

AMAZON'S TRYST WITH THE LAW: THE INDIAN ANTI-TRUST PERSPECTIVE

- MS. PRAGYA JAIN* & MS. AKSHITA SINGH*

ABSTRACT

The popularity of Amazon, as an online marketplace platform operating via various independent sellers, has been sky-rocketing over the years. Since its entry in the Indian market, Amazon has been trying to realise its Great Indian Retail Dream of reaching the consumer directly. Unrelenting in the face of the regulatory obstacles in India, Amazon, over the years has succeeded in dodging every curveball, albeit with increasing difficulty. Its aggressive approach to capture the market has been met with vehement disapproval from sellers existing on its online ecosystem as well as offline brick-and-mortar stores. While the platform has recently faced scrutiny by the Indian Competition watchdog, its partnership with Cloudtail India has been rigorously contested by the opposite parties. However, with the sudden decision of Amazon to cease its partnership with Cloudtail, the road ahead seems blurry at the moment.

Per the authors, the looming end of Cloudtail-Amazon's hand-in-glove act brings in several other core issues that ought to be understood while gauging the overall impact of the decision. The same has been presented in a three-fold fashion. We first trace the events leading up to the present case and the CCI probe into the e-commerce giants and the disintegration of Cloudtail. We next put forth a stakeholder analysis that would enable readers to comprehend the effects of the impugned disintegration from the perspective of the sellers other than Cloudtail. However, to lay down a more balanced view, the analysis is then furthered by an appraisal of the advantages of seemingly "direct" sellers like Cloudtail and how they leverage the economics of scale. The soul of this paper lies in contextualising the long wrought out tussle between the CCI, Indian trade unions, and e-commerce giants and the way forward.

Keywords: Amazon, Cloudtail, Competition Law, E-commerce, FDI

* Ms. Pragya Jain is a fifth year student from Hidayatullah National law university, Raipur.

* Ms. Akshita Singh is a fourth year student from National Law University, Odisha.

I. GENERAL OVERVIEW

Amazon, a force to be reckoned with in the e-commerce industry, has gained a humongous stronghold over the years, so much so that it is synonymous with online shopping for a major part of the population.¹ In an increasingly digital age, having a user base of over 200 million² has rendered it nigh impossible for the e-commerce giant to not attract attention from both customers and sellers. However, it is also true that with more popularity comes greater accountability. Amazon's role as an online marketplace platform has often incited legions of sellers, particularly the one contesting against the highly driven joint-venture between Amazon and Cloudtail India (hereinafter, "Cloudtail").³ Cloudtail is the wholly-owned subsidiary of Prione Business Services, the outcome of a culmination between Amazon and Catamaran Ventures.⁴ The joint-venture, ambitious in its approach, had claimed to transform the e-commerce business in India along with the lives of millions of small businessmen.

At this juncture, it becomes pertinent to acquire a perspective on Amazon's move concerning its stake in Cloudtail. A cursory glance of the definition of 'group company' given under the RBI Policy pertaining to Foreign Direct Investment (hereinafter "FDI") in India, stipulates "*A group company means two or more enterprises, which, directly or indirectly, are in a position to exercise 26% or more voting rights in the other enterprise or can appoint more than 50% of the members of the board of directors in the other enterprise.*"⁵ So as to ensure that Cloudtail did not fall within the ambit of a group company, Amazon brought down its stake from 49% to 24% in Cloudtail.⁶ This allowed Cloudtail to sell on the marketplace and have its independent plans.

¹ Daniele Palumbo, 'Amazon: The unstoppable rise of the internet giant' (February 2021) BBC News <<https://www.bbc.com/news/business-55927979>> accessed 01 September 2021.

² Todd Spangler, 'Amazon Prime Tops 200 Million Members, Jeff Bezos Says' (15 April 2021) Variety <<https://variety.com/2021/digital/news/amazon-prime-200-million-jeff-bezos-1234952188/>> accessed 02 September 2021.

³ Digbijay Mishra, 'Seller body files antitrust case against amazon at CCI', (26 August 2020) The Times of India <<https://timesofindia.indiatimes.com/business/india-business/seller-body-files-antitrust-case-against-amazon-at-cci/articleshow/77765512.cms>> accessed 03 September 2021.

⁴ Tarush Bhalla & Suneera Tondon, 'Amazon's top seller Cloudtail to cease ops from May 2022' (10 August 2021) Mint <www.livemint.com/companies/news/amazons-cloudtail-india-to-be-discontinued-from-may-2022-11628524693285.html> accessed 04 September 2021.

⁵ Reserve Bank of India, Master Circular on Foreign Investment in India (Circular Number - No.15/2013-14) <https://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=8104>.

⁶ *ibid.*

While this restructuring of the shareholding may lend legitimacy on paper, the reality is vivid. Allegations regarding Amazon operating via Cloudtail to attain maximum profits have often surfaced.⁷ However, with the two companies deciding to cease their seven-year-old partnership, the road ahead may be characterised by an odd turn of events. In what seems like a knee-jerk reaction to deep scrutiny by the Competition Commission of India,⁸ (“CCI”), the end of this mega saga may just be more than two enterprises simply parting ways. Interestingly, it has also been brought to notice that Cloudtail off-late has brought down its focus on smartphones.⁹ The information may not be interesting per se, but the fact that Cloudtail decides to reduce its attention on smartphones at a time when the centre of the allegations in the proceedings against Amazon is the act of selling smartphones via its preferred sellers, i.e., Cloudtail seems slightly queer. Hence, while the short-term goal of Amazon seems to dodge the spotlight which it has been put into before the competition watchdog, its long-term agenda behind the action remains speculative.

In this article, the authors have attempted to furnish an understanding of the looming end of Cloudtail-Amazon’s hand-in-glove act in a three-fold fashion. Firstly, we will walk through some crucial events which prompted the CCI to initiate an investigation and caused the e-commerce giant to take the subsequent decision of disintegration of Cloudtail. In the next fold of the research, we shed light on the effects of the impugned disintegration from the perspective of the stakeholders i.e. the sellers other than Cloudtail. In our last fold, we further our analysis by adopting a more balanced view. This entails an appraisal of the advantages of seemingly “direct” sellers like Cloudtail and how they leverage the economics of scale. The crux of the research lies in contextualising the long wrought out tussle between the CCI, Indian trade unions, and e-commerce giants and the way forward.

II. A WALK THROUGH KEY EVENTS

⁷ IANS ‘Indian Sellers Collective asks Narayana Murthy to end ties with Amazon’ (19 July 2021) Business Standard <www.business-standard.com/article/companies/indian-sellers-collective-asks-narayana-murthy-to-end-ties-with-amazon-121071900531_1.html> accessed 06 September 2021.

⁸ In Re: Delhi Vyapar Mahsangh And Flipkart Internet Private Limited and its affiliated entities & Amazon Seller Services Private Limited and its affiliated entities (CCI Case No. 40 of 2019).

⁹ Chaitali Chakravarti and Writankar Mukherjee, ‘Murthy’s Catamaran Ventures and Amazon India decide not to renew JV next year in Cloudtail’ (09 August 2021) The Economic Times <<https://economictimes.indiatimes.com/tech/technology/et-exclusive-amazons-cloudtail-india-to-stop-operations-from-next-may/articleshow/85179750.cms>> accessed 07 September 2021.

In order to fully appreciate the magnanimity of Amazon's tryst with the Indian competition watchdog, a brief recollection of the turn of events is necessary. These events help contextualise the political environment in which Amazon's Cloudtail was conceptualised in India. More importantly, it points to Amazon's undeterred will to jump through Indian regulatory hoops to reach the customer directly, much to the chagrin of other smaller e-sellers and trade collectives in the nation.

The June 2014 attempt¹⁰ at cementing a Joint Venture between Bezos's Amazon and Indian tech tycoon NR Narayana Murthy's Catamaran Ventures set the ball rolling for Amazon's Indian dreams. This Joint Venture became known as Prione Business Services¹¹ and it was successful in circumventing the regulatory wall of FDI norms that restrict¹² foreign players from holding a majority stake in e-commerce ventures. This Murthy-led 51:49 joint venture was aimed at onboarding small and medium-sized business services into the online world and boosting their business¹³. The catch, however, revealed itself in August 2014. Cloudtail India, a fully owned Prione subsidiary, made its presence known on the e-marketplace as a seller.¹⁴ However, it was around the same time, India, in the spirit of supporting its small and medium business owners, brought about stricter rules to regulate foreign-backed investments in its e-commerce space.¹⁵ It is crucial to note that this demographic continues to be of dear value in India's political fabric. These rules specifically laid down the scheme of the e-commerce models to disallow FDI in the inventory sold on the marketplace.

¹⁰ Saritha Rai, 'Amazon Ties Up With IT Billionaire Murthy Of Infosys To Launch E-commerce Joint Venture In India' (27 June 2014) Forbes <www.forbes.com/sites/saritharai/2014/06/27/amazon-ties-up-with-it-billionaire-murthy-of-infosys-to-launch-e-commerce-joint-venture-in-india/?sh=6efba50df7a6> accessed 04 September 2021.

¹¹ Priyanka Sahay, 'Amazon's JV with Catamaran is now a seller in its India marketplace' (06 October 2014) VCCircle <www.vccircle.com/amazons-jv-catamaran-now-seller-its-india-marketplace> accessed 04 September 2021.

¹² Nisha Poddar, 'Narayana Murthy to partner with Amazon for e-commerce business in India' (24 June 2014) The Economic Times <<https://economictimes.indiatimes.com/tech/ites/narayana-murthy-to-partner-with-amazon-for-e-commerce-business-in-india/articleshow/37267628.cms>> accessed 04 September 2021.

¹³ Rai (n 10).

¹⁴ Priyanka Iyer, 'As Jeff Bezos and Narayana Murthy end Cloudtail partnership amid CCI probe, here's a timeline on one of Amazon's largest sellers in India' (10 August 2021) Money Control <www.moneycontrol.com/news/business/as-jeff-bezos-and-narayana-murthy-end-cloudtail-partnership-amid-cci-probe-heres-a-timeline-on-one-of-amazons-largest-sellers-in-india-7301081.html> accessed 04 September 2021.

¹⁵ Rajat Mukherjee, Nitish Goel and Akshat Gupta, 'India: Key Changes In The Consolidated FDI Policy Of 2016' (10 June 2016) Mondaq <www.mondaq.com/india/inward-foreign-investment/499690/key-changes-in-the-consolidated-fdi-policy-of-2016> accessed 04 September 2021.

From then on, it is worth noting that Cloudtail's market presence and net profits rose promisingly well into FY17¹⁶ at which point, Amazon's alleged malpractices had fluttered quite a few feathers. The All-India Online Vendors Association knocked at the CCI's doors,¹⁷ levelling allegations of predatory pricing against e-commerce giants Amazon and Flipkart, affected through their online sellers Cloudtail and WS Retail, respectively.

As a reaction to the revised e-commerce rules coming into force,¹⁸ a smart restructuring of Cloudtail was necessitated to ensure that it was in compliance with the Indian laws. This move also came in the aftermath of Amazon winding up its marketplace operation in China.¹⁹ After facing stiff local competition in China, Amazon turned its eye to India, a trove of opportunities for growing its business. Being one of the key growth markets, India prompted Amazon to run pillar to post in terms of being compliant with the country's laws. Thus, Amazon Asia diminished its stake in the seller to 24% and Murthy's stake shot up to 76%.²⁰ This resulted in Cloudtail's status as an Amazon group company being neutralised.²¹

Meanwhile, Cloudtail's revenues and profits continue to skyrocket well into FY19²² and FY20,²³ further breaking the backs of traders across the country. In January 2020, the Delhi

¹⁶ Anushree Bhattacharyya, 'Cloudtail India posts FY17 net profit of Rs 1.59 crore' (01 June 2018) Financial Express <www.financialexpress.com/industry/cloudtail-india-posts-fy17-net-profit-of-rs-1-59-crore/1189235/> accessed 04 September 2021.

¹⁷ Shambhavi Anand, 'Online sellers write to CCI alleging predatory pricing by Flipkart's WS Retail and Amazon's Cloudtail' (04 March 2017) The Economic Times <<https://economictimes.indiatimes.com/small-biz/startups/online-sellers-write-to-cci-alleging-predatory-pricing-by-flipkarts-ws-retail-and-amazons-cloudtail/articleshow/57456435.cms?from=mdr>> accessed 04 September 2021.

¹⁸ Sankalp Phartiyal, 'Explainer: What are India's new foreign direct investment rules for e-commerce' (31 January 2019) Reuters <www.reuters.com/article/india-ecommerce-explainer-idINKCN1PP1XS> accessed 04 September 2021.

¹⁹ Arjun Kharpal, 'Amazon is shutting down its China marketplace business. Here's why it has struggled' (18 April 2019) CNBC <www.cnbc.com/2019/04/18/amazon-china-marketplace-closing-down-heres-why.html> accessed 04 September 2021.

²⁰ Shambhavi Anand and Chaitali Chakravarty, 'Key Amazon seller Cloudtail returns in a new avatar' (, 07 February 2019) The Economic Times <<https://economictimes.indiatimes.com/industry/services/retail/key-amazon-seller-cloudtail-returns-in-a-new-avatar/articleshow/67877172.cms?from=mdr>> accessed 04 September 2021.

²¹ 'ET Now Digital 'Cloudtail rejigs ownership structure, to be back on Amazon soon' (07 February 2019) Times Now News <www.timesnownews.com/business-economy/companies/article/cloudtail-rejigs-ownership-structure-to-be-back-on-amazon-soon/361666> accessed 04 September 2021.

²² 'TNN 'Cloudtail's topline up 25% at Rs 8,945 crore' (14 October 2019) The Times of India <<https://timesofindia.indiatimes.com/business/india-business/cloudtails-topline-up-25-at-rs-8945-crore/articleshow/71572061.cms>> accessed 05 September 2021.

Vyapar Mahasangh knocked on the doors of the CCI and a probe was initiated into the practises of Amazon and the Walmart owned Flipkart.²⁴ The Competition watchdog initiated an investigation under Section 26(1) of the Competition Act, 2002 on the premise of having prima facie evidence.²⁵ Allegations of indulging in anti-competitive practices, preferential treatment of sellers, deep discounting, and predatory pricing were levelled against these e-commerce giants. The news of the probe's launch coincided with Bezos's visit to India, which was met with protesting traders on the street.²⁶

In almost a knee-jerk reaction, the companies were quick to move to the Karnataka High Court²⁷ seeking its intervention in the probe. The companies seemingly received some relief when the Court granted an interim stay²⁸ on the CCI's probe into them. After an appeal to the Supreme Court by CCI was redirected²⁹ to the High Court, the matter grew more contentious. The companies contended that there was a lack of prima facie evidence. While CCI maintained that the factum of a probe did not allude to the guilt of the companies and thus must be allowed, Amazon and Flipkart maintained their stance. Additionally, they claimed that there should have been a consultation between them and the regulator before the initiation of the probe. At this juncture, it is pertinent to note that the law does not provide for

²³ TNN 'Cloudtail profit up 130% in 2019-20' (12 December 2020) The Times of India <<https://timesofindia.indiatimes.com/business/india-business/cloudtail-profit-up-130-in-2019-20/articleshow/79686140.cms>> accessed 05 September 2021.

²⁴ IANS 'CCI orders enquiry into business practices of Amazon, Flipkart' (14 January 2020) The Hindu <www.thehindu.com/business/Industry/ci-orders-enquiry-into-business-practices-of-amazon-flipkart/article30564551.ece> accessed 05 September 2021.

²⁵ Peerzada Abrar, 'Our duty is to ensure fair competition, CCI tells Karnataka High Court' (14 February 2020) Business Standard <www.business-standard.com/article/companies/our-duty-is-to-ensure-fair-competition-cci-tells-karnataka-high-court-120021400043_1.html> accessed 05 September 2021.

²⁶ Soutik Biswas, 'Why India is greeting Amazon's Jeff Bezos with protests' (15 January 2020) The BBC <www.bbc.com/news/world-asia-india-51117315> accessed 05 September 2021.

²⁷ Himanshi Lohchab, 'Amazon moves Bengaluru HC, seeks stay on CCI's probe order' (10 February 2020) The Economic Times <<https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/amazon-moves-bengaluru-hc-seeks-stay-on-ccis-probe-order/articleshow/74063198.cms>> accessed 05 September 2021.

²⁸ Peerzada Abrar, 'Karnataka HC grants interim stay on CCI probe against Amazon, Flipkart' (15 February 2020) Business Standard <www.business-standard.com/article/companies/karnataka-hc-grants-interim-stay-on-cci-probe-against-amazon-flipkart-120021401878_1.html> accessed 05 September 2021.

²⁹ PTI 'SC asks Karnataka HC to decide CCI plea for vacating stay on probe against e-confirms' order' (26 October 2020) The Economic Times <<https://economictimes.indiatimes.com/industry/services/retail/sc-asks-karnataka-hc-to-decide-cci-plea-for-vacating-stay-on-probe-against-e-confirms/articleshow/78871112.cms?from=mdr>> accessed 05 September 2021.

such a consultation. Accordingly, the High Court dismissed the plea and cleared the way for the probe,³⁰ after which an appeal was filed before a division bench of the Court.

Further adding to its woes, a comprehensive investigative probe by Reuters in February 2021 took stock of sensitive internal documents and communications.³¹ It was reported that the massive small business sellers' online onboarding has been but a façade. The 2019 document revealed that behind the veil, despite the supposed 400,000 strong Indian sellers, it was only a smaller cluster of sellers that accounted for a third of sales in the marketplace.³² Further, Reuters also reported that of these sellers, Amazon had indirect equity stakes in two: Cloudfare and Appario.³³

In July 2021, a crushing blow was then received by the companies when the division bench dismissed the pleas³⁴ by the e-commerce giants. The final death knell was delivered in August 2021 when the last recourse of the companies, a three-judge bench of India's Apex Court allowed CCI³⁵ to continue its investigation. The Bench, led by the Chief Justice of India, called upon the companies to uphold their stature and facilitate such probes instead of showing resistance.³⁶ It is at this point the Bezos-Murthy relationship was laid to rest. The Supreme Court's order followed the release of a statement by the companies which announced that the Joint Venture partnership will not be renewed from May 2022.³⁷ The non-renewal thus put the final nail in Cloudfare's coffin. In light of this seemingly unending

³⁰ Digbijay Mishra, 'Karnataka HC dismisses Flipkart, Amazon plea to stop CCI probe' (24 July 2021) *The Economic Times* <<https://economictimes.indiatimes.com/tech/tech-bytes/karnataka-hc-dismisses-flipkart-amazon-plea-to-stop-cci-probe/articleshow/84668622.cms>> accessed 06 September 2021.

³¹ Aditya Kalra, 'Amazon documents reveal company's secret strategy to dodge India's regulators' (17 February 2021) *Reuters* <www.reuters.com/investigates/special-report/amazon-india-operation/> accessed 06 September 2021.

³² *ibid.*

³³ Kalra (n 31).

³⁴ Mishra (n 30).

³⁵ Krishnadas Rajagopal, 'Won't intervene in CCI probe against Amazon, Flipkart: SC' (09 August 2021) *The Hindu* <www.thehindu.com/business/wont-intervene-in-cci-probe-against-amazon-flipkart-sc/article35825108.ece> accessed 08 September 2021.

³⁶ Dhananjay Mahapatra, 'SC upholds CCI probe into Amazon, Flipkart' (10 August 2021) *The Times of India* <<https://timesofindia.indiatimes.com/business/india-business/sc-upholds-cci-probe-into-amazon-flipkart/articleshow/85197369.cms>> accessed 08 September 2021.

³⁷ 'Amazon, Catamaran to end Cloudfare joint venture next year' (09 August 2021) *The Times of India* <<https://timesofindia.indiatimes.com/business/india-business/amazon-catamaran-to-end-cloudfare-joint-venture-next-year/articleshow/85181383.cms>> accessed 09 September 2021.

saga, the authors have attempted to put forth both sides of this debate in the next section, to lay out the stakes involved.

III. DAVID V. GOLIATH: THE INDIAN E-COMMERCE MARKET

A. David: The Small and Medium Business

Being an online marketplace platform operating via various independent sellers and with a significant number of registered users and customers, Amazon has been flourishing over the years. Its very popularity as an online marketplace has made it a crucial part of every independent seller, be it big or small, who seek to earn revenue by selling products online. That said, it must also be noted that the impugned joint venture between Amazon and Cloudtail has often browned-off sellers both on and off the platform.³⁸ Prior to the disintegration of the two, various issues concerning the ill-effects of such a partnership have been flagged by sellers and traders all across the globe. To paint a clear picture of the issues, these sellers can be further categorised into two groups. The first group will include all the other independent, yet small, sellers who sell their products on Amazon alongside Cloudtail. The second group will comprise all the conventional traders of the country who feel threatened by the presence and power of Amazon as a platform.

The first group of sellers were always irked by the presence of gigantic sellers such as Cloudtail and their apparent treatment by Amazon. Their contentions have always been premised on the idea that Amazon has always catered more to its renowned sellers and has given what was called preferential treatment to them. The cornerstone of the entire edifice on which these arguments are based is the upper hand which the sellers believe is given to the preferred sellers. The favouritism is evidenced by alleged exclusive launches and deep discounting via and to the preferred sellers respectively, one of which being Cloudtail itself.³⁹ This, as per the sellers, deprived them of a fair chance to grow and earn revenue on the platform and essentially violating section 3(1) read with section 3(4) of the Act.⁴⁰

³⁸ Jay Greene, 'Amazon Sellers Say Online Retail Giant Is Trying to Help Itself Not Consumers' (01 October 2019) The Washington Post <www.washingtonpost.com/technology/2019/10/01/amazon-sellers-say-online-retail-giant-is-trying-help-itself-not-consumers/> accessed 10 September 2021.

³⁹ Mihir Dalal, 'The Amazon, Flipkart Antitrust Case Files' (04 March 2020) Mint <www.livemint.com/industry/retail/the-amazon-flipkart-antitrust-case-files-11583250005881.html> accessed 10 September 2021.

⁴⁰ *ibid.*

Belonging to the second group of sellers are the ones who sell through the brick-and-mortar set-up.⁴¹ To them, the opportunity cost resulting from the practise of Amazon in the name of innovation has been rather high. The increased power of Amazon and Cloudtail as a single entity has had a direct bearing on their lives and livelihoods.⁴² By the virtue of their set-up, not only are these sellers devoid of a Pan-India reach, unlike Amazon, but they are also bound by fixed costs. Having sufficient backing, Amazon has always resorted to deep discounting, a tactic far-fetched for any small seller or trader to afford, via sellers such as Cloudtail. Piling onto their agonies are other benefits given to sellers such as Cloudtail, including, inter alia, promotion of private labels and preferential listing by the e-commerce giant.

While the sellers have been patently vocal about their agonies, it is also true that the disintegration of Cloudtail and Amazon will at least be a breather for the first group sellers. It could be a first, yet significant step in the direction of fair play and ensuring sufficient opportunities to all sellers alike. However, the story does not end here.

Amazon and the sellers stand at an immensely different juncture. While Amazon reserves its role as a mere intermediary between the customer and the seller, it is these sellers who are counting on Amazon for their daily bread and butter. What Amazon does now to fill the vacuum will decide the road ahead for them. As for the second group of sellers, amazon now has a greater need than ever before to balance its profit motive while respecting the competitive boundaries.

B. Goliath: Foreign Investment-Backed Cloudtail

Since its conception in 2014, Cloudtail has been a regulatory hot potato. As previously mentioned, it was launched as an independent seller and was, for the lack of a better term, the love child of Amazon Asia and Indian tech mogul Murthy's Catamaran Ventures. With Indian laws shrouding the customer in a regulatory cloak fashioned out of stringent regulation of foreign investments, the vision of direct sales became increasingly difficult for the e-commerce giant to overcome.

⁴¹ Rebecca Bundhun, 'Why Small Traders in India Fear the Amazon Effect' (19 January 2020) The National News <www.thenationalnews.com/business/economy/why-small-traders-in-india-fear-the-amazon-effect-1.965981> accessed 11 September 2021.

⁴² Mihir Dalal and Suneera Tandon, 'E-commerce Boom Hurts Brick-and-Mortar Retailers' (17 March 2014) Mint <www.livemint.com/Industry/f6eARBcJOWrTZTzuDcZZzI/Ecommerce-boom-hurts-brickandmortar-retailers.html> accessed 11 September 2021.

Cloudtail's presence in this regard came as a round-about way of de-cloaking the customer. The JV began its operations in August 2014, and as revealed by a Reuters report based on sensitive internal Amazon documents, was referred to as a Special Merchant ("SM").⁴³ The document in question, an Amazon India report from February 2015, stated that Cloudtail was accountable for a large slice of the cake, accounting for up to 40% of sales in the marketplace.⁴⁴ Further, much to the woes of trader associations across the nation, it has also been uncovered in the aforementioned report that Amazon facilitated key relationships with major tech companies, thus skyrocketing the product offerings and credibility of Cloudtail.⁴⁵ While the e-commerce giant has maintained that no preferential treatment has been accorded to Cloudtail or any of its sellers, the reality proves otherwise.⁴⁶

Curiously, the Bezos-Murthy partnership's death knell was announced in a statement on August 9, noting that it will not be renewed and as such Cloudtail will cease operations in May 2022.⁴⁷ Despite undergoing strategic restructuring over the years, the end of Cloudtail brings a reality check for Amazon's direct sales fantasy in India.

In an arguendo, the extent of foreign investment in India did not threaten the livelihood of countless traders and did not contradict India's socialist worldview, Cloudtail's presence in the e-commerce market was a wonderful feat. Viewed from a kinder eye, Cloudtail served a cocktail of fine logistics, cheaper prices, and a wide range of product offerings resulting from observed customer and seller behaviour in the marketplace.⁴⁸

Cloudtail's presence skyrocketed⁴⁹ as it was able to leverage the economics of scale by deep discounting, and offering faster pan-India deliveries for its wide range of products.⁵⁰ This

⁴³ Kalra (n 31).

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ 'Amazon to end controversial JV with Narayana Murthy's Catamaran Ventures' (09 August 2021) Mint <www.livemint.com/companies/news/amazon-to-end-relationship-with-indian-seller-cloudtail-11628518408828.html> accessed 09 September 2021.

⁴⁸ 'Amazon brings back offers, fast deliveries' (08 February 2019) The Times of India <<https://timesofindia.indiatimes.com/business/india-business/amazon-brings-back-offers-fast-deliveries/articleshow/67892509.cms>> accessed 09 September 2021.

⁴⁹ 'How Amazon used Cloudtail, Appario to snowball its India sales' (18 February 2021) Business Today <www.businesstoday.in/latest/corporate/story/how-amazon-used-cloudtail-appario-to-snowball-its-india-sales-288714-2021-02-18> accessed 09 September 2021.

⁵⁰ Priyanka Sahay, 'How the Likes of Amazon have Circumvented India's FDI Laws' (17 November 2020) News 18 <www.news18.com/news/business/how-the-likes-of-amazon-have-circumvented-indias-fdi-laws-3088847.html> accessed 09 September 2021.

added to the woes of other sellers both on the e-marketplace (comprising SMBs and other sellers) and in mom-&-pop stores, for whom the sheer volume of products, profit margin, and fast countrywide deliveries were beyond their ken.

Further, Cloutail, allegedly backed by Amazon, was able to obtain favourable deals⁵¹ from other tech giants, thus adding to its credibility in the marketplace. Furthermore, it alleviated the fears of even the older sceptics of e-commerce by providing them with a credible option and reduced the risk of online scams in the product offering. This credibility came in handy during the COVID 19 pandemic when brick and mortar shops had to be shut and even the biggest naysayers of e-commerce had to resort to it.⁵²

As we near the disintegration of what some may characterise as the greatest thing to happen to e-commerce in the country, several questions remain unanswered. The non-renewal of the Bezos-Murthy partnership also cast aspersions on Amazon's other JV arrangements such as Appario.⁵³ It remains to be seen what the future holds for Amazon's operational blueprint in India and what becomes of the innovation-policy balance in the Indian context.

IV. CONCLUSION - THE WAY FORWARD

Radical steps such as effecting disintegration or demerger of two enterprises are not just confined to the borders of our country. As competition concerns escalate across the globe, regulators have started to examine the practices of burgeoning enterprises far more strictly. For instance, in December 2020, Facebook came under fire for its acquisition of Instagram Inc. and WhatsApp Inc. in 2012 and 2014 respectively.⁵⁴ The acquisition led to alarms being raised as it had consolidated Facebook's monopoly in the social networking space. At this juncture, the Federal Trade Commission of the United States of America questioned Facebook's moves on the precipice, saying that they enabled the tech giant to maintain its social networking monopoly by neutralizing any possible competitive threat. In a similar vein, the mega Facebook-Giphy deal has also been brought under the lens of the competition

⁵¹ Kalra (n 31).

⁵² Brian Dumaine, 'Amazon was built for the pandemic—and will likely emerge from it stronger than ever' (18 May 2020) Fortune <<https://fortune.com/2020/05/18/amazon-business-jeff-bezos-amzn-sales-revenue-coronavirus-pandemic/>> accessed 09 September 2021.

⁵³ Kalra (n 31).

⁵⁴ *Federal Trade Commission v. Facebook* Incorporation (Case No: 1:20-cv-03590) (US).

watchdog in the United Kingdom.⁵⁵ Given Facebook's aggressive market power, the authorities worry that the subsuming could result in denial of access to GIFs by other social media companies, thereby affecting the competition negatively.

While on the surface, the end to the Cloudfair-Amazon saga seems like a benevolent move by a tech giant endeavouring to comply with domestic laws of the country, the waters run deeper. The disintegration of Cloudfair comes as a symptomatic treatment of a much deeper ailment.

As Amazon's long-standing quest remains to capture the direct sales market in India,⁵⁶ this move only reeks of being pursued by the need to prevent a much graver governmental backlash. Thus, characterising it as an appeasement and damage control would not be entirely out of order. While the authors' opinions converge on the point of Amazon's continued act of toeing the line, their opinions seemingly diverge on the utility of mega sellers such as Cloudfair, as laid out in the previous section of this article. One of the authors laid out the turf war between deep pocketed sellers such as Cloudfair and other smaller sellers (including brick and mortar ones). The author underlined the harm that presence and undeniable preferential treatment of these players causes to other traditional sellers (both online and offline). The next subsection was dedicated to understanding the utility of the mega sellers such as Cloudfair and how the economics of scale was leveraged to serve finer logistics. The situation today stands at an interesting junction. The challenge in the e-commerce space remains stark: finding the middle ground between the two viewpoints so as to balance innovation and survival and what the future holds for Amazon's Indian dreams.

Thus, with every passing day, a question that now plagues the authors is whether Bezos's quest to directly make it in the Indian e-commerce market will meet with the same success as his space quest.⁵⁷

⁵⁵ 'Facebook's Takeover of Giphy raises competition concerns' (12 August 2021) Competition and Markets Authority <www.gov.uk/government/news/facebook-s-takeover-of-giphy-raises-competition-concerns> accessed 14 September 2021.

⁵⁶ Kalra (n 31).

⁵⁷ 'Jeff Bezos is going to space on first crewed flight of rocket' (08 June 2021) CNN <<https://edition.cnn.com/2021/06/07/tech/jeff-bezos-space-blue-origin-new-shepard-flight-scen/index.html>> accessed 14 September 2021.