

Introduction

As the Royal Government embarks on a 21st century economic roadmap, e-commerce as a means of trade and development will be an important component of the economy. As e-commerce displaces the traditional way of doing business around the world, Bhutan needs to be prepared for the opportunities and challenges that the rapid growth of e-commerce presents to businesses, regulating agencies and consumers. E-commerce industry in the country is very basic and in its infancy with a few businesses and individuals engaged in buying and selling of goods and services online. A handful of entrepreneurs are engaged in selling their products online in cross-border transactions but is largely limited to goods and services of tourist value.

E-commerce provides increased and rapid access to markets and exports, access to suppliers, access to global value chains, productivity, competition, better consumer choice and jobs. It gives an opportunity to leapfrog through the country's development stages and allows even small business to compete globally. However, challenges in terms of fraud, adaptation cost, loss of tax revenue, changing nature of jobs and adequacy of infrastructure have to be considered.

As the risks are real and benefits are not automatic, an overall policy is required, to put in place a strategy to optimize the benefits of e-commerce, which includes enhancing competitiveness by improving productivity and service delivery. It would set the stage for having necessary regulatory frameworks and recommend appropriate law(s) to govern and facilitate e-commerce to facilitate e-commerce and resolve issues arising from it.

The policy is aimed at fostering an appropriate national e-commerce policy framework which is up-to-date, compatible and facilitates all e-commerce initiatives including the government led e-Payment system for Bhutan. The policy will focus on providing equal opportunities for stakeholders in different locations and areas of the society to take part in the process. It also aims to support policy and lawmakers in understanding the complexities of the legal aspects of ICTs and in preparing harmonized legal frameworks that facilitate the conduct of e-commerce and e-government. The provisions of the policy are intended to comply with international best practices and ensure that emerging practice in commercial transactions are uniform and of acceptable standard.

The Five Pillars

The e-commerce policy is grounded in five pillars that are designed to ensure equal access for all citizens, increased trust, the removal of potential barriers to adoption, the implementation of e-commerce governance consistent with international norms and standards, and a positive business environment that encourages investment and market participation. The country has an exceptional opportunity to leverage e-commerce and ICT development to help develop the economy and create a world-class legal and regulatory framework.

Pillar One: Access and Education

Ensuring that all Bhutanese have access to affordable Internet access will be a top priority. Access to the Internet is no longer a luxury and is a necessity that serves as a foundation for education and life-long learning initiatives, access to knowledge, health care, government services, financial activity, entertainment and communication.

Key elements of this policy include ICT development, universal and affordable connectivity, network reliability, and e-commerce skills development.

ICT development

Underlying e-commerce is access to information and communications technologies. ICT development is widely recognized as a critical component to economic development as it drives innovation, enhances education, and provides the foundation for e-commerce. The e-commerce policy must therefore prioritize ICT development and use. The ICT component of the policy includes policies that encourage personal computer ownership. While many citizens use mobile devices to connect to the Internet, computers (accompanied by broadband connectivity) can play an important role in integrating the Internet into the household, sparking educational, entertainment, and commercial uses. Potential policies include consumer tax rebates and the elimination or reduction of tariffs on personal computing equipment.

Closely linked to ICT ownership is network development. As further noted below, universal, affordable connectivity is essential for a robust e-commerce marketplace. The private sector is well situated to manage networks, but government policy can encourage its development. Policies include steady availability of spectrum, public-private partnership in broadband development, government support for high-speed research and education networks, and the facilitation of a competitive internet exchange environment.

Given mounting concern with the localization of data, an issue that has crept onto the global trade agenda, the royal government will support the creation of a national data center. Data governance is of increasing importance and control over national data through localized data storage centers provide heightened assurance that the data will be subject to national laws, thereby fostering greater trust among consumers and domestic businesses.

Universal, affordable connectivity

Many governments have in the past relied upon a universal service funding model to ensure access to conventional telephone services. Adapting such systems to the Internet as a mechanism to facilitate universal broadband or Internet access represents one policy option that will be explored. Indeed, given the Internet's importance, government cannot adopt a hands-off approach, though it must recognize that its role differs in the urban and rural markets. In urban communities, the focus ought to be on the competitive environment and the assurance that the entire community can afford access.

The governmental role in rural communities ought to be a different one. In those communities, many of which lie on the outskirts of larger cities, the concern revolves around connectivity, not

competition, since there is often no broadband option available to local residents and wireless services may be similarly limited. While competition remains relevant – high costs in underserved areas are often a function of limited consumer choice and competition – government policy will first focus on creating the necessary incentives or frameworks to encourage network investment in rural communities. Moreover, the plan could involve funding for rural broadband initiatives, tax incentives to promote investment in wireless and broadband, and the removal of any restrictions to encourage new entrants.

Countries around the world have struggled with this issue for many years with fears of a digital divide raising major concerns for politicians and policy makers. The solution lies not in simply handing over millions in economic assistance to the telecommunications providers, but rather for government to support local, community-owned networks that operate for the public benefit. While the telecommunications providers might be called upon to establish the services, publicly funded networks would remain in public hands, with the communities retaining the flexibility to offer reduced fees or alternate options. By ensuring that communities own their networks, they have the option to license operational responsibilities to the private sector. This model offers the potential to retain some profitability from the network and to create an environment that may yield multiple, competitive providers.

Network reliability

Network reliability is essential to ensure that all Bhutanese have network connectivity that they can count on and use effectively for e-commerce, education, and communication. One of the immediate challenges is identifying particular areas or regions of concern. The royal government will seek to address in at least two ways. First, Develop a consultation paper along with e-tailers association to provide guidance on reduced outages of not more than five minutes per day, full coverage of internet services, reduced internet charges and data packages. Second, establish a new public reporting mechanism to allow consumers to report network outages. The results of those reports will be publicly reported, providing incentives for telecommunications providers to address the problem areas with network upgrades.

The need to upgrade mobile networks to faster speeds is also a critical issue. The government will facilitate the deployment of 4G and 5G networks in the country by ensuring sufficient availability of spectrum and assessing the potential for tax-based incentives to encourage network investment.

E-commerce education and skills for business and schools

The need for greater digital literacy is absolutely crucial and must form a foundational part of any future government strategy. Partnerships to increase digital literacy will include government, business, and consumer groups. This multi-pronged approach will include efforts to integrate digital literacy programming within the education system as well as e-learning programs and the integration of digital technologies in the classroom. A grassroots approach will take time – perhaps as much as a decade – but a long-term commitment to better education and awareness will payoff for the next generation.

Digital literacy should include more than education in schools. Also critical is education to help consumers better identify fraudulent websites with the active participation and support of Internet

and telecom companies. As new payment systems emerge, consumers will also require education on their availability, benefits and security.

Pillar Two: Trust in E-commerce

The success and growth of e-commerce depends on more than just a world-class network and technical infrastructure. Consumers and businesses alike must trust in e-commerce, safe in the knowledge that their personal information will be secured and not misused, that consumer protection laws apply equally online and offline, that online contracts will be enforced, that intellectual property rights will be respected, and effective laws can be used to combat spam, spyware, and other cyber-security threats. Governments play a critical role in establishing the necessary legal and regulatory frameworks to foster e-commerce trust and the e-commerce policy establishes an ambitious agenda designed to ensure that the domestic rules are consistent with global standards.

Consumer protection

The Consumer Protection Act serves as the primary source of legislative protections for consumers. Facilitating trust among consumers for e-commerce is strongly linked to ensuring that the legislative and regulatory framework can fully address emerging consumer issues that may arise due to e-commerce transactions.

In order to ensure that the CPA meets current global best practices, the government will undertake a comprehensive review of the legal framework to ensure that they comply with those standards developed by the OECD on e-commerce consumer protection. Notable issues include:

- **Transparency:** Consumers who participate in e-commerce should be afforded transparent and effective consumer protection that is not less than the level of protection afforded in other forms of commerce.
- **Fair Business, Advertising and Marketing Practices:** Businesses engaged in e-commerce should pay due regard to the interests of consumers and act in accordance with fair business, advertising and marketing practices as well as the general principle of good faith.
- **Online Disclosures:** Online disclosures should be clear, accurate, easily accessible and conspicuous so that consumers have information sufficient to make an informed decision regarding a transaction. Such disclosures should be made in plain and easy-to-understand language, at a relevant time, and in a manner that enables consumers to retain a complete, accurate and durable record of such information.
- **Online Disclosures – Language:** When more than one language is available to conduct a transaction, businesses should make available in those same languages, all information necessary for consumers to make an informed decision regarding a transaction. All information that refers to costs should indicate the applicable currency, unless it is apparent from the context.

- **Business Information:** Businesses engaged in e-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum: i) identification of the business; ii) prompt, easy and effective consumer communication with the business; iii) appropriate and effective resolution of any disputes that may arise; iv) service of legal process in domestic and cross-border disputes; and v) location of the business. This information should include the legal name of the business and name under which it trades; its principal geographic address; an e-mail address, telephone number or other electronic means of contact; appropriate domain name registration information for web sites that are promoting or engaging in commercial transactions with consumers; and any relevant government registration or license information.
- **Transaction Information:** Businesses engaged in e-commerce with consumers should provide information describing the goods or services offered that is sufficient to enable consumers to make informed decisions regarding a transaction. Depending on relevant factors, including the type of good or service, this should include information such as: i) Key functionality and interoperability features; ii) Key technical or contractual requirements, limitations or conditions that might affect a consumer's ability to acquire, access or use the good or service; iii) Safety and health care information; and iv) Any age restrictions.
- **Terms and Conditions:** Businesses engaged in e-commerce should provide information about the terms, conditions and costs associated with a transaction that is sufficient to enable consumers to make an informed decision regarding a transaction. Consumers should be able to easily access this information at any stage of the transaction.
- **Confirmation Process:** Businesses should ensure that the point at which consumers are asked to confirm a transaction, after which time payment is due or they are otherwise contractually bound, is clear and unambiguous, as should the steps needed to complete the transaction, especially for new payment mechanisms.
- **Dispute Resolution:** Consumers should be provided with meaningful access to fair, easy-to-use, transparent and effective mechanisms to resolve domestic and cross-border e-commerce disputes in a timely manner and obtain redress, as appropriate, without incurring unnecessary cost or burden. These should include out-of-court mechanisms, such as internal complaints handling and alternative dispute resolution (hereafter, "ADR"). Subject to applicable law, the use of such out-of-court mechanisms should not prevent consumers from pursuing other forms of dispute resolution and redress.
- **Redress:** Businesses should provide redress to consumers for the harm that they suffer as a consequence of goods or services which, for example, are defective, damage their devices, do not meet advertised quality criteria or where there have been delivery problems. Governments and stakeholders should consider how to provide redress to consumers in appropriate circumstances involving non-monetary transactions.

Contractual certainty and fairness

In the days before e-commerce consumers rarely entered into formal contracts with large companies when interacting with friends, making copies of photographs to give to family, or

purchasing music, videos, or other media. The advent of digital technologies did more than just facilitate social media and new online services. It also brought with it, Internet companies that mediated these activities governed by contracts that consumers were required to accept as condition for accessing the service.

The enforceability of these contracts has often been assumed, relying on e-commerce laws that confirmed the validity of the electronic contracting as well as traditional notions of offer and acceptance with consumers implicitly aware that their actions would be governed by the site or service terms of use. Yet these contracts were distinctly different from business-to-business commercial contracts that often involve painstaking negotiation and trade-offs that are well-understood by the parties. Consumers now enter into hundreds of online contracts that no one is expected to read from start to finish.

The e-commerce policy seek to address both the contractual certainty of e-commerce contracting and provide consumers with the assurance that the law will not uphold unfair or unconscionable terms that may have the effect of undermining consumer rights. Work in this area will include a review of the ICM law to ensure that meets international standards and an assessment of potential safeguards that could be adopted to provide consumers with greater trust in e-commerce contracts.

Data protection and privacy

The recent passage of the European Union's General Data Protection Regulation (GDPR) heightens the importance of establishing effective privacy safeguards. The GDPR features broad applicability, as Article 3 provides that the collection of personal data or behavioural information from persons in an EU Member State triggers the GDPR requirements. Those requirements include extensive privacy protections, rights of access, and a right of deletion. For example, the GDPR consent provision requires that consent "freely given, specific, informed, and unambiguous." The provisions also identify minimum security safeguards and data breach disclosure requirements.¹

The OECD guidelines for consumer protection in e-commerce discussed above include a specific requirement for privacy:

Businesses should protect consumer privacy by ensuring that their practices relating to the collection and use of consumer data are lawful, transparent and fair, enable consumer participation and choice, and provide reasonable security safeguards.

Countries around the world have accepted the OECD's fair information practices as the starting point for privacy legislation and Bhutan should be no different. Indeed, the ability to participate in a global economy that relies upon data transfers increasingly depends upon a modernized data protection and privacy law framework. The principles underlying future reforms include:

¹ For further information on the GDPR, see: https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en

1. *Accountability*: an organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.
2. *Identifying Purposes*: the purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.
3. *Consent*: the knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.
4. *Limiting Collection*: the collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.
5. *Limiting Use, Disclosure and Retention*: personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by the law. Personal information shall be retained only as long as necessary for fulfilment of those purposes.
6. *Accuracy*: personal information shall be as accurate, complete and up-to-date as necessary for the purpose for which it is to be used.
7. *Safeguards*: personal information shall be protected by security safeguards appropriate to the sensitivity of the information.
8. *Openness*: an organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.
9. *Individual Access*: upon request, an individual shall be informed of the existence, use and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness of the information and have it amended as appropriate.
10. *Challenging compliance*: an individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals for the organization's compliance.

Work to ensure that Bhutan features an internationally recognized data protection law with suitable enforcement powers is a key component of a national e-commerce policy.

Anti-spam rules

Consumer trust also depends upon electronic marketing rules that respect privacy and contain appropriate remedies for misleading information or marketing claims. Anti-spam laws typically feature a requirement for express consent. Express consent requires disclosing the purposes for why consent is being requested and identifying who is seeking consent. Anti-spam laws also

establish tough consequences for failure to comply. The royal government will introduce anti-spam legislation that addresses unsolicited commercial email, malware, phishing, and various other online harms in order to enhance online trust and provide the necessary powers to combat online fraud and the abuse of personal information.

Cyber-security

Closely related to privacy safeguards are measures to ensure appropriate security protection. For example, more advanced privacy law frameworks frequently also include security breach disclosure requirements. By mandating notification, the laws ensure that individuals are better able to guard against identity theft by closely monitoring their credit card bills, bank accounts, and credit reports for any unusual activity. Legal rules and regulations to be considered for the country include rules:

- a) Against cyber-crimes related to e-commerce, including financial thefts, fraudulent contracts, extortion of money.
- b) Against identity theft and impersonation.
- c) On data integrity, customer & client authentication and non-repudiation.
- d) Against Denial of Service (DoS) attacks which arises from overwhelming a server, a network or a website in order to paralyze its normal activity.
- e) Against phishing which is the fraudulent acquisition of sensitive information such as usernames, passwords and credit card details, by masquerading as a trustworthy entity in an electronic communication.
- f) Against inappropriate social engineering which manipulates people into performing actions or divulging confidential information.

Intellectual property

E-Commerce and intellectual property intersect in various areas. E-Commerce involves the sale of goods and services that are often based on IP and other licensing requirements. More often than not, IP is at the core of the good or service in the transaction – and insofar as this is true, various protections must be in place in order to ensure rights holders and users are able to freely transact without fear of theft or duplication. Furthermore, some argue that E-Commerce businesses are often based on product or patent-licensing. Ultimately, E-Commerce businesses greatly value their IP (businesses that have patent portfolios and registered trademarks can place a higher value on their business) as it allows for a competitive advantage over others.

The Bhutan e-commerce policy will prioritize several intellectual property issues.

a) Copyright

One of the fundamental issues raised for right-holders of copyright is the determination of the scope of protection in the digital environment: how rights are defined, and what exceptions and limitations are permitted. In addition to this, rights holders must pay attention to issues concerning the enforcement and administration of those rights; in particular, who infringed the copyright. Questions of jurisdiction and applicable law affect both rights holders and users. Issues to be addressed include anti-circumvention laws in compliance with the World Intellectual Property

Organization's Internet Treaties, the establishment of a notice-and-takedown system that balances the rights of creators and users, and ensuring that user rights frameworks are sufficiently robust to support new creators and educational uses.

b) Trademarks and Geographical Indications

A trademark is a sign that is capable of distinguishing goods or services of one business from those of other businesses. Depending on the jurisdiction, trademark protection is often obtained through registration with a trademark office. At an international level, a business can seek the protection of intellectual property rights of a trademark by registering that mark in the trademark office of each country or use the WIPO's Madrid System. Registering a trademark allows for the protection of that mark via an exclusive right the trademark's usage. This means that the trademark could be used exclusively by its owner or licensed to another party for use in return for payment (it is suggested that this provides legal certainty and reinforces the position of the rights holder). A series of treaties (some administered by the WIPO) together with national/regional laws make up the international legal framework for trademarks. These include treaties such as: (a) Paris Convention; (b) Madrid Agreement; (c) Madrid Protocol; (d) Nice Agreement and others.

The e-commerce policy will include a review of current trademark protections to ensure that businesses can obtain sufficient protection and that consumers do not face brand confusion online due to inadequate trademark safeguards.

Closely related to trademark protections are protections associated with geographical indications. Geographical Indication (GI) is a sign used on products that possess a unique trait by virtue of its geographical (or territorial) origin. In other words, the GI must suggest that a product originates from a very specific place and that the respective qualities of that product are due to the place of origin. For instance, GI is relevant to products that include the name of regions such as "Champagne", "Darjeeling", "Havana", "Tequila" and others. A review to identify potential Bhutanese products suitable for geographical protections will be undertaken given the promise of e-commerce to help market such products on a global basis.

c) Traditional Knowledge

Traditional knowledge has garnered increasing attention in recent years with proposals to grant indigenous peoples "the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions." Trade agreements have increasingly incorporated traditional knowledge provisions. For example, the Comprehensive and Progressive Trans Pacific Partnership states that "[t]he Parties recognize the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems." The country's approach to traditional knowledge is in need of review, particularly given the potential link between e-commerce and products available for sale online that incorporate traditional knowledge.

Business registration/licensing

The necessity of creating business registration or licensing requirements for e-commerce businesses represents an emerging challenge for countries have traditionally relied upon registration or licensing as a core component of their regulatory system. The challenge in the e-commerce environment is exacerbated by jurisdictional issues in which businesses may be physically located outside the country, making it difficult to enforce these regulatory requirements.

Despite the challenges, some countries have established registration requirements. For example, China requires e-commerce business – including e-commerce platforms – to comply with registration requirements. As Bhutan develops its e-commerce policy, an examination of licensing requirements will be undertaken with the view to establishing a lightweight system that enables appropriate levels of regulation but does not unduly impede market participation by new entrants.

COVID-19

Since the beginning of 2020, the world is unfortunately suffering from the impact of a global pandemic – Covid-19 (Coronavirus). This pandemic has touched virtually every country around the world, including Bhutan, and is having an impact on almost all aspects of life.

Lockdown measures that were imposed to curtail the spread of the disease have resulted in consumers having to resort to different ways of making purchases, including for essential items. Traders, in turn, have been obliged to change their way of selling. The disruption in the supply chain during Covid-19 has led to shortages of a variety of goods including life necessities because of insufficient level of production or challenges in product distribution under self-isolation measures. Such measures have also largely restricted consumers' ability to shop from traditional forms of commerce, moving many businesses online. Under such circumstances, there have been increasing reports of unfair, misleading and fraudulent commercial practices online, including financial scams, false claims of coronavirus treatment or prevention, price gouging of essential goods and the promotion of unsafe or counterfeit products.

Among the above identified issues, price gouging has become a major problem for consumers, as businesses seek to maximize profits from increased demand for essential goods such as facemasks, hand sanitizer, or basic grocery items by exponentially raising their prices. In response to the concerns, the government will follow OECD recommendations to:

- Educate consumers about Covid-19 scams, including how to report them and avoid misinformation, building on learnings from behavioural insights.
- Establish a dialogue with online businesses about scams and misleading conduct and, to the extent possible, share information to help identify rogue traders.
- Foster co-operation between agencies with relevant consumer protection mandates, for example via inter-agency taskforces.
- Avoid rolling back consumer protection and product safety measures, and consider ways to reduce the administrative burdens on business and streamline compliance processes.

Pillar Three: Barriers to Adoption

The Bhutan government can also play a critical role in removing potential barriers to e-commerce adoption. While the private sector must lead with new innovation, new services, and new products, government can play an active role by removing potential barriers or restrictions that slow the delivery of goods purchased through e-commerce sites. The e-commerce policy identifies several key barriers, including customs duties, logistics, and payment systems, and develops a strategy to better facilitate e-commerce transactions.

Borders and customs

E-commerce opens the door to the purchase and sale of goods worldwide. Consumers who previously were limited in choices based on domestic retailers, may now access a global marketplace. Similarly, businesses enjoy the same opportunities with an international market readily accessible via a single network. The globalized e-commerce marketplace may conflict with conventional border and customs rules, which were crafted for a world of large cargo imported by businesses.

The common response to these border challenges is to establish de minimis standards that facilitate swift clearance of packages purchased by consumers. The Bhutan de minimis standard currently sits at \$50-\$100, which may lead to some attempts to evade applicable duties by reducing the declared value of the personal shipment. The Bhutan e-commerce policy will engage in a comprehensive review of the current standards with the aim of balancing tax fairness that does not disadvantage domestic retail businesses, the need for swift clearance of packages, and the identification of an appropriate de minimis amount. This work will be conducted in conjunction with a review of longstanding customs rules to ensure they are consistent with emerging e-commerce standards developed by the World Customs Organization.

Logistics

Timely delivery of e-commerce packages depends upon more than just swift clearance at the border. Once packages are in the country – or if they originate within the country – modernized logistics systems are needed to bring e-commerce deliveries to the consumer. Many countries have struggled to develop modernized logistics systems, which were developed in an era where postal delivery was the primary mechanism of delivering letters and parcels to consumers.

While the private sector typically leads on the investment in modernized logistics systems that work in conjunction with global services, there is a role for government to play in improving the current system in Bhutan. The e-commerce policy will explore policy measures that may support supply chains, particularly in rural and remote regions where deliveries may currently face extended delays. These communities may also benefit from the development of government-supported local distribution hubs that could facilitate distribution by working with multiple providers. Given the important role played by Bhutan Post, modernizing the postal delivery system would have the added benefit of supporting the growth of e-commerce. The COVID-19 safety protocols for handling of cargo has exposed the urgent need to reform the present logistics industry in the country to a more modern, mechanized system.

Payments

Electronic commerce requires more than just contractual certainty and vendors willing to sell online. In a world that increasingly relies on mobile communications, fast, convenient payment systems are needed to foster frictionless transactions. The OECD consumer protection guidelines for e-commerce cite the need for easy-to-use payment systems:

Businesses should provide consumers with easy-to-use payment mechanisms and implement security measures that are commensurate with payment-related risks, including those resulting from unauthorized access or use of personal data, fraud and identity theft.

Governments and stakeholders should work together to develop minimum levels of consumer protection for e-commerce payments, regardless of the payment mechanism used. Such protection should include regulatory or industry-led limitations on consumer liability for unauthorized or fraudulent charges, as well as chargeback mechanisms, when appropriate. The development of other payment arrangements that may enhance consumer confidence in e-commerce, such as escrow services, should also be encouraged.

Governments and stakeholders should explore other areas where greater harmonization of payment protection rules among jurisdictions would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ.

In response, the government will work to identify and remove barriers to entry for new financial participants, develop policies together with financial institutions to increase credit card use, and seek to remove foreign exchange restrictions that may hamper e-commerce payments. Additional policies that may be implanted include:

- a) Establish a consultation forum for periodic consultations with banks and e-tailers association to explore ways to improve the digital system of payments, nationally and internationally.
- b) Extend awareness programs of the existing policies such as BIPS to facilitate national and international e-payments and financial digitisation to e-tailers through its association.
- c) Initiate a time-bound program to reduce charges and credit limits of foreign credit cards. This will form a part of its initiative to improve international payment gateways.
- d) Establish systems to move towards international standards used for credit card security.
- e) Extend wallet services in mobile banking to cover all registered e-tailers.
- f) Instruct banks to incentivise e-tailers to accept credit cards and digital payments by offering small discounts (e.g. 5%) to consumers.

Pillar Four: E-commerce Governance and Policy

The governance associated with e-commerce is another important component of an effective e-commerce policy. E-commerce issues frequently involve a “whole of government” response, touching a wide range of departments including industry, telecommunications, culture, finance, customs, and trade. Developing an effective e-commerce governance framework helps prioritize the issue and ensure greater consistency in policy development.

Government E-commerce governance structure

The starting point for any e-commerce policy is leadership. The country needs digital leaders, including a Chief Technology Officer and cabinet-level attention to the issue. Given the broad scope of digital issues, Bhutan needs a single point of leadership with the ability to advance the policy at the cabinet table and to cut across sectors. Many countries have created ministerial positions (or at least junior ministers) with responsibility for specific digital issues. For example, Australia has both a Minister for Innovation, Industry, Science and Research and a Minister for Broadband, Communications and the Digital Economy. Bhutan should consider how to best maximize e-commerce development with a governance structure that brings together the key ministries, engages the private sector, and establishes timelines and benchmarks to measure progress and policy success.

E-commerce and OpenData

Governments have an important role to play in the digital content realm in ensuring that its own content – or content produced on its behalf – is readily and freely available in digital form. After years of closed, "walled garden" approaches, the world is embracing the benefits of openness. These approaches promote the use of cost-effective open source software and the benefits of commercial and civic activity around accessible government data.

Open data initiatives have generated dozens of commercial and non-commercial websites that add value to the government data. Some make the data more understandable by using interactive maps to provide visuals about where activities are taking place (e.g. government stimulus spending). Others make the data more accessible by offering services to customize or deliver government information (e.g. postal codes to allow public interest groups to launch advocacy campaigns).

The crucial aspect behind these initiatives is that the government makes the data available in open formats free from restrictive licenses so companies and civil society groups can create innovative websites, tools, and online services.

In addition to an open data approach, a commitment to collecting e-commerce and ICT data is essential. As the e-commerce policy unfolds, a data-driven follow-up will help identify both areas of success and room for improvement.

Government as a User

Governments play an important role not only in setting e-commerce policy, but also in leading by example. There are several areas where the government can play a critical role in this regard. The development of e-government services has the dual effect of improving government services and allowing the public – both consumers and businesses – to become more comfortable with electronic service delivery. By shifting government services toward e-delivery, there are opportunities for greater efficiency, new innovation, and the creation of a model for the privacy sector. Moreover, the government can use e-commerce services in its daily operations. This may

include private sector cloud services, the adoption of open source software solutions that are openly available to the public, and a renewed emphasis on ICT investment within government.

Digitization Strategy

Countries around the world have worked to establish digitization strategies to ensure that their national content is openly and freely available online. The approach can enhance e-commerce activity, benefit education, and serve as an important cultural export. For example, in September 2005, the European Union launched i2010, a digitization action plan. Several years later, Europeana debuted, a website that provides direct access to more than 4.6 million digitized books, newspapers, film clips, maps, photographs, and documents from across Europe. The majority of the materials included to date are in the public domain – i.e., they are no longer covered by copyright and can be used and accessed by all. In fact, the European Commission has emphasized “works in the public domain should stay there once digitized and be made accessible through the Internet.”

Crafting a digitization strategy is another example of government leading by example. Devoting resources toward a national approach offers benefits of reduced access costs for educational materials and brings Bhutanese cultural to a wider audience, thereby enhancing the national brand and its e-commerce marketplace.

Digital Taxation

Government officials around the world have been increasingly anxious to impose digital sales taxes on online services. The debate is often framed around the notion that services such as Netflix and other Internet companies should be collecting sales tax like any other service provider. Supporters argue that countries have begun to levy sales taxes on digital services and everyone should do the same.

Despite assurances that digital sales taxes are relatively easy to implement, governments encounter challenging complexities associated with requiring thousands of online companies around the world to implement dozens or even hundreds of new tax requirements.

Governments often plan to establish a lightweight registration system for foreign companies to ease the administrative burden associated with signing up for sales tax collection. However, while the basic framework is relatively straightforward, enforcement presents an enormous challenge as tax authorities try to persuade online businesses with no local presence to register, collect, and remit the applicable sales tax. Governments often say they will work with businesses to assist with compliance.

As governments race to catch up to the growth of e-commerce, there has long been a seeming inevitability to the imposition of digital sales tax. However, moving ahead without a clear international standard remains easier said than done. The country should therefore actively monitor global tax developments, but refrain from implementing digital tax requirements until international standards are fully developed. This will require developing digital tax policies for

both e-commerce companies and large Internet platforms as well as conducting an examination of the effectiveness of the Financial Incentive Act 2017.

Platform liability (F-commerce)

The role of large Internet platforms has taken on increasing importance in recent years, given their often-dominant position in the marketplace. In many markets, e-commerce has given way to “f-commerce” (Facebook Commerce), with social media giants such as Facebook or Alibaba playing a critical role in the e-commerce environment. While large Internet companies currently have a limited physical presence in the country, a review of the domestic legal frameworks applicable to these companies is nevertheless important. The e-commerce policy requires an assessment of the suitability of ICM Act provisions to Internet companies. Further, consideration to liability approaches for content posted by third parties on Internet sites is needed to identify the balance between freedom of expression and safeguards against harmful content.

Domain name governance

The domestic domain name system is often the public face of a country’s Internet to the rest of the world. The Bhutan e-commerce policy should feature a full assessment of the dot-bt domain name extension, to ensure that the potential benefits from the national country-code domain are fully realized. This should include a review of the policies associated with dot-bt registrations to ensure that they currently meet international standards.

Moreover, the intellectual property issues associated with domain names are important, since the registration of a domain name should take into account whether the domain name infringes on a registered trademark of another company. This is known as ‘cybersquatting’, which may require the infringing party to pay damages for trademark infringement. The e-commerce policy will ensure that the dot-bt domain name dispute resolution policy is consistent with global domain name dispute resolution policies such as the ICANN Uniform Domain Name Dispute Resolution Process.

Net Neutrality

Given the close link between e-commerce and networks, telecommunications policy plays a pivotal role in e-commerce policy development. Among the most important issues involve neutrality concerns associated with Internet services and platforms, often referred to as network neutrality. Access also depends on ensuring that the telecom and Internet services function in a neutral manner that allows consumers to access services of their choice without interference or discriminatory treatment. While the definition of net neutrality is open to some debate, at its core there is the commitment to ensuring that Internet service providers (ISPs) treat all content and applications equally with no privileges, degrading of service or prioritization based on the content’s source, ownership or destination.

The concern over net neutrality is not new. Observers have long feared that ISPs would succumb to economic self-interest, engaging in “packet preferencing” by blocking or slowing data coming from competing sites or services. ISPs frequently argue that they merely want to serve as

intermediaries without regard for what traverses their networks (i.e. the end-to-end approach). Yet, as they offer competing Internet phone services, music download services and other value-added content, there is an obvious temptation to create a home network advantage. The e-commerce policy will ensure that net neutrality is respected by network providers with enforcement powers for potential violations.

Jurisdiction

As the adoption of e-commerce grows worldwide, coupled with the development of global supply chains and logistic systems, goods and services have become more accessible and move more freely across borders. This makes it increasingly common for consumers to buy directly from vendors that are located in a different jurisdiction. With this trend comes the corresponding challenges of jurisdictional issues when a dispute arises between consumers and businesses.

International standards to address these issues include:

- Businesses engaged in E-commerce with consumers should make readily available information about themselves that is sufficient to allow, at a minimum: service of legal process in domestic and cross-border disputes.
- The government and stakeholders should explore other areas where greater harmonisation of payment protection rules among jurisdictions would be beneficial and seek to clarify how issues involving cross-border transactions could be best addressed when payment protection levels differ.
- In order to provide effective consumer protection in the context of global E-commerce, governments should:
 - Facilitate communication, co-operation, and, where appropriate, the development and enforcement of joint initiatives at the international level among governments and stakeholders;
 - Improve the ability of consumer protection enforcement authorities and other relevant authorities, as appropriate, to co-operate and co-ordinate their investigations and enforcement activities, through notification, information sharing, investigative assistance and joint actions. In particular, governments should: Call for businesses to make readily available information about themselves that is sufficient to allow, at a minimum, location of the business and its principals for the purpose of law enforcement, regulatory oversight and compliance enforcement, including in the cross-border context; Strive to improve the ability of consumer protection enforcement authorities to share information subject to appropriate safeguards for confidential business information or personal data, and; Simplify assistance and co-operation, avoid duplication of efforts, and make every effort to resolve disagreements as to co-operation that may arise, recognising that co-operation on particular cases or investigations remains within the discretion of the consumer protection enforcement authority being asked to co-operate.
 - Make use of existing international networks and enter into bilateral and/or multilateral agreements or other arrangements as appropriate, to accomplish such co-operation;
 - Continue to build consensus, both at the national and international levels, on core consumer protections to further the goals of promoting consumer welfare and

- enhancing consumer trust, ensuring predictability for businesses, and protecting consumers;
- Co-operate and work toward developing agreements or other arrangements for the mutual recognition and enforcement of judgments resulting from disputes between consumers and businesses, and judgments resulting from law enforcement actions taken to combat fraudulent, misleading or unfair commercial conduct.

E-commerce/Digital Trade Agreements

Regional trade agreements increasingly feature e-commerce or digital trade chapters. The provisions are largely replicated across agreements and have emerged as a template for new agreements. For example, the CPTPP is based on liberalized premises in favour of an open digital economy. Chapter 14 of the agreement is dedicated to electronic commerce. The chapter protects the free flow of information across borders; prohibits unauthorized disclosure of personal information, online fraudulent and deceptive commercial practices, and unsolicited commercial electronic messages or spam; prevents governments of its member countries from requiring the use of local services for data storage and demanding access to an enterprise's software source code; and ensures that its member countries do not discriminate against or impose custom duties or any other charge on online digital products.

A forward looking e-commerce policy must account for these international developments. Work in the area will include:

- a) Build upon the provisions of the ICM Act of 2018 for e-commerce provisions in FTAs, by examining the different positions being taken by major economies in the context of the World Trade Organization plurilateral negotiations on e-commerce.
- b) Build capacity in policy areas which are considered as controversial in the context of e-commerce negotiations.
- c) Focus on policies that facilitate e-commerce and establish an operational framework for it. Some of these take time and therefore in any negotiation should be considered for offering them on a "best effort" basis.
- d) Brings its domestic legal frameworks governing e-commerce at par with the principles of the UNCITRAL Model Law on Electronic Commerce adopted in 1996.

Pillar Five: E-commerce Business Development

While building an eco-system is a necessary condition for e-commerce, it is not sufficient. It is also important to build a domestic digital market place while assuring that brick and mortar businesses are not adversely affected. Equally important is the diversification of markets and products which can be easily achieved through e-commerce. Integrating youth, CSI and rural areas into the growth process of Bhutan would also be easier through e-commerce.

E-Commerce entities will be encouraged to;

- a) Along with the royal government develop mechanisms for collaborating with established international companies to expand and facilitate the scope of operations of e-tailers.
- b) Explore options for participation in regional and global value chains for high-value low volume products such as mobiles, internet-based services, religious products, and high-end textiles. With Bhutan Post and RMA develop a collaborative approach for using existing international platforms, e.g. the digital marketing platform of Google.
- c) Use the DCSI flagship products for developing new areas of e-commerce.
- d) Along with Bhutan Agriculture and Food Regulatory Authority (BAFRA) examine ways to expand awareness among co-operative farms about branding and developing their own portal for e-commerce.
- e) Identify niche markets where organic Bhutanese products can be a part of regional or international value chains.
- f) Begin on-line courses and encourage training and collaborative arrangements for video marketing, and establish the relevant institutional support for promoting this activity.
- g) Establish business incubators, co-working spaces, mentorship schemes and common business platforms.

E-tailers Association will be encouraged to:

- a) Develop training programmes for brand creation, product advertisement, using graphics to expand the legend of specific products, especially, but not exclusively in the area of traditional knowledge.
- b) Establish a platform with the relevant government departments that need to collaboratively promote e-trade in agricultural products, and determine the training needs in collaboration with farmers to create a single window for training in this area.

E-commerce Development Cluster

To promote the development of e-commerce, the royal government will facilitate the growth of e-commerce clusters through the building of infrastructure for start-ups and provision of integrated facilities for businesses to operate.

Venture capital incubator

The Financial Services Act, monetary and fiscal regulations will be reviewed and necessary amendments made to support the venture capital funding for e-commerce businesses. The traditional means of asset based financing is unviable to fund the growth of e-commerce as digital entrepreneurs worldwide rely on their ideas and potential of growth to raise financing. Moreover, most digital entrepreneurs do not own physical asset to raise funds and conventional bank lending cannot be applied to digital businesses that burn money for many years.

E-commerce Skills Development program

The royal government will review and incorporate digital education in the school curriculum and will be made a core education requirement.

TVETs will incorporate digital skills development as one of the skills for students.

The royal government will develop a one/twoyear apprenticeship program for e-commerce skills development.

Digital Free Trade Zone

The digital economy is expected to help the country overcome its geographical constraints but the digital businesses require common facilitate infrastructure and services to grow. Therefore, the royal government will develop and promote Digital Free Trade Zones that offer incentives more than the general prevailing incentives, tax privileges and world class matching internet services for businesses' located and engaging in digital exports.

National Brand Promotion

Promoting Brand Bhutan is a flagship program in the 12th Plan and for e-commerce the branding will be different from conventional goods and services and will be guided by the following strategies.

Export strategy

The National Export Strategy (NES) guides the country's export promotion strategy and for e-commerce the goods and services being channeled will be guided by the NES but the e-commerce industry will be guided by this policy. The export strategy will require the royal government to first and foremost the digital infrastructure is established and this entails ensuring e-payments work, communications reliability with redundancy, minimal regulations, logistics infrastructure and integrating into regional and global supply chains.

Building networks with global and regional e-commerce platforms and operators and negotiating preferential or free access to markets will be important.

Trademark

The Geographical Indications and Indigenous Knowledge initiatives will form a key part of the National Brand Promotion for e-commerce. Therefore, the royal government will work with artisans, local communities, businesses and other stakeholders in ensuring digital protections of exports. The policy will promote Bhutanese trademarked exports as well as exports of any other goods that e-commerce businesses are able to compete and sell.

Portal

A few national digital portal initiatives have been launched for e-commerce, the policy will merge these numerous portal initiatives into a single national portal and provide infrastructure support akin to what the industrial estates provide to manufacturing industries. The management of the portal will be on commercial basis with initial years of budgetary support from the royal government. The portal will not be provided exclusivity to operate and be subject to competition. The national portal will host information and advertisement for private vendors to enable them to increase sales of their own brand.

Competition policy

- a) Maintain platform neutrality, i.e. not promote one brand more than others. They shall provide equal opportunities to all e-tailers, whether big or small, to sell their goods.
- b) Maintain complete transparency and credibility around their user review and rating policy and will not manipulate the web search results.
- c) Provide fair and equitable terms to all players who want to use their platforms by providing fair commission rates and not compromise the brand equity or profitability of e-tailers.
- d) Not allow platform owners to include exclusivity clauses in their contracts with e-tailers unless it is the latter's interest to do so.