

Flipkart set to receive ED notice on FEMA breach of Rs 1,400 crore

The Enforcement Directorate, which is probing Flipkart for alleged breach of Foreign Exchange Management Act, is likely to send a show-cause notice alleging violation of Rs 1,400 crore, said a senior finance ministry official.

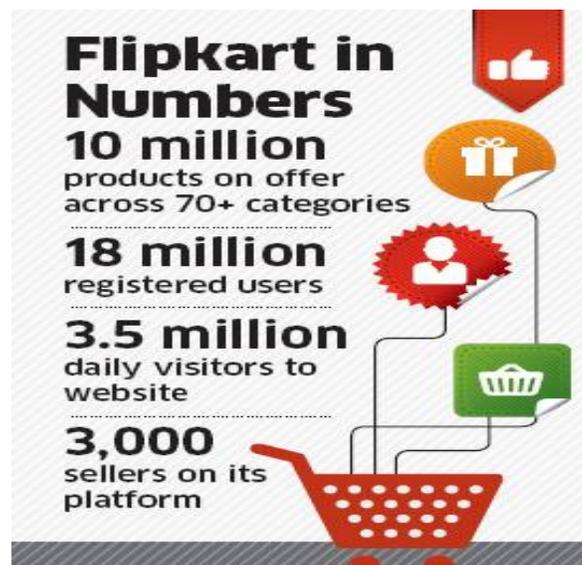
In late 2012, the commerce & industry ministry had told the Lok Sabha that Flipkart Online Services, India's leading e-commerce company, was under ED's scanner for possible violation of foreign investment rules. Now, the agency has prima facie evidence that the company has flouted the country's FDI rules, the finance ministry official said, asking not to be named.

India bars foreign investment in e-commerce firms selling wares directly to consumers but allows overseas participation in the so-called marketplace models where the website of a company such as Flipkart is used as a platform by third-party vendors to sell their products. "Flipkart is in complete compliance with the laws of the land. We will continue to support the authorities whenever we are approached," a Flipkart spokesperson said in an emailed reply.

Probe for period before April 2013

The ED probe is for the period before April 2013, when Flipkart shifted to the marketplace model, converting itself into a platform for independent buyers and sellers to conduct business on its site.

It junked its earlier model where it had control over goods sold through its e-commerce site which is not allowed under the current FDI norm. Foreign private equity investors, including Accel Partners, Tiger Global, Iconiq Capital and Naspers Group, have invested in Flipkart Online Services.



ED has the power to impose a fine up to three times the actual investment allegedly made in violation of FDI laws, according to the tax head of one of the big four consultancy firms. "One could become bankrupt," the top executive said, without talking specifically about Flipkart's case.

However, the tax head of a rival global consultancy firm says sending show-cause notice is just the preliminary stage of an investigation. "This is an early stage as they will conduct a preliminary inquiry and then issue a showcause notice," the tax expert said, asking not to be quoted as his company does not allow him to talk on specific cases.

"The (affected) party has the right to explain its position. Right now it does not mean the company is guilty," he added. He said though the maximum penalty can be levied in such cases, but the quantum of the fine depends on the nature of offence and the discretion of the investigator. The maximum fine is rarely imposed, he said.

part from Flipkart, ED had also investigated the world's largest retailer Walmart Stores Inc for a \$100-million investment into Cedar Support Services that owns Bharti Retail in 2010 by way of compulsorily convertible debentures, at a time India did not allow any sort of foreign investment in multibrand retailing or in the supermarkets segment. Subsequently, last year, ED said it found no violation on Walmart's part while infusing the funds into Cedar.

(Economic Times)