that the two companies have been unable to fulfil so far.

Since November 2021, Huawei and ZTE's European, US and Indian rivals have already secured trusted sources approval and are receiving trusted products' approvals to supply network equipment on a case-to-case basis.

Companies need to get the trusted sources tag, and their equipment should be deemed trusted products under India's new security directive to be able to supply gear to telecom services providers.

Huawei, on its part, told ET that it had submitted all the required documents. ZTE declined to comment.

"We have submitted relevant documents for the 'trusted' sources application, and we continue to work with authorities to fulfil additional queries on the matter," a spokesperson for Huawei told ET. "Huawei has been an integral part of the local ICT industry and we continue to work closely with the government, key telcos and leading enterprises," the spokesperson added.

People familiar with the matter said Huawei executives have been meeting government authorities regularly on the matter.

The future of the two equipment vendors' operations in India have come under a cloud since the escalation of the India-China border dispute in 2020.

While India has banned several Chinese origin apps, it hasn't explicitly barred Huawei and ZTE from operating in India. It has, however, made clear they will have to fulfil new conditions under a security directive, the implementation of which Pant is overseeing.

With no timeline in sight to finish the equipment supply paperwork, the two Chinese equipment vendors may be effectively out of the race to provide 5G gear to telcos, said experts.

India's telcos themselves are also shying away from sourcing 5G gear from Chinese vendors due to the government's stance.

Sources at Bharti Airtel, India's second largest telco, said that the carrier was not engaging with Chinese vendors for any 5G-related contact." …there are just maintenance and replacement-related orders that are being issued to both vendors," the person said on condition of anonymity.

Airtel did not respond to ET's specific queries on the matter.

India's third largest telco, Vodafone Idea (Vi), has also put its engagement with Chinese suppliers on hold.

Vi's managing director Ravinder Takkar told ET last week that the telco would follow the government guidelines strictly. "The trajectory going forward with 5G and so on is a bit on hold with the Chinese suppliers because of the government policy and issues," he said.

Huawei and ZTE have deployed their equipment for both Bharti Airtel and Vi.

The telcos have been working with the Chinese companies and have awarded some purchase orders for upgrades under existing regulations.

Huawei and ZTE have also been on the radar of the Income Tax department on suspicion of tax evasion.

The I-T department had searched the offices of Huawei India in February, and those of ZTE in August last year.

Government sources had said they had discovered tax liability worth hundreds of crores, unaccounted cash and a failure by the company to file Tax Deducted at Source for several financial years.

ET reported on May 26 that the government had issued a lookout notice on behalf of the I-T department against Huawei Telecommunications (India) chief executive Li Xiongwei, which prevented him from flying out to Bangkok earlier this month for a business meeting.

Xiongwei has since challenged the lookout circular in the Delhi High Court, saying he wasn't given a reason for the notice despite repeated requests. The court has asked the I-T department to give reasons within a month as to why the circular should not be quashed.

India probes ZTE, Vivo as more China firms under scrutiny

Bloomberg, 30/05/2022

India is probing the local units of ZTE Corp. and Vivo Mobile Communications Co. for alleged financial improprieties, according to documents seen by Bloomberg, extending an investigation into other China-based firms after fining Xiaomi Corp.

The Ministry of Corporate Affairs will scrutinize auditor reports and has received information from unnamed sources that indicates potential violation including fraud, according to the documents. In the case of Vivo, an inquiry was sought in April to detect if there were "significant irregularities in ownership and financial reporting" while authorities were asked to study the books of ZTE and submit findings "on urgent basis," according to the documents.

Representatives for ZTE and Vivo didn't reply to emails seeking comment. An email to the spokesperson for the ministry of corporate affairs wasn't answered.

India has tightened scrutiny of China-based firms since 2020, when the two nations saw the deadliest fighting in decades at their disputed Himalayan border.

Prime Minister Narendra Modi's government has banned more than 200 mobile applications from Chinese providers, including shopping services from Alibaba Group Holding Ltd., the TikTok short video hit from ByteDance Ltd. and apps used on Xiaomi's phones. This month the country's anti-money-laundering agency took control of the bank accounts of Xiaomi Technology India for allegedly breaching foreign-exchange laws, a decision that was put on hold following a court order.

The Ministry of Corporate Affairs has started the process of inspecting books of accounts of more than 500 Chinese companies, according to a person with knowledge of the matter. Apart from ZTE and Vivo, this includes Xiaomi, Oppo,

Representatives for Xiaomi, Oppo, Huawei and Alibaba didn't reply to emails seeking comment.

The ministry, in some cases, has sent letters to the firms seeking details on directors, shareholders of the companies, ultimate beneficiaries and owners, while it is in the process of seeking similar details from the rest of the companies, the person said. A report is expected in July, the person added.

Once the inspection reports are ready, the ministry would decide on whether further investigation by the serious fraud office is needed, the person said.

La direction générale du Trésor est présente dans plus de 100 pays à travers ses Services économiques. Pour en savoir plus sur ses missions et ses implantations : www.tresor.economie.gouv.fr/tresor-international

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Liberté Égalité Fraternité

Responsable de la publication : Service économique de New Delhi
Rédacteurs : Feli VISCO, Thomas SALEZ
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Crédits photo : ©DG Trésor