

**2 December 2019**

**To:**

His Excellency  
Mr. Imran Khan  
The Prime Minister of Pakistan  
Constitution Avenue, G-5/2, Islamabad

His Excellency  
Mr. Abdul Razak Dawood  
Advisor for Commerce, Textile, Industry & Production and Investment  
Ministry of Commerce, Block-A, Pak. Secretariat, Islamabad, Pakistan

Ms. Shandana Gulzar Khan  
Federal Parliamentary Secretary for commerce

**Subject: Industry Comments Pakistan's Draft e-Commerce Policy Framework**

On behalf of the Asia Internet Coalition (AIC) and its members, I am writing to humbly request for the AIC to submit comments on the Draft e-Commerce Policy Framework which was approved by the Federal Cabinet on 1 October 2019. The AIC strongly supports the government's efforts to promote digital trade, increase youth employment, and create opportunities for women entrepreneurs and SMEs. To this end, we appreciate the opportunity to provide our feedback on the e-Commerce Policy Framework ("Framework") of Pakistan. We hope the recommendations provided in this letter will be given a timely consideration.

The 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.

In the past, AIC has submitted industry positions on [Digital Taxation Framework in Pakistan](#), to the Ministry of Finance. As a leading industry body in Asia, we are privileged to work closely with the government of Pakistan and the authorities to realize Pakistan's digital economy goals, which could translate into local growth opportunities and innovation. Our member companies would like to assure the government that they will continue to actively contribute to the security and advancement of digital platforms, products and services in support of the digital economy goals of Pakistan.

e-commerce in Pakistan is at a nascent stage with modest internet retail sales. However, it is an emerging sector with a noticeable surge in recent past in online vendors, local e-Commerce platforms and online payment facilities introduced by banks and facilitated / enabled by cellular companies through their nationwide networks. e-commerce businesses such as daraz.pk, pakwheels.com and others are already achieving significant business in Pakistan indicating a

positive trend for a growing e-Commerce sector of Pakistan. Pakistan is also a leader in mobile banking transactions in South Asia. To support Pakistan's ambitions and aspirations on e-commerce sector, we strongly recommend that the existing framework be amended, which will not only enable country entrepreneurs to overcome the usual trade channels and reach a global market but also position the country on a faster growth path by embracing technology.

**As such, please find appended to this letter detailed comments and recommendations (in [Section A](#) and [Section B](#), followed by section wise specific comments), which we would respectfully request the Government of Pakistan to consider, when reviewing the e-commerce framework.**

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](mailto: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 Pakistan.

Sincerely,



**Jeff Paine**  
Managing Director,  
Asia Internet Coalition  
[www.aicasia.org](http://www.aicasia.org)

## Introduction

There are key elements of the Policy Framework, which are yet to be defined and clarified. Depending on how they are further defined or implemented could adversely impact the ability of

businesses in Pakistan to avail themselves of cutting-edge digital services or tools that are available online. This could risk limiting growth opportunities, stifling innovation, and impeding efficiency and productivity. The Framework as currently written could also limit users in Pakistan from harnessing the full potential of the digital economy, leaving them with limited access and choice in online services.

## Section A

### *General Comments and Recommendations*

#### **1. Data Privacy**

The AIC recognizes the importance of balancing flexible, robust data privacy protections with the beneficial use of personal data. We note the transparency requirements within the Framework's code of conduct and recommend that the Government of Pakistan avoid implementing new data privacy rules until the Personal Data Protection Bill is finalized. The AIC also voices its concern about the code's requirement to disclose the facility where data is stored by companies. In addition to being irrelevant to Pakistani consumers and ill-suited to contemporary data processing practices, this requirement will undermine the security of Pakistanis' data. We therefore recommend the Government reconsider this requirement.

Most importantly, it is essential to note that these platforms provide valuable opportunities for Pakistani SMEs to grow and trade across borders. Such a provision related to data should not be part of an eCommerce policy, but should be handled separately under a comprehensive data protection bill instead. Therefore, AIC strongly recommends that these requirements also be reconsidered.

#### **2. Code of Conduct**

As currently written, the scope and applicability of the Framework and Code of Conduct remains vague. The Code of Conduct states that it applies "to all e-Commerce businesses whereas e-Commerce is defined as buying and selling of goods or services including digital products through electronic transactions conducted via the internet or other computer-mediated (online communication) networks." However, the term "e-commerce business" itself is undefined. Therefore, we seek clarity on what role would the business need to play with respect to the "buying and selling" in order to fall within the scope of the Code of Conduct? For example, would a payment processor or advertising platform qualify as an e-commerce business under these rules? We further recommend providing more clarity the scope of the Framework to specifically cover B2C e-commerce platforms.

#### **3. Promote Free Flow of Data**

The Framework states, "At present, in Pakistan, there is no broad legal framework covering the issue of data localization." We welcome this omission in Pakistani law, as the flow of data across borders is a prerequisite for a successful and innovative digital economy. Any measure that restricts data flows will deter investment in Pakistan and limit its access to innovative digital tools and cross-border services. Data localization also runs counter to the Government's ambitions to export information technology services, as localization measures act as a market access barrier and may violate obligations under the General Agreement on Trade in Services. We therefore

recommend for the Government of Pakistan to refrain from making any reference to “data sovereignty” in the Framework and commit to the free flow of data.

#### **4. Refrain from Imposing Customs Duties on Digital Goods**

The Framework contemplates levies, customs duties, and others taxes on digital goods imported into Pakistan, including e-books, movies, software, and other items which can be electronically transferred and stored. We suggest the Government of Pakistan to refrain from imposing any such duties, as they violate the WTO’s long-standing moratorium and hamper the Government’s digital ambitions. Tariffs will reduce access to digital goods, limit the choice of technologies available to Pakistani consumers and businesses, and dampen gains in productivity.

A recent study<sup>1</sup> of four developing countries found that digital tariffs would result in significant economic consequences. If Indonesia, for example, implemented its proposed tariffs on digital goods, it would lose 160 times more in GDP than it would collect in revenue, in addition to losing \$300 million in investment and 66,000 jobs. The study suggests that countries imposing customs duties would also face retaliation from their trading partners, as the WTO moratorium would no longer be respected.

#### **5. Refrain from Creating Market Access Barriers**

The AIC cautions the Government of Pakistan against creating new market access barriers. The Framework states “it shall be mandatory for all online businesses to maintain a physical address in Pakistan.” This measure will impair the ability of foreign businesses of all sizes, but especially Small Medium Enterprises (SMEs) from providing goods and services to the Pakistani market. In addition, the broad definition of “online business” as stipulated in the Framework and might actually go against existing trade agreements.

The Framework may also bar payments to “unauthorized and unregistered sites/apps.” We note that this will severely curtail Pakistanis’ access to cross-border digital goods and services, as many sites and apps are based in jurisdictions other than Pakistan. This can also run the risks of non-compliance and can be detrimental given that Pakistanis depend on these platforms to reach customers in other markets. Another issue at hand is the difficulties of implementing these requirements which may cause firms already servicing the Pakistani market to exit.

#### **6. Make it easier for online businesses to pay for critical services**

The e-commerce Policy should move Pakistan away from a 1940s approach for approval of each foreign remittance, to a general exemption for freelancers and companies to make businesses to make payments outside Pakistan if necessary for their operations. The e-commerce Policy should consider the creation of broader exemptions in Pakistan’s Foreign Exchange Manual.

#### **7. Join the Information Technology Agreement**

Lastly, we applaud the Government of Pakistan’s desire to accede to the World Trade Organization’s (“WTO”) Information Technology Agreement (“ITA”). According to the WTO,

<sup>1</sup> [https://ecipe.org/publications/moratorium/?mc\\_cid=bb2c18ccf5&mc\\_eid=df6d6e5920](https://ecipe.org/publications/moratorium/?mc_cid=bb2c18ccf5&mc_eid=df6d6e5920)

developing economies' share in world exports of ITA products increased from 26% in 1996 to 63% in 2015. Participation in the ITA is a proven way to expand Pakistanis' access to digital technologies and position Pakistani firms to join global value chains.

## Section B

### *Specific Comments and Recommendations on Pakistan e-commerce Policy (Sept 2019) - Salient points and possible impact*

#### **A. Payments to online businesses (whether local or foreign) will be barred unless registered with provincial sales tax authorities**

- Consumer/Business Payments from Pakistani banks and payment gateways to GST non-compliant sites/apps shall be barred ([Annex A](#))
  - Recommendation: Remove
  - Rationale: Negative impact on businesses in Pakistan that make payments to global online platforms and services to run their business.

#### **B. Mandatory local registration and legal presence**

- Online/e-commerce businesses shall be registered with SECP compulsorily, irrespective of legal nature of the business entity. SECP shall add a separate category of e-commerce ([Annex B](#))
  - Recommendation. Remove. Instead provide an incentive-based model to encourage businesses to register.
  - Rationale: Increases barrier to entry for smaller e-commerce players and will hamper growth of online SMEs if process of registration is cumbersome.

#### **C. Online businesses must maintain physical address in Pakistan**

- It shall be mandatory for all online businesses to maintain a physical address in Pakistan ([Annex C](#))
  - Recommendation: Remove.
  - Rationale: Broad definition of “online business” and might actually go against existing trade agreements.

#### **D. All e-commerce platforms/Apps must display a single customer universal identification numbers for all businesses**

- All e-commerce platforms/websites/Apps doing business with different names shall provide on their websites the name registered with SECP along with customer universal identification number (CUIN) ([Annex D](#))
  - Recommendation: Remove. Instead provide an incentive-based model to encourage businesses to register.

- Rationale: Increases barrier to entry for eCommerce businesses and platforms and will hamper growth of online SMEs. Will make all online platforms noncompliant. Pakistanis depend on these platforms to reach customers in other markets.

#### **E. ‘Online transactions’ to be covered by consumer protection laws, no intermediary liability**

- The existing Federal and Provincial consumer protection laws shall be amended for receiving complaints relating to online transactions between consumers and online service provider in any sector ([Annex E](#))
  - Recommendation: Clarify roles and responsibilities of merchant, customer, platform. Should include some indemnity for online platforms similar to PECA.

#### **F. E-commerce platforms must disclose specifically the location and facility where data is stored**

- All eCommerce platforms shall make full disclosure on their websites/Apps about the facility where such data shall be stored ([Annex F](#))
  - Recommendation: Remove
  - Rationale: This is terrible for data security and privacy. Online platforms don’t store data in one location, and for global platforms serving Pakistan, it is impossible to identify the location and facility as data is often mirrored. These platforms provide valuable opportunities for Pakistani SMBs to grow and trade across borders. Such a provision related to data should not be part of an eCommerce policy, but should be handled separately under a comprehensive data protection bill.

#### **G. E-Commerce platforms must display numbers and email addresses for customer complaints and issue detailed acknowledgements of complaints**

All e-Commerce platforms shall display cell/phone number, email address for redressing consumers’ complaints and issuing acknowledgements, manually or automatically, of receipt of complaints, the process and timelines ([Annex G](#))

- Recommendation: Remove.
- Rationale: For c2c marketplaces this would be a burdensome obligation. Instead proper consumer protection can address this.

#### **H. E-commerce platforms may not display goods legal in other jurisdictions but banned in Pakistan**

- No e-commerce platform shall offer such goods for sale on their online platform which are declared ‘prohibited’ or ‘banned’ under any applicable policy. Such products shall be immediately removed from offer within 24 hours of complaint ([Annex H](#))
  - Recommendations: Remove
  - Rationale: C2C Marketplaces can’t proactively restrict sales for banned goods. This should already be covered by PECA. PTA can issue order takedown of illegal content (or content selling illegal goods).

#### **I. E-commerce platforms lose intermediary liability, become liable for users**

- e-commerce platforms shall enter into an enforceable contract with sellers. In case of any loss to consumers due to non-existence of such a contract, e-Commerce platform shall indemnify the consumer ([Annex I](#))
  - Recommendation: Similar to PECA, there should be some intermediary liability for products sold through c2c online platforms.

## Comments on Specific Sections

| Section  | Comments on Specific Sections  |
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| <p><b>I - E-Commerce Regulation and Facilitation - Recommendations</b><br/>Page 13</p> | <p><b>Section (v): The requirement to have any online business having sales of more than PKR 1 million register with the SECP may not be feasible or practical.</b> This recommendation should be removed given complexities involved to make amendments to applicable laws and regulations given that very little factual guidance has been provided to the benefits of such registration. Should the recommendation remain it would be best to clarify that such registration would not impact entities outside Pakistan as they would not be bound to the Companies Act 2017.</p> <p><b>Section (vi): The mandatory requirement for all online business to maintain a physical address in Pakistan would be extremely challenging and may well counter the entire notion of the policy to ‘promote’ e-commerce trade in Pakistan as if instituted this requirement could prevent many both small and large entities from building Pakistan’s digital economy.</b> This recommendation should be removed. Also vice versa if this was instigated for all Pakistani companies looking to provide services to other countries (which instituted reciprocal registration requirements) this would prohibit many Pakistani entities from exporting overseas. This type of provision would possibly have a negative effect on Pakistan’s aspirations to build a strong digital economy.</p> <p>Section (vii): For hyper scale online businesses it would be extremely challenging if it were to follow individual codes of conduct in each and every jurisdiction that it were to operate in. The code of conduct should be instituted as a guideline following international best practices for Pakistan based businesses to use as a framework for setting up their processes. This recommendation should be changed accordingly and should expressly exclude non Pakistan entities / providers.</p> <p>Section (viii): Would the addition / substitution for e-commerce suffice? Would certain nuances be lost given the difference in traditional commerce to that of e-commerce? This should be carefully considered in principle.</p> |
| <p><b>IV - Consumer Protection - Recommendations -</b><br/>Page 20</p>                 | <p>Section (i): Careful consideration must be taken when considering the implementation and or amendment of the specified laws and regulations. As an example, should businesses be required to provide special notices to customers in Pakistan this may outright exclude certain vendors from offering services to Pakistani customers and vice versa for businesses looking to utilize a single platform for boosting Pakistani exports. If implemented this could significantly affect the future of the digital economy in Pakistan creating a burdensome hurdle with little actual protection for consumers in Pakistan. If this provision isn’t removed, the provision should at least be rephrased as a set of guidelines for how business may consider flashing messages to consumers to help guide industry.</p> <p>Section (iii) Similar to previous comments this should be changed to guidance and not mandatory / binding rules. This could again limit the growth of</p>  |

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|   | <p>Pakistan’s digital economy.</p> <p>Section (iv) Some clarification needed for intermediary platforms. If someone buys something and they don't like it, the liability should be on the seller/merchant, not the platform.</p>   |
| <p><b>Code of Conduct - Annexure IV - Page 33</b></p> | <p>Section (I) (a): Packaging and Invoicing should be the responsibility of the merchant/business, not the platform. Further clarity on responsibilities and what does “action against e-Commerce platforms” mean in terms of redressal.</p> <p>Section (I) (b): The language and principle behind this clause needs to be reviewed. The language relating to transparency around data practices is valid and should be covered by the Data Protection Act. The language is not needed in this Code of Conduct. Furthermore, the data location is not relevant but should focus on the actual protections and precautions taken to protect data.</p> <p>Section (I) (c): Because marketplaces are largely C2C, it's a safety risk to publish contact information such as (address, phone) in listings as it becomes a vector for harassment and scams, too. Many platforms only require phone number and emails provided by people when they sign up so they wont be able to comply anyway.</p> <p>Section (II) (b) : This language needs to be clarified. This language seems to restrict all cross border payments. Also GST registration would only be applicable for Pakistani based businesses.</p> <p>Section II (c) : This language is not required. The laws in question will have adequate provisions to ensure and maintain compliance. This code of conduct is not the correct medium to regulate this aspect. Furthermore, compliance with applicable laws is the responsibility of the business/merchant-that is to say, online platforms should not be in the business of forcing merchants to abide by the law. Most overseas providers have tools that allows business to comply, but ultimately, it should be up to the business itself to comply.</p> <p>Section II (d) : This language needs to be elaborated on. What notices is this referring to? Is 15 days a reasonable time period for corrective measures in all cases? The language requires additional context and great clarity on what it’s aiming to achieve.</p> <p>Section II (e) : Needs to be removed as it goes against existing legislation. Blocking of any website in Pakistan should only be managed by the PTA as per PECA with due legal process with proper assessment. Hugely problematic and will hurt local businesses that rely on the platforms to reach global customers.</p> <p>Section III (a) This language would restrict most global platforms from having an ability to provide service to Pakistan. This would stiffen competition and stunt the growth of the digital economy.</p> <p>Section III (b) Indemnities are extremely strong remedies and would not be appropriate. In the event of there being no contract how could an indemnity be enforced? It’s not international best practice to stipulate contractual terms. Any statements of this nature should at most be recommendations and not rules in a</p> |

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|  | <p>code of conduct.</p> <p>Section III (c): Should be removed. This should not be the responsibility of the platform but the seller. This can also be addressed through a proper rating/review system of products.</p> <p>Section III (d): Unsustainable for any eCommerce platform to handle all consumer complaints when in fact they should be handled by the seller. Trying to establish “fact” between Consumer and Business is virtually impossible. If someone buys a luxury bag with a stolen credit card, then asks for a refund claiming the bag to be fake, how would an eCommerce platform resolve this?</p> <p>Section III (g): 24 hours TAT is quite unrealistic. A guideline should be provided of 5 days as an alternative. Providing strict TATs will not be useful. Requests should be forwarded with proper legal documentation via the PTA.</p>  |
| <p><b>V – Taxation Structure</b></p> <p>Existing state of taxation structure</p>                   | <p>Creating rules that are consistent within Pakistan as well as other jurisdictions will increase voluntary compliance, which in turn levels the playing field between domestic and foreign companies doing business in Pakistan.</p> <p>Pakistan is already a member of the OECD Inclusive Framework on BEPS which is working towards a global solution for digital economy tax issues. This group has released a policy paper and is making progress towards a global solution.</p>   |
| <p><b>VI - Existing state of ICT Infrastructure and Telecom Services in Pakistan - Page 30</b></p> | <p>To attain the e-commerce policy framework’s goal of promoting inclusive economic growth, access to e-commerce services needs to be available to everyone. As highlighted by the <a href="#">Digital Pakistan Policy (2018)</a>, creating an enabling environment for e-commerce requires an underlying connectivity infrastructure aimed at improving productivity and global competitiveness.</p> <p>Pakistan has made significant strides forward in improving access to broadband internet services in the last years. At the same time, the data quoted in the e-commerce policy shows that less than half of all cellular subscribers are 3G/4G subscribers.</p> <p>The Economist Intelligence Unit’s <a href="#">Inclusive Internet Index</a> (2019) points to two key barriers in Pakistan; availability of broadband and affordable internet access. Availability of quality high-speed broadband is key to enabling access to e-commerce services and a good user experience in currently underserved areas. While affordable internet access is needed to grow the ecosystem of supply and demand for e-commerce among MSMEs by lowering the cost of doing business. These are both critical factors to enable the inclusive use of e-commerce services and more inclusive economic growth.</p> |
| <p><b>VIII - Data Protection and Investment - Recommendations - Page 26</b></p>                    | <p>Section (ii) Any implementation and or enactment of a Data Protection Act should be carefully considered and not enacted until all aspects receive appropriate consultation. Please see Data Protection Act feedback provided separately.</p>   |

## **Excerpts of the E-Commerce Policy**

### **Annex A:**

Consumer/Business Payments from Pakistani banks and payment gateways to unauthorized and unregistered (GST non-compliant) sites/apps shall be barred. (Page 33)

### **Annex B:**

Online/e-Commerce businesses, having sales of more than 1 million PKR per annum, shall be registered with SECP compulsorily, irrespective of legal nature of the business entity, i.e. to allow partnership firms and even single member companies doing online businesses to get registered. SECP shall add a separate category of e-Commerce and simplify the registration process by making necessary amendments in the Companies Act, 2017 and relevant rules and regulation. (Page 14)

### **Annex C:**

It shall be mandatory for all online businesses to maintain a physical address in Pakistan. (Page 14)  
To guard consumers against business malpractices and for privacy protection and safety, it shall be mandatory for all e-Commerce platforms having access to consumers in Pakistan to have a registered business entity and a physical address in Pakistan. (Page 34)

### **Annex D:**

All e-Commerce platforms/websites/Apps already doing business with different names/ domain names shall provide on their websites the name by which they are already registered with SECP along with customer universal identification number (CUIN). (Page 33)

### **Annex E:**

The existing Federal and Provincial consumer protection laws shall be amended with consumer centric approach to specifically address, inter alia, the following issues:

- (a) definition of 'online transactions' between consumers and online goods suppliers/sellers and service providers;
- (b) receiving complaints relating to online transactions between consumers and online retailer shops, marketplaces, and auction places, financial institutions and any other online service provider in any sector;
- (c) determination of jurisdiction for entertaining complaints involving online transactions;
- (d) In case of acceptance of a claim, determination of loss caused to the consumer and its payment by the online merchant along with costs of proceedings incurred by consumer, in addition to refund of actual price paid.
- (e) An Online Dispute Resolution mechanism will be developed for B2B eCommerce by incorporating necessary amendments in the draft Trade Dispute Resolution Act. (Page 20)

### **Annex F:**

All e-Commerce platforms shall make full disclosure on their websites/Apps regarding data collection. Such disclosure shall also include disclosure about the facility where such data shall be stored and purpose for which it may be used. (Page 33)

**Annex G:**

All e-Commerce platforms and auction places shall clearly display cell/phone number, email address on a complaint form for redressing consumers' complaints. In addition, a system shall be installed for issuing acknowledgements, manually or automatically, of receipt of complaints. The acknowledgements shall also disclose the process and timelines for expeditious resolution of complaints. (Page 33)

**Annex H:**

No e-Commerce platform including auction place shall offer such goods for sale on their online platform which are declared 'prohibited' or 'banned' under the prevailing Import Policy Order or any other applicable policy issued by any competent na under the law. Such products shall be immediately removed from offer within 24 hours of receipt of a complaint or notice. (Page 34)

**Annex I:**

e-Commerce platforms shall enter into an enforceable contract with sellers. In case of any loss to consumers due to non-existence of such a contract, e-Commerce platform shall indemnify the consumer (Page 34)

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