

# Comparison of approaches to legal regulation of e-commerce in the BRICS countries

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## Abstract

The article examines the importance of e-commerce in the modern world, as well as the level of its development and legal regulation in the BRICS countries. The author studied the problems of functioning of international electronic commerce during the 2020 coronavirus pandemic. For the purpose of comparative legal research, the legislation on electronic commerce of the Russian Federation, the People's Republic of China, Brazil, India, and the Republic of South Africa was considered. In the course of the study, it was concluded that the existence of a single normative act regulating exclusively legal relations within the framework of electronic commerce was the most effective way of legal regulation in this area.

**Keywords:** legislation, pandemic, BRICS countries, e-commerce, Internet trade.

**JEL:** L81.

## Introduction

E-commerce using the Internet is an integral part of society today. This fact is confirmed by statistical studies, according to which 40% of Internet users worldwide buy goods or services using online platforms.<sup>1</sup> This area of activity is especially relevant for the BRICS countries, given that China, India, and South Africa are the fastest growing markets among the BRICS countries.<sup>2</sup> In other countries, e-commerce development indicators are unstable, so the BRICS countries need to consolidate in this area.

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<sup>1</sup> United Nations Guidelines for Consumer Protection. UNCTAD. [https://unctad.org/system/files/official-document/ditceplpmisc2016d1\\_en.pdf](https://unctad.org/system/files/official-document/ditceplpmisc2016d1_en.pdf).

<sup>2</sup> Doklad o razvitii elektronnoy trgovli v malom i srednem biznese stran BRIKS (Report on the development of electronic commerce in small and medium-sized businesses in the BRICS countries). <https://roscongress.org/materials/doklad-o-razvitii-elektronnoy-torgovli-v-malom-i-srednem-biznese-stran-briks/>

The need for consolidation is also confirmed by the fact that the largest digital platforms are global. This raises the question of developing uniform approaches to antimonopoly regulation of their activities recognized by the world community. In addition, since digital platforms extend their reach to cross-border markets, the existence of different approaches to the activities of such digital giants in individual states will significantly reduce the effectiveness of regulatory impact (Spiridonova, 2020).

The paper uses a comparative legal method for studying and comparing the legislation in the BRICS countries. Another method used in the research is the analysis method allowing to identify the rules governing electronic commerce in the BRICS countries.

## **1. Impact of the pandemic on the development of e-commerce**

The Russian Federation has been developing electronic commerce since 2003. This is confirmed by the report “Some aspects of the development of electronic commerce in Russia,” which at the time of its creation contained information only about online stores.<sup>3</sup> Of course, today Russian consumers use not only online stores, but also online aggregators, the largest of which are Ozon, Wildberries, Ulmart, YandexMarket, Lamoda, etc.

The pandemic has triggered the growth of e-commerce, as restrictive measures have become an obstacle for people to shop offline. Thus, according to the Russian National Association of Distance Selling (NADT), during the pandemic, 7 million new buyers came to Russian marketplaces. However, restrictive measures have also revealed some problematic aspects of this area.

First, the 2020 coronavirus pandemic highlights the problem that e-commerce is less effective if it develops only within the borders of one country. Secondly, the legislator was faced with the issue of consumer protection in electronic commerce (Gromova & Ivanc, 2020). For example, how can consumers find out who exactly they conclude a transaction with; whether the site is a seller or acts only as an information intermediary; who should complaints be sent to in case of violation of rights. Thirdly, there is the issue of competition between the largest aggregators, whose popularity is so high that other sites are in the shadow of their competitors; the problem also manifests itself in the fact that some aggregators have been specializing in online sales for many years, and representatives of small and medium-sized businesses are forced to create online platforms from scratch or use services of competitors at a high price due to the pandemics.

Despite the fact that the coronavirus pandemic has had a stimulating effect on the development of e-commerce, including transnational, thanks to it, at the same time, the problem of insufficient legal regulation of this area has become more acute, both in individual BRICS countries and within the entire association. Only one country in the

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<sup>3</sup> Nekotorye aspekty razvitiya elektronnoj torgovli v Rossii (Some aspects of the development of electronic commerce in Russia). <https://www.un.org/ru>.

union (China) has a separate law dedicated entirely to e-commerce. Other countries have a number of separate rules that are scattered in different regulations or apply traditional consumer protection laws to e-commerce relations.

To identify gaps in the legislation on e-commerce regulation, we consider it necessary to conduct a comparative analysis of the legislations of the BRICS countries devoted to regulation of this area.

## 2. Russia

Consider the Law of the Russian Federation “On Protection of Consumer Rights” (hereinafter — the Law).<sup>4</sup> The development of electronic commerce was the reason for introducing novelties into it. So, in 2018, the Law introduced the concept of an owner of an aggregator of information about goods (services): “An organization, regardless of its organizational and legal form, or an individual entrepreneur who owns the program for electronic computers and (or) the owners of the site and (or) the page of the site in the information and telecommunication network ‘Internet’ and which provide the consumer with respect to a certain product (service) the opportunity to simultaneously familiarize himself with the proposal of the seller (executor) to conclude a contract for the sale of goods (contract for the provision of services)...”

Paragraph 1.2 of Article 9 of the Law determines the list of information that the aggregator must provide to the consumer. Article 12 of the Law establishes the responsibility of the aggregator for providing inappropriate information about the product to the consumer. Article 26.1 of the said Law specifies rules for distance sale of goods, for example, the seller must provide the consumer with information on the main consumer properties of goods, delivery rules, and rules for returning goods before concluding a contract.

Let’s give an example from judicial practice. The plaintiff bought a mobile phone on the AliExpress website on the basis of an invoice dated November 13, 2017. The funds were transferred to the seller’s account, which was confirmed by a bank statement. The goods were tracked by the track number of the parcel, from which it follows that the parcel arrived on the territory of the Russian Federation on 2017.11.26. On November 27, 2017, the package was released by customs. Further movement of the parcel on the site was not tracked. Prior to the trial, the claimant’s package was never received. An answer was received to the seller’s address, according to which the seller was not responsible for the goods that had passed the customs of the Russian Federation. Also, the plaintiff addressed the defendant (Federal State Unitary Enterprise “Russian Post”) with the claims dated 2018.03.04 and 2018.04.16, in response to which it was reported that since there was no information about the processing and forwarding of the postal item, it was considered lost. On the basis of Article 13 of the Law on the Protection of Consumer Rights, as well as the norms of the Civil Code of the Russian Federation, as well as the norms of the Universal

<sup>4</sup> Zakon RF ot 07.02.1992 No. 2300-1 (red. ot 31.07.2020) “O zashchite prav potrebitel’j” (Law of the Russian Federation of February 7, 1992 No. 2300-I (Edition of July 31, 2020) “On Protection of Consumer Rights”). [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_305/](http://www.consultant.ru/document/cons_doc_LAW_305/)

Postal Convention, the court satisfied the plaintiff's claims. But this decision is a precedent, firstly, because the victims do not always go to court, and secondly, the plaintiff was able to correctly prove the fact of the purchase, the fact of moving the goods, etc.<sup>5</sup>

It should be noted that the Russian Federation adopted the Resolution No. 24 of the Plenum of the Supreme Court of the Russian Federation "On the Application of Rules of International Private Law by the Courts of the Russian Federation" dated July 09, 2019. In this Resolution, the Supreme Court of the Russian Federation clarified that in such situations, it is possible to apply the norms of the Russian legislation on consumer protection. According to the explanations of the Plenum of the Supreme Court of the Russian Federation, a website on the Internet can be considered targeted at Russian consumers if one of its languages is Russian, prices are in Russian rubles, contact phone numbers with Russian codes are indicated, or there is other similar evidence (for example, the website owner ordered services aimed at increasing the citation rate of his site among Russian Internet users).<sup>6</sup>

Now we will consider the Resolution No. 612 of the Government of the Russian Federation "On Approval of the Rules for the Sale of Goods by Remote Method" dated September 27, 2007 (hereinafter referred to as the Resolution), the key aspect of which is the concept of selling goods remotely: "Sale of goods under a retail sale and purchase agreement concluded on the basis of familiarization of the buyer with the description of the goods proposed by the seller contained in catalogs, brochures, booklets or presented in photographs or using postal networks, telecommunication networks, including the information and telecommunication network 'Internet'..."<sup>7</sup> Also, in this Resolution, the concept of a seller was modified: "An organization, regardless of its organizational and legal form, as well as an individual entrepreneur selling goods remotely."

The above-mentioned regulation specifies types of goods that are prohibited from being sold remotely, such as alcoholic beverages and products that require certification for sale, such as jewelry. It also establishes the rules of transfer, delivery, rejection of goods, terms and necessary documents, and consumer rights when selling goods of inadequate quality.

The question arises about the effectiveness of such norms. In the concept of "selling goods by remote means," the Russian legislator equated selling via the Internet with selling via mail, radio, and TV channels. As a consequence, the norms reflected in the Resolution are designed for all these types of trade. However, when disputes arise in practice, application of these rules will be ineffective. The definition of the owner of the

<sup>5</sup> Decision of the Odintsovo City Court of the Moscow Region No. 2-5046 / 2018 of July 20, 2018 in case No. 2-5046 / 2018 <https://sudact.ru/>

<sup>6</sup> Postanovlenie Plenuma Verhovnogo Suda RF ot 9 iyulya 2019 g. No 24 "O primenении norm mezhdunarodnogo chastnogo prava sudami Rossijskoj Federacii" (Resolution of the Plenum of the Supreme Court of the Russian Federation of July 9, 2019 No 24 "On the Application of Rules of International Private Law by the Courts of the Russian Federation"). <https://www.garant.ru/products/ipo/prime/doc/72191252/>

<sup>7</sup> Postanovlenie Pravitel'stva RF ot 27.09.2007 No 612 (red. ot 16.05.2020) "Ob utverzhdenii Pravil prodazhi tovarov distancionnym sposobom" (Resolution of the Government of the Russian Federation dated September 27, 2007 No. 612 (ed. 16.05.2020) "On Approval of the Rules for the Sale of Goods by Remote Means"). [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_71418/](http://www.consultant.ru/document/cons_doc_LAW_71418/)

aggregator is also not entirely correct. For example, Rozhkova believes that the “owner of the aggregator” is actually the copyright holder of the corresponding technological platform, which includes, in particular, computer programs, databases, the website itself, and other things (Rozhkova, 2018).

In 2000, a Draft Federal Law “On Electronic Commerce” was submitted to the State Duma of the Russian Federation.<sup>8</sup> It disclosed the concept of electronic commerce: “...the conclusion, through the exchange of electronic documents, of the following transactions stipulated by the Civil Code of the Russian Federation (but not limited to them): purchase and sale, delivery, paid services, transportation, loan and credit, etc.” Since the bill was submitted to the State Duma of the Russian Federation in 2000, therefore, the content of the bill does not mention the concept of the Internet, and electronic commerce is reduced to the exchange of documents in electronic form. Also, this draft law defines the concept of an information intermediary: “...a person who, on behalf of another person, sends, receives or stores electronic documents or provides other services in relation to these documents.” Also, this definition does not in any way correspond to the concept of an aggregator or copyright holder of the site. The term “information system” is defined in the project as: “a system for preparing, sending, receiving, storing or otherwise processing electronic documents.” Today this information system is called a database. Further, the bill contains provisions on natural monopolies. Thus, the above draft law is outdated, and the understanding of e-commerce as in the early 2000s is no longer relevant.

### 3. China

Now let’s turn to the legislation of China. In 2018, the Law of the People’s Republic of China “On Electronic Commerce” (hereinafter – the PRC Law) was adopted, which discloses the concept of “electronic commerce”: “Commercial activities for the sale of goods or the provision of services via the Internet and other information networks.” Chinese lawmakers emphasize that e-commerce is directly linked to the Internet and information networks. Instead of the term “aggregator,” the PRC legislator uses the term “e-commerce operator,” which refers to individuals, legal entities and unincorporated organizations that carry out commercial activities provided by a supplier, including operators of e-commerce platforms, as well as station operators and e-commerce operators who sell goods or provide services through self-created websites and other network services.<sup>9</sup>

Consumer safety is ensured by Article 17 of the above Law. Electronic commerce operators must disclose information about goods or services in a comprehensive, truthful, accurate, and timely manner. E-commerce operators should not use bogus transactions, fabricate user reviews, or conduct false or misleading commercial propaganda in a manner

<sup>8</sup> Proekt Federal’nogo zakona “Ob elektronnoj trgovle” No. 11081-3 (Draft Federal Law No. 11081-3 “On Electronic Commerce”). <https://sozd.duma.gov.ru/bill/11081-3>

<sup>9</sup> Law of the People’s Republic of China on Electronic Commerce. [https://www.jetro.go.jp/ext\\_images/world/asia/cn/ip/law/pdf/regulation/regulation20190101.pdf](https://www.jetro.go.jp/ext_images/world/asia/cn/ip/law/pdf/regulation/regulation20190101.pdf)

that deceives and misleads consumers. This rule is relevant since in e-commerce it is very easy to mislead the consumer by publishing false reviews.

Paragraph 2 of Article 24 of the PRC Law obliges the operator to control the dissemination of information about the user. “When an e-commerce operator receives an application to request information about a user, correct or delete, he must verify the identity. Promptly submit inquiries, correct or delete user information. If the user logs out, the e-commerce operator must immediately delete the user’s information...” This rule is important for the consumer, since protection of personal data is in his best interests. In addition, Article 30 of the PRC Law obliges operators of e-commerce platforms to take technical measures and other necessary measures to ensure the security of their network. Operators are also required to ensure full and stable operation, prevent illegal and criminal activities on the network, effectively respond to network security incidents, and protect e-commerce transactions. This creates an additional guarantee of data security.

To minimize cases when an individual creates a website for selling goods, while using the word “store” or “company” in its name, the PRC legislator established a rule according to which operators of an e-commerce platform must require an application to be included in the platform for selling goods or providing services. Business operators, i.e. persons who directly trade, provide their real information, such as identity, address, contact information, administrative license, etc. To verify registration, it is necessary to regularly check and update the registration files.

Any trade is related to intellectual property; therefore, protection of intellectual property rights is also a responsibility of the operators. Under Articles 41 and 42 of the PRC Law, e-commerce platform operators establish rules for the protection of intellectual property rights. If the owner of the intellectual property rights believes that his intellectual property was infringed, he has the right to notify the e-commerce platform. Operators in Taiwan take necessary measures such as deleting, blocking, disconnecting, and terminating transactions and services. The notification must contain evidence of a violation. Upon receipt of the notification, the e-commerce platform operator must take necessary and timely measures and send a notification to the platform.

Now let’s turn to Articles 49, 50, 51 of the PRC Law. They prescribe how the user interacts with the e-commerce operator.

*Step 1.* If the information about the product or service provided by the e-commerce operator meets the terms of the offer, the user selects the product.

*Step 2.* If the product or service is selected and the order is successfully sent, the contract is concluded. A special point is that e-commerce operators should not use standard clauses or other methods to stipulate that the contract will not be concluded after the buyer has paid the price.

*Step 3.* The e-commerce operator must comprehensively and clearly inform the user about steps, precautions, delivery methods, etc. The operator must also ensure that users can conveniently and completely read and download information about the goods.

*Step 4.* After the electronic payment service providers complete electronic payments, they must provide users with timely and accurate information confirming the payment in the agreed way.

Chapter IV of the PRC Law regulates the procedure for resolving disputes in e-commerce. To improve user-operator interaction, the latter should create a convenient and effective mechanism for filing complaints and messages, as well as publish complaints and reports.

Disputes related to e-commerce can be resolved in several ways. First, it can be done through negotiations and inquiries from consumer organizations, industry associations, or others organizations. The main principle of interaction between operators and consumers is that in the event of disputes, operators of e-commerce platforms should actively help consumers to protect their legal rights and interests. The second way is judicial. When resolving disputes related to e-commerce, e-commerce operators must provide original contracts and transactions. Due to loss, counterfeiting, destruction, concealment or refusal to provide the aforementioned information by the e-commerce operator, if the people's court, arbitration institution or the relevant institution cannot establish the facts, the e-commerce operator is legally responsible.

The third way to resolve disputes is voluntary, through online negotiations. Operators of e-commerce platforms can create online dispute resolution mechanisms, formulate and publicize disputes.

The state of the PRC does not shirk from developing e-commerce. According to article 67 of the above law, the state promotes the use of e-commerce in various areas of the national economy, as well as supports industrial integration and development. And according to article 66, the state contributes to the creation of e-commerce infrastructure and logistics network, and also improves the statistical system of e-commerce.

Anyone who violates the provisions of the PRC Law "On Electronic Commerce," therefore, infringes on the management of public security and should be punished in accordance with the law, and if the act contains elements of a crime, then the offender will be held criminally liable.

The problem in China today is that there are many retailers who do not take advantage of their social, mobile networks in developing e-commerce. For example, a PwC Total Retail 2017 study shows that 70% of Chinese shoppers believe personalized marketing is important to their overall shopping experience, and only 50% are currently satisfied with modern personalized marketing. Historically, big brands have distanced themselves from the buyer by only having access to basic demographic data. Secondly, for a long time, fake accounts operated on social networks, which caused distrust among buyers. At the same time, experience has proven the effectiveness of social networks in the development of e-commerce.<sup>10</sup>

Thus, the legislation of China is focused on the development of electronic commerce. At the moment, the law of the PRC "On Electronic Commerce" is the most progressive among the BRICS countries. Evidence of this success is the volume of e-commerce. For example, in 2016, the volume of the B2C (business-to-consumer) e-market segment in Russia amounted to \$12 billion, and in China – to \$400 billion. The Chinese economy was focused on e-commerce, so the legal regulation of this area was the main task of the Chinese legislator.

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<sup>10</sup> e-Commerce in China — the future is already here. <https://www.pwccn.com/en/retail-and-consumer/publications/total-retail-2017-china/total-retail-survey-2017-china-cut.pdf>

Over the past decade, Russia has also begun to rapidly expand e-commerce. For example, in 2016, the volume of the Russian e-commerce market was 260 billion rubles, and in 2017, it reached 1,150 billion rubles. At first glance, this is a large figure, but if we compare it with the total volume of retail sales in Russia, it is only 3, 5 %.<sup>11</sup>

In general, the development of all economic relations between the RF and the PRC is based on the growth of e-commerce, while the consumer base in Russia is more than 90% of the population.<sup>12</sup>

#### 4. Brazil

Now let's turn to the Brazilian e-commerce legislation. This country does not have a specific law on e-commerce, as China does. The basic law is the "Brazilian Consumer Protection Code,"<sup>13</sup> which regulates commercial legal relations, regardless of the way they are carried out. This law contains only general rules, such as the consumer's right to adequate and clear information about various products and services with the correct indication of the quantity, characteristics, composition, quality, price and taxes, as well as possible risks. The consumer has the right to be protected from misleading and offensive advertising, commercial methods based on coercion or other illegal means, as well as from actions and reasons that are offensive or imposed as part of the supplied products and services. The above provisions also apply to legal relations in the field of electronic commerce. Law No. 13.543 of December 19, 2017 "On Offers and Methods of Displaying Prices for Products and Services for the Consumer" is considered a very important law, since at the legislative level it sets the font size for prices in electronic commerce, which must be at least twelve points for perception convenience.<sup>14</sup>

In addition, the provisions of the draft law "Brazilian Civil Internet Base" will apply to legal relations in electronic commerce, as well as the rules on the protection of personal data on the Internet.<sup>15</sup> Data collection is only possible with the prior consent of users. Users will be required to explicitly consent to the collection of information about their browsing habits. However, in some situations, they may not consider it possible to continue using the service if they decide not to accept the terms set by the site. Article 16 of the said bill establishes a direct prohibition on storing access to logs of other Internet

<sup>11</sup> Kakoj stanet elektronnaya kommerciya v 2018 godu i dalee? (What will e-commerce be like in 2018 and beyond?). <https://www.shopolog.ru/metodichka/analytics/kakoy-stanet-elektronnaya-kommerciya-v-2018-godu-i-dalee/>

<sup>12</sup> Transgranichnaya elektronnaya kommerciya. Novye vozmozhnosti dlya razvitiya kitajsko-rossijskoj trgovli. (Cross-border e-commerce. New opportunities for the development of Chinese-Russian trade). <https://iz.ru/920768/van-zhui/transgranichnaia-elektronnaia-kommertciia>

<sup>13</sup> Brazilian Consumer Protection Code. [http://www.planalto.gov.br/ccivil\\_03/leis/18078.htm](http://www.planalto.gov.br/ccivil_03/leis/18078.htm)

<sup>14</sup> Law No. 13.543, December 19, 2017 "On Offers and Methods of Displaying Prices for Products and Services for the Consumer." <https://www2.camara.leg.br/legin/fed/lei/2017/lei-13543-19-dezembro-2017-785957-publicacaooriginal-154549-pl.html>

<sup>15</sup> A civil rights framework for the internet in Brazil. <https://www.financierworldwide.com/a-civil-rights-framework-for-the-internet-in-brazil>

applications without the prior consent of the data owner, taking into account the provisions of Article 7 or personal data that is excessive in relation to the purpose for which the owner has given his permission. The provisions of Article 11 are of particular interest, because this may directly affect international electronic commerce: “In any operation for the collection, storage, and processing of records, personal data or messages via the connection and the Internet of application providers in which at least one of these actions take place on national territory, Brazilian law and the rights to privacy, personal data protection and the confidentiality of personal messages and records must be respected.”

But in 2013, the Decree of the President of the Republic of Brazil of March 15, 2013 No. 7962 on electronic commerce was adopted.<sup>16</sup> For example, Article 2 of this Decree states that the seller’s electronic website must contain: postal address and email, and other information necessary for its identification; the main characteristics of the product or service, including risks to the health and safety of consumers; terms of price, any additional or ancillary costs such as delivery or insurance; availability; form and timing of the service or product delivery or release. All these conditions must be displayed in a visible, easy-to-view place on the site. The sites must also contain information about the minimum number of consumers for the contract to enter into force, the term of use of the consumer’s proposal, and the code of the supplier responsible for the site about the electronic supplier of the offered product or service.

Article 5 of this Decree contains conditions obliging the supplier to clearly and openly inform about the means that are effective for the implementation of consumer protection.

In Brazil, there is a long history of controversy over advertising on websites that misleads consumers. Therefore, this Decree also contains rules that ensure compliance with the 1990 Consumer Protection Code for out-of-office contracts and establish minimum requirements for such information.<sup>17</sup>

Thus, Brazilian legislation contains a number of regulations that extend to legal relationships in electronic commerce, but only one Presidential Decree contains a small list of special rules aimed at regulating electronic commerce, which is not always effective, because the Decree consisting of 9 articles cannot settle all types of legal relationships in the field of electronic commerce. Judicial practice draws attention to the consumer’s right to information about the manufacturer and seller, and private information exchange services are under development (Ostanina & Titova, 2020).

## 5. India

The Republic of India is also engaged in the development of electronic commerce. This thesis is confirmed by the fact that India has been declaring its participation in electronic commerce since 1997. In 2017, e-commerce turnover was projected to grow from

<sup>16</sup> Decree of the President of the Republic of Brazil of March 15, 2013 No. 7962 on electronic commerce. [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2011-2014/2013/Decreto/D7962.htm](http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Decreto/D7962.htm)

<sup>17</sup> Consumer protection in electronic commerce. United Nations Conference on Trade and Development. [https://unctad.org/system/files/official-document/cicplpd7\\_en.pdf](https://unctad.org/system/files/official-document/cicplpd7_en.pdf)

\$30 billion in 2017 to \$ 86 billion in 2022.<sup>18</sup> This is facilitated by the development of the online platform IndiaMart, which collects and systematizes information about products and services of various Indian companies. Due to simplification of relations between buyers and sellers, there is an increase in electronic sales on this site. Buyers can choose different types of goods from different manufacturers in one place. IndiaMart is the second B2B platform in the world (after the Chinese company Alibaba). In 2014, IndiaMart launched Tolexo, a specialized e-platform for promoting small and medium-sized businesses. There is another evidence of the development of electronic commerce in India. For example, Amazon partnered with the second largest retailer in India, Future Retail. Future Retail stores will use Amazon India's marketplace for online sales, and the company will also connect to Amazon's Prime Now platform, which delivers goods in two hours. The partnership with Future Retail is Amazon's response to the launch of an online store for India's largest food retailer, Reliance Retail.<sup>19</sup> But at the same time, there is practically no legal regulation of electronic commerce in India.

India's Electronic Commerce Act was passed in 2000.<sup>20</sup> In connection with the adoption of this Act, it was planned to introduce a special taxation regime, which would consist of the following: equal taxation of e-commerce and traditional trade; constant monitoring of trade flows, changes in technology and business practices; international consensus on protection of national interests (Kumar, 2017). The main task of the Act was to ensure legal recognition of transactions through electronic data interchange (EDI) and other means of electronic communication, commonly referred to e-commerce. The goals were to replace paper-based methods of transferring and storing information, facilitate electronic filing of documents with government agencies and, in addition, amend the Indian Penal Code, the Indian Evidence Act of 1872, the Bank Certificates Act of 1891 and the Reserve Bank of India Act of 1934 on matters related to electronic commerce. But the paradox of the situation is that the above laws did not regulate legal relations in electronic commerce, as it is more focused on cybercrime, therefore it mostly regulates not civil, but criminal legal relations.

In 2020, India introduced the Consumer Protection (E-Commerce) Rules, which aims to restrict the practice of giving some sellers preferential treatment. The rules provide space and equal treatment for individual and small sellers on such platforms, and also eliminate the possibility of unfair trading practices on the part of large sellers. In addition to regulating e-commerce platforms of Indian origin, the E-Commerce Rules also governs foreign e-commerce platforms.<sup>21</sup>

<sup>18</sup> Roznichnye prodazhi v Indii i rastuschij rynek elektronnoj kommercii (Retail sales in India and the growing e-commerce market). <https://ruasean.ru/news/291-roznichnye-prodazhi-v-indii-i-rastuschij-rynok-elektronnoj-kommercii.html>

<sup>19</sup> Amazon predstavil dve eCommerce-tekhnologii (Amazon presented two eCommerce technologies). <https://e-pepper.ru/news/amazon-predstavil-dve-ecommerce-tekhnologii.html>

<sup>20</sup> Information Technology Act, 2000. The Gazette of India, No. 27, June 9, 2000.

<sup>21</sup> Consumer Protection (E-Commerce) Rules, 2020. <https://www.indialegalive.com/special/consumer-protection-e-commerce-rules-2020/>

Today, the Indian legislator also needs to create a special normative act that would regulate legal relations in the field of electronic commerce since the above facts indicate active development of e-commerce, and in order for the activity to be effective and safe for users, it must be regulated by law.

## 6. South Africa

To complete the study of legal regulation of electronic commerce, it is necessary to analyze the legislation of the Republic of South Africa. This research area is also relevant for this state, as evidenced by the following fact: according to UNCTAD research, in 2018, South Africa took the 77<sup>th</sup> position out of 151 economies in the B2C e-commerce index; and on the African continent, this state occupies the 2<sup>nd</sup> place in terms of e-commerce.<sup>22</sup> The country has three major online e-commerce platforms – UAfrica, Shopify, and BidorBuy.

A study of the legislation of the Republic of South Africa showed that in 2012, the country adopted a regulation called the Bill of Changes in Electronic Communications and Transactions.<sup>23</sup> This act is of interest to our study because it defines a commercial electronic transaction – the sale or purchase of goods or services by businesses, households, individuals, governments and/or other public or private entities, which is conducted through electronic communication networks and/or electronic means of communication, and include ordering, payment of remuneration and / or delivery of goods or services.

The South African legislator also defines an information network – a system for creating, sending, receiving, storing, displaying or otherwise processing data messages, including the Internet and electronic communication networks, where electronic communication networks are located. The law also contains a definition of an electronic transaction – a transaction carried out using electronic means of communication. It is particularly important to highlight the concept of consumer – any natural person who enters into or intends to enter into an electronic transaction with a supplier as an end user of goods or services offered by this supplier.

The peculiarity of legislation in South Africa is that terms related to electronic commerce are present to a sufficient extent, but there are no special rules that would regulate the content of these legal relations. This seems to be insufficient, especially with regard to resolving possible disputes arising in connection with electronic commerce.

## Conclusion

Based on the above study, the following conclusions were made. E-commerce is firmly entrenched in our lives, and the coronavirus pandemic shows that this area has great

<sup>22</sup> UNCTAD B2C E-Commerce Index 2018. [https://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/s0\\_pres\\_1\\_of\\_1\\_-torbjorn\\_fredriksson\\_unctad.pdf](https://www.wto.org/english/tratop_e/devel_e/a4t_e/s0_pres_1_of_1_-torbjorn_fredriksson_unctad.pdf)

<sup>23</sup> Notice 888 of 2012 Electronic communications and transactions amendment bill, 2012. [https://www.gov.za/sites/default/files/gcis\\_document/201409/35821gen888.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/35821gen888.pdf)

potential and needs adequate legal regulation, including to ensure consumer rights. At this point, due to insufficient legal regulation in the field of e-commerce, there are a number of problems, among which we can distinguish unfair competition among aggregators, insufficient consumer protection, as well as uneven development of e-commerce in individual countries.

A comparative analysis of the legislation in the BRICS countries showed that the absence of a unified law on electronic commerce and application of legislation on consumer protection by analogy is not effective. Of course, civil law, consumer protection law, and information technology law can, to some extent, settle simple disputes in the field of electronic commerce, for example, return of goods, or refusal to transfer goods. But legal relations are evolving, and application of disparate rules will soon become insufficient to resolve conflicts. The lack of adequate legal regulation can lead to a decrease in the confidence of foreign investors and consumers. The PRC Law “On Electronic Commerce” can be considered a model for regulating this field of activity, because it explains all the essential conditions of legal relations. The Chinese experience in creating a legal framework for e-commerce is a convincing evidence of the effective economic and legal policy pursued by the state authorities, which resulted in China’s undisputed leadership in the e-commerce market among all other BRICS countries and can be used by other countries, taking into account national realities.

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