E-commerce and digital payments in India

1. Introduction

In the current climate of economic uncertainty, marked by the forecasts of a steady downward growth, the countertrend of the Indian market shows the resilience of a country in constant evolution. India is the fifth largest economy in the world, following United States, China, Japan and Germany, and the third largest per purchasing power, with growth predictions for the whole of 2020.

Among the different perspectives offered by the economy of the Indian subcontinent, thanks to the spread of the internet and the huge catchment area, the e-commerce sector ("e-commerce" or more briefly "**ecom**") continues to attract large amounts of capital from all over the world.
As proof of this, last April, at the height of the pandemic, Facebook invested $5.7 billion in Reliance's Jio Platforms, purchasing 9.99% of one of India's largest telecommunications companies. And, if in May the domino effect on the global economy did not spare the e-commerce sector, it is true that the main brands owners took immediate action to accompany small and medium enterprises in the inevitable process of digital conversion, which nowadays represents the only lifeline for the sectors most affected by the crisis.

2. E-commerce legislation

In order to fully understand how ecom works both from a regulatory and organisational point of view, an initial distinction shall be made between "Business to Business" (hereinafter, more briefly "**B2B**") and "Business to Consumer" (or simply "**B2C**") commerce. As the terms suggest, in B2B trade, the relationship is established between companies, which trade goods that are instrumental to the production of final products intended for the retail. In B2C trade, on the other hand, commercial relations exist between businesses and final consumers, buyers and users of the goods and/or services purchased.

For the sake of completeness, mention should also be made of the Consumer to Consumer ("**C2C**") trade, which allows consumers to purchase goods/services from other private consumers, but which, for the purposes of this article, does not deserve further consideration.
To this first classification, Indian law adds a second one, distinguishing the ecom "marketplace" model from the "inventory" model. In the former, the ecom company ("e-commerce entity"[1]) acts as an intermediary, making its digital platform available to producers and consumers so that they

[1] E-commerce entity means a company incorporated under the Companies Act 1956 or the Companies Act 2013 or a foreign company within the meaning of section 2 (42) of the Companies Act 2013 or an office, branch or agency in India as provided for in section 2 (v) (iii) of FEMA 1999 owned or controlled by a person resident outside India and conducting electronic commerce business.

can interact freely, and getting commission from the sale price. In the second one, the ecom company acts as a seller: it purchases products from producers, and then resells them on its own platform, keeping the difference between the purchase price and the sale price.
Finally, it should be noted that the concept of e-commerce covers not only tangible goods sold online, but also digital products and services.

Once these conditions are set, it should be clarified to what extent ecom companies receiving foreign direct investment ("**FDI**") are subject to these limits.

Under Indian law[2], with few exceptions[3], in the B2C marketplace, ecom can only act according to the "marketplace" model and is precluded from buying and reselling products to end users of the platform. This limitation, instead, does not apply to the B2B market, where ecom companies can operate both as intermediaries, according to the marketplace model, and as sellers, according to the inventory model.

Further restrictions impose a percentage limits either on the sales (25% of the total) conducted on the platform managed by the ecom company, or on the shareholding held in other companies operating on the same platform. The rationale is that, in addition to certain purchase volumes by the same seller or by a subsidiary of the company ecom, the latter is presumed to operate as the owner of the goods sold according to the inventory model. Therefore, by preventing ecom companies from directly or indirectly influencing sales prices, the restriction intends to protect the internal market from "hostile" operations by foreign subject.

Notwithstanding the purpose, such regulatory approach seems to have been shelved in May 2018, when Walmart purchased 77% of Flipkart for a total of $16 billion. On that occasion, several merchant and retailer associations claimed that the FDI rules had been breached and that there was a risk of abuse aimed at influencing the retail prices.

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[2] Regulations set forth in the "Consolidated FDI Policy Circular 2015". ("FDI policy") issued by the Ministry of Commerce & industry Department of industrial Policy and Promotion (FC Section), reiterated in the Guidelines for foreign direct investment (FDI) on E-commerce, Press Note no. 3 (2016) and press note no. 2 (2018). The full text of the Guidelines can be found at the following addresses respectively https://dipp.gov.in/sites/default/files/pn3_2016_0.pdf; https://dipp.gov.in/sites/default/files/pn2_2018.pdf.

[3] E-commerce according to the B2C model is allowed in the following circumstances:

(i) The manufacturer may sell its products in India through retail e-commerce;
(ii) The single-brand vendor operating through its own stores may engage in retail trade through e-commerce;
(iii) An Indian manufacturer may sell its brand products through e-commerce. The Indian producer will be the subsidiary that owns the Indian brand and produces at least 70% of the products in house, while at least 30% of the raw materials must come from Indian producers.

Perhaps, also for all these reasons, on February 23 2019, the Government of India published a first draft of the national e-commerce policy, which aims to rationalise and standardize the sector ("**Draft Policy**")[4].

In a nutshell, six essential issues are analysed: (i) privacy; (ii) infrastructure development; (iii) e-commerce markets; (iv) regulatory issues; (v) boosting the national digital economy; (vi) promoting exports through e-commerce.

The draft, which was immediately made available to stakeholders for evaluation and feedback, was recently discussed by the Indian Government before the pandemic; however, as a precautionary measure, it was decided to wait until the end of the Covid-19 emergency before proceeding to the final approval.

3. The e-commerce becomes "social"

Restrictive measures due to the pandemic have emphasized the already established trend of consumers buying products through digital platforms. In order not to be excluded from the choices of potential customers, companies are therefore adapting their offers to these new means of communication, through a digitization process that regulates every stage of the sales, from presentation to purchase, including payment methods.

Briefly mentioned in the introduction, the operation Facebook-Jio Platforms by Reliance ("**Jio**") has been welcomed by the Indian government as an opportunity to accomplish the "Digital India" mission: a government digital development program that aims to make India a less conservative country and more aware of the future economic challenges ahead.

Based on the statements made by the founder of Facebook and in consideration of what the company itself has already experienced in India, the strategy for the e-commerce sector seems to be aimed at creating a "marketplace" for the sale of goods, where companies target customers through social network pages, such as Instagram and **Facebook,** or through communication platforms, such as Messenger and WhatsApp. More specifically, companies will have the opportunity to buy Facebook ads to direct customers to their online stores. This means **that every seller, regardless of their size or budget, will be able to take their business online and**

[4] The full text of the Draft National e-commerce Policy can be consulted at the following address: https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf

connect with customers anywhere in the world, allowing small and medium businesses to set up real social stores, personalizing the appearance and advertising of their products.

In this landscape, social contact between companies and consumers, an essential element for the sale of particular types of goods (clothes for instance), could be recovered through **live video broadcasts**; a form of content communication widely spread on social networks, with the aim of facilitating the purchase of products in real time.

With regard to payment methods, Facebook has also indicated that payments will be made through WhatsApp, acquired by Facebook Inc. in 2014. India, with over 400 million active users, is the largest WhatsApp community in the world.

Indeed, the Mountain View company has already developed an application to help businesses: **WhatsApp Business**. Two years after its launch, the application has about one million active users in India alone, representing 20% of the total global user base. In any case, in line with the above-mentioned strategy, WhatsApp is ready with WhatsApp Pay to take the next step.

The acquisition of Jio made possible for WhatsApp to launch its own digital payment platform, called **WhatsApp Pay**. A pilot project was already launched in 2018, but the present one was only possible following the green light of the **National Payments Corporation of India (NPCI)**. Currently being tested only in India, this feature uses the Unified Payment Interface ("UPI"), a peer-to-peer technology system developed by the National Payments Corporation of India to allow its users, who have associated their account with a payment method, to make transactions with other users.

This real-time payment system, regulated by the Reserve Bank of India, has already been used to transfer funds between two bank accounts to portable devices and has recently reached a new all-time high of 1.3 billion. At present, however, the service is only available for banking transactions, but will be soon extended to e-commerce activities, generating a real revolution in payment methods.

4. Conclusion

The economic situation, the interest of multinationals, government support and the large number of potential customers make India one of the most interesting countries for companies that are willing to invest in e-commerce, a sector that can only grow in the future, but still little explored by Italian companies.