



June 8, 2021

To,
Chairperson,
Board for Regulation and Supervision of Payment and Settlement Systems
Reserve Bank of India

16th floor, Central Office Building
Shahid Bhagat Singh Marg
Mumbai - 400 001

Subject: Representation before the Board for Regulation and Supervision of Payment and Settlement Systems (BPSS) requesting it to disallow Amazon's application for the New Umbrella Entity for Retail Payments.

Dear Sir,

We invoke your attention to the “Framework for authorisation of pan-India Umbrella Entity for Retail Payments” (hereinafter referred to as “**Framework**”), which was released by the Reserve Bank of India (hereinafter referred to as “**RBI**”) on 18.08.2020. Through this Framework, the RBI has given an opportunity to private players to apply to set up ‘New Umbrella Entity (hereinafter referred to as “**NUE**”) for retail payment systems and develop and operate their alternate payment mechanism. New Umbrella Entity would be an entity which would be permitted to develop and operate alternate payment systems other than what is operated by National Payment Corporation of India (hereinafter referred to as “**NPCI**”), such as Unified Payments Interface (UPI) and RuPay debit card payment system. By way of the Framework, RBI intends to set a stage for competitors to NPCI by promoting private players to innovate and operate alternate payment systems. NUE would be permitted to operate new payment systems which would include ATMs, White Label POS, Aadhaar based payments and remittance services and newer payment methods etc.

Our submission is at three levels. At the first level, we will like to contest the very need of setting up NUEs in competition to NPCI, which operates as a quasi-public body, in a non-profit manner. India has been the envy of the world in the manner it successfully operates a public infrastructure for digital payments when many other countries are belatedly trying to wrest some amount of public and regulatory control in this area. We are not sure why would India choose to squander this advantage, and head-start, by now privatizing digital payment infrastructural platforms. Payments systems, like currency management, are the lifeblood of an economy, and an extremely critical infrastructure for any country. Not only it does not belong to the real economy, even for financial economy it is a core infrastructural element. We should not be looking for creating value in this layer, but to maximize how this core infrastructural layer helps greatest value creation in the whole of economy. It is therefore not a layer that needs competition and profit making, which are ideas behind NUEs. Like currency is provided and managed on a monopoly and non-profit basis, the core digital payment exchange or infrastructure should also be a public or quasi-public monopoly, operated on a non-profit basis. This layer should be such as to maximize competition and innovation in dependent payment systems, and other parts of the economy. All changes and innovations needed at infrastructure level can in any case periodically be made in a carefully calibrated and regulated manner.

It is even more unthinkable that MNCs should be allowed to be a part of consortiums applying for NUE license. Payments infrastructures are one of society's richest mines of data, and access of MNCs to such a data mine would compromise India's data sovereignty. NUEs will be allowed to make profit, and only sustainable basis of profit-making in a payment infrastructure is through use or abuse of data that is generated and/or trapping people in one captive digital payments ecology for subsequent exploitations. Both these are fundamentally dangerous business directions which should not be encouraged.

We therefore appeal that the whole process of NUE licensing be scrapped, and instead NPCI and platforms like the UPI are strengthened.

At a second level, even if the NUE process is decided to be taken ahead with, applicant entities that are very likely to use their control over a digital payment infrastructure for problematic

vertical and horizontal integrations should be disallowed. The attempt should be to choose such entities that can remain pure play digital payment infrastructure providers. With regards to the purpose of the NUE process, it has been stated that availability of NUE will offer products which will, besides addressing concentration risk, also encourage competition and innovation, thus contributing financial stability. Therefore, competition in the market is one of the primary objectives that has been identified by the RBI, which in turn would lead to innovation. Considering the scope and object of the Framework and also the nature of work that NUE would be permitted under the Framework, it is extremely important to ensure that the permission to set up such entity is not granted to the entities which may unduly and selectively use it to commercial advantage of themselves and their related entities and to the utter disadvantage of all other stakeholders, including and most importantly the citizens of India and those which may distort the market of payment settlement itself. Giving the NUE license to any consortium that includes any large-scale retailer is in this context especially problematic.

And at a third level, this submission especially focuses on the problems with the application for license submitted by e-commerce giant Amazon Inc. and Amazon India Private Limited (hereinafter referred to as “**Amazon**”) along with Visa Inc., ICICI Bank Limited and Axis Bank Limited, Pine Labs and Bill Desk (hereinafter collectively referred to as “**Amazon consortium**”). Even as we focus this particular submission on Amazon, all the arguments made hereunder, including the high likelihood of abuse of data and market power, problematic vertical integrations, and the giant corporates overwhelming the ‘public functions’, must also be considered while scrutinizing the applications of other corporate giants. Particularly, the application of the consortia where Google and Facebook are partnering with India’s biggest retailer and communication giant, Reliance-Jio, must be strictly scrutinized by the RBI and BPSS, as it poses similar concerns to that of Amazon consortium.

We humbly submit that the application of Amazon consortium must be rejected forthwith on the following grounds-

A. Amazon lacks the record of fairness and integrity as mandatorily required for approval of Application under the Framework.

It is submitted that under the Framework, fairness, equity and competitive neutrality have explicitly been made an essential criterion for entities to operate as NUE. Under the head “Scope and Activities”, these criteria have been mandated in the following terms,

“H. Scope of Activities

The scope of activities of the umbrella entity shall be as follows:

...

3. Fulfil its policy objectives and ensure that principles of fairness, equity and competitive neutrality are applied in determining participation in the system; frame necessary rules and the related processes to ensure that the system is safe and sound, and that payments are exchanged efficiently.”

(Emphasis Supplied)

Further, under heading of “Fit and Proper Criteria”, record of fairness and integrity for Promoters and Promoter Groups have been made as explicit criteria to evaluate if an entity is “fit and proper” to work as NUE. The relevant extract of the Framework is reproduced below,

“F. Fit and Proper Criteria

The Promoters / Promoter Groups shall conform to the Reserve Bank’s ‘fit and proper’ criteria. Director of a Promoter Company / Group Company shall be deemed to be a “fit and proper” person if:

1. Such person has a record of fairness and integrity, including but not limited to –
 - a. financial integrity;
 - b. good reputation and character; and
 - c. honesty;”

From the above, it is clear that functioning of NUE inherently requires, owing to the nature of work that NUEs would be engaged in, that the Applicant entity must have a record of fairness and integrity, which covers broad factors. The scope of fairness and integrity has been kept inclusive for a reason. An entity is expected to work in fairness and equity and in furtherance of competition in the market, and therefore, requires a record of fairness and integrity to be considered as “fit and proper”.

While determining the ‘fit and proper’ criteria, it has been observed by the Honorable Supreme Court has noted that the *past conduct cannot be ignored* while making an evaluation [Rampur Distillery Co. Ltd. v. Company Law Board, (1969) 2 SCC 774]. The past conduct, as will be put forth below creates no doubt that Amazon as an entity cannot be considered as fit and proper for operating as NUE.

In this regard, it is pertinent to note that records of Amazon as an entity goes contrary to the principles of equity and fairness, and it is being investigated for its unfair, abusive and anti-competitive conducts in number of jurisdictions, including in India. Some of the investigations are highlighted below-

- a) Currently, Amazon is being investigated by the Enforcement Directorate (hereinafter referred to as “ED”) for violation of Foreign Direct Investment Rules of India under the provisions of Foreign Exchange Management Act, 1999 (hereinafter referred to as “**FEMA**”) and Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (hereinafter referred to as “**Non-debt Rules**”). Several Writ Petitions have been filed against Amazon by small traders and trader associations alleging the violation of FEMA and seeking directions from the High Court to direct the ED to investigate the alleged violations. While deciding such writ petitions, the Hon’ble Delhi High Court was informed that the ED is investigating the conducts in light of the provisions under FEMA and allied Rules thereunder. Further, there have been many press reports / statements which have been made by Hon’ble Commerce Minister wherein he has elaborated on the need of e commerce players (like Amazon) to adhere to the e commerce laws, both in

letter and spirit which has not been followed by Amazon. This aspect must be seen and appreciated since this goes right into the aspect of fairness and integrity of Amazon.

- b) It has been recently reported by Reuters that Amazon gives preference to certain special sellers on its e-commerce platform.¹ It was pointed that majority of sales on the platform of Amazon came from very few ‘special sellers’, where Amazon also held equity shares or in some way related to Amazon. It is pertinent to note that that e-commerce entities must maintain “level playing field” which they are flouting blatantly. Further, controlling inventories have also been explicitly prohibited under the Non-Debt Rules. It has been reported that the office of Enforcement Directorate has again initiated probe against Amazon pursuant to the report of Reuters.²
- c) Further, it is pointed that the Competition Commission of India (hereinafter referred to as the “CCI”) had also started investigation against Amazon and its business practices. It was noted by the CCI that there is material on record to *prima facie* show that Amazon has been using its market power to engage in the practice of preferential treatment of selected sellers, deep discounting and exclusive arrangements, which may be an exclusionary tactic to foreclose the competition and may result in an appreciable adverse effect on competition. The fact is CCI, which is an expert body to regulate competition in the market, has found glaring evidence against Amazon, which indicates that it has been distorting the competition in the market. It is interesting to point out that CCI released a market study too (CCI study on e-commerce) wherein CCI clearly noted the business malpractices and anti-competitive practices of Amazon.
- d) Additionally, the conduct of Amazon Inc. globally has been under the scrutiny of enforcement agencies. In this regard, in the USA it has been noted in the “Investigation of Competition in Digital Markets-Majority Staff Report and Recommendations”³ that

1 “Amazon documents reveal company’s secret strategy to dodge India’s regulators”, dated 17th February 2021, <https://www.reuters.com/investigates/special-report/amazon-india-operation/>

2 “Enforcement Directorate Initiates FEMA Probe Against Amazon”, dated 28 January 2021 <https://www.bloomberquint.com/law-and-policy/ed-initiates-fema-probe-against-amazon>

3 “Investigation of Competition in Digital Markets” Majority Staff Report and Recommendations Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary

Amazon has been engaged in ‘*extensive anticompetitive*’ (“US Report”) conduct in its treatment of third-party sellers on its platform. In the USA, Amazon operates the platform and also directly sold the products on its own platform. It was noted Amazon’s position in the market gave it a collection of highly sensitive consumer data, which Amazon can use to disadvantage of its consumer. The investigation is also being carried by the Federal Trade Commission of USA in regard to complain filed against Amazon. In one of the complaints, Amazon has also paid millions of dollars to Federal Trade Commission to settle the charges against it for violating the contract with its delivery drivers.⁴

- e) Similarly, in the European Union, Amazon is being investigated for allegedly violating the competition law of European Union, for its dual role on its e-commerce platform as a seller and the owner of the marketplace, which Amazon allegedly uses to disadvantage of those sellers.⁵
- f) Further, in Japan, Amazon was being investigated for its unfair vendor terms with sellers on its platform. Amazon later accepted settlement with Japan Fair Trade Commission by agreeing to pay close to USD 19 million to its sellers and change the terms of the agreement with its sellers in Japan.

Therefore, from the above, it is clear that Amazon’s past conduct cannot be considered fit and proper for granting its NUE application. Amazon is being investigated in India and throughout the globe which shows their business operations and thus, there is a serious question on integrity of Amazon, which has been found violating rules and regulations across the globe to its advantage, and more importantly, to the disadvantage of other entities and the individual end consumers. Integrity of an entity is a primary factor while dealing with commercially sensitive

available at

https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519

⁴ “Amazon to pay \$61.7 million to settle charges it withheld driver tips” dated 03 February 2021 available at: <https://www.livemint.com/companies/news/amazon-to-pay-61-7-million-to-settle-charges-it-withheld-driver-tips-11612312738879.html>

⁵ “Antitrust: Commission sends Statement of Objections to Amazon for the use of non-public independent seller data and opens second investigation into its e-commerce business practices” dated 10 November 2020 available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2077

issue of payments and settlement, and as show above, the same is inherently covered as an essential factor under the Framework. Amazon, not being a fit entity on these essential grounds, should not be allowed to operate as NUE in India.

B. Amazon can use the commercially sensitive data to disadvantage of users and competitors of its services as NUE.

Operation of payment systems by NUE would require flow of users' sensitive personal data along with the transaction. However, it is pointed that the Framework does not explicitly oblige NUE to protect users' personal data or contemplate any special responsibility on NUEs with respect to the same. This must be seriously considered, due to lack of any data protection framework for NUEs or any special obligations on the entities, it is particularly important to review the Applications under the Framework through the lens of data protection and such data concentration would be used by the private entities. It is more important in respect of Amazon, concerning the past conduct of Amazon with respect to data.

As mentioned above, Amazon is being investigated across the globe for misusing the data for benefit of its platform. In this regard, it is further pointed that Amazon has been fined in France with €35 Million over misuse of cookies, and violating France's data protection law. Particularly, in European Union, the European Commission has been investigating Amazon for use of non-public independent seller data. In respect of the same, European Commission has sent a statement of objections to Amazon. It has been specifically noted by the European Commission that very large quantities of non-public seller data available to Amazon directly flows into the automated systems of that business, which aggregates these data and use them to calibrate Amazon's retail offers and strategic business decisions to the detriment of the other marketplace sellers. Herein, we may point out that the allegations pertain to Amazon's 'private labels', i.e., the goods that are Amazon branded. It is being investigated that whether Amazon uses data of the third-party sellers on its platform, to produce the goods similar to that of third party sellers at much cheaper prices, and ultimately compete with the same third party sellers. In India, such labels include "Amazon basics", "Solimo", "Symbol" etc., which are Amazon branded products available on their e-commerce platforms. Such private labels are marketed by

Amazon and sold by their sellers, Cloudtail and Appario where Amazon has indirect equity stake. The similar observation has been noted in the USA report at page 261, which points that Amazon's strategy of purchasing its competitors and companies that operate in adjacent markets is primarily for the valuable customer data. In this regard, it is pertinent to take note of a particular statement of Mr. Jeff Bezos, Chief Executive Officer of Amazon Inc., which he made during the deposition before the US Congress. He stated that his **company (Amazon) had a policy of not using the data that it collects regarding sales of products in its marketplace to launch its own private labels, however, he cannot confirm that the same has not been violated.** This is an admission of their wrongdoing by the CEO himself that Amazon violated norms. It would not be out of place to mention that a recent report based on internal audit of Amazon⁶ has revealed that 4,700 of its workforces working on its own sales had unauthorized access to sensitive third-party seller data. While this is a blatant abuse of its market position, the same is also violative of Amazon's own company policy which directly puts Amazon's integrity in question. It must be noteworthy that traditionally US authorities are non-interventionist in their approach, yet they are intervening to check the business practices of Amazon because of their sheer and might we add, blatant illegal and anti-competitive practices.

In this light, it would be no surprise if Amazon intends to obtain the NUE approval primarily for the valuable commercially sensitive data and consequently to exploit the same to get undue benefit. Such has been their behavior in the past and there is no doubt that this would continue in the future, unless regulators step in. This data is in turn used to analyse consumer behaviour by integrating data from all the sources, which is ultimately monetized by Amazon.

It is submitted that similar to the other commercial data that Amazon allegedly uses in its favour, the payment data that Amazon may collect in as an NUE may be used to disadvantage of other entities by Amazon and may put Amazon in an unfairly advantageous position.

It would be pertinent to note that Amazon is also facing suit in Germany over the claims that it is continuously transferring the data to the United States, which is in violation of privacy laws of

⁶ ["Amazon knew seller data was used to boost company sales", dated April 30, 2021, available at https://www.politico.eu/article/amazon-seller-data-company-sales/](https://www.politico.eu/article/amazon-seller-data-company-sales/)

EU. It is pointed that the RBI, through its circular DPSS.CO.OD.No 2785/06.08.005/2017-18, dated April 06 2018, has made its stand clear with respect to localization of payment data. Therefore, here again, the alleged conduct of Amazon in Germany is also against the spirit of RBI's directions with respect to payment data. It would not be out of place to mention that Amazon uses data to its commercial advantage with sheer disregard to the laws of that particular geography, in India, since there is no data protection framework at place, the risk posed by Amazon is far more. This becomes an essential consideration while approving the application under the Framework since NUE would have immense amount of data that may be illegally transferred by Amazon to outside India.

At this juncture, it is pertinent to note that Amazon is a retailer having strong network effect. It is an accepted position, which has also been noticed by the CCI, that strong network effects generate a source of market power for such e-commerce platforms. Large number of users on the platform makes it valuable, and the platform benefits from a 'positive feedback loop' leading to higher market power. With a strong network effects, it would be easier for Amazon to tie up its payment system to its set of services in all ranges. The same would give advantage to Amazon in payment settlement market as well. These vertical integrations may be detrimental for the market in general as one entity would have an undue advantage and may create an 'ecosystem' for such entities, which may be used to oust smaller players from the market. Therefore, it is humbly submitted that the BPSS may consider the abovementioned factors of abuse of data while deciding upon the application made by Amazon consortium under the Framework.

C. The RBI should carefully peruse and think twice before giving NUE licenses to private entities having other business interests.

It is our submission that payment settlement and digital payment exchange is task which is 'public' in nature and the same should be best managed as a public good and by a public sector entity. Involvement of private entities would put the consumers and market in greater risk of being exploited in the name of 'monetization'. In the present times, digital payments must only be considered as an alternate means that replace the physical payments through currency and cheques. Digital payments are increasingly mainstream, which should no longer require any

additional convenience fee. The government and banks provide currency and cheque-based payment services free of charge, either as a public good or a part of banking service. These physical payments systems are certainly more expensive to provide than digital payment systems. Since digital systems are now nearly mature, and well on the way to become mainstream, they also need to be facilitated through the exchange platforms free of cost. As of now, NPPI's stand to charge no fee for its services such as UPI and RuPay debit card system, has been one of the major reasons that digital payments have thrived in India. Under these circumstances, involving private player, who may run these businesses for its profit and profits of its associate entities, may have a negative impact in a long run. It is submitted that Government entities serve the citizens, while private entities serve their shareholders. In a long run, giving control to core financial infrastructures in the hands of private entities may result in outcomes that are contrary to the intentions behind bringing in the NUE Framework.

While we submit that private sector should not be granted the license to operate payment networks, without prejudice, we further submit that even if such license is granted to private entities, the same should only be granted to an independent entity which has no relation with any other entity in the market. This is because any related entity may get undue advantage because of related entity being in a position of NUE. Especially, in the cases where the link of any applicant is with any big retail player, such as Amazon, the concerns are bigger.

As stated above, the data collected by NUE may be used by Amazon for its favour, and the same may cause disadvantage to every other stakeholder, including the citizens. The transactional data of an individual can be used to analyse the behaviour of such individual. The same data, clubbed with the other data that Amazon may collect from its e-commerce platform, prime video service, travel services etc. can be used to target such an individual efficiently. This is an advantage that competitors of Amazon, be it brick and mortar sellers or any other small e-commerce entity, would not have. It may lead to a grave situation where Amazon may be able to eliminate its competitors at different stages.

In light of the above, it is our humble submission that BPSS while considering the application of Amazon consortium, takes into account the necessary factors as mentioned above.

Misuse of data is a primary concern in contemporary digital world, and it becomes more important where the data pertains to payment. NUE would get immense amount of data owing to their nature of work. Therefore, it is important for BPSS to consider who would be getting such data, while evaluating the Applications under the Framework. The past record of Amazon directly questions its intentions as well as integrity. Considering the same, and in the interest of justice and welfare of the citizens of this Country, it is humbly prayed before the BPSS to disallow the application filed by Amazon consortium under the framework.

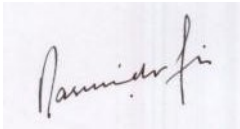
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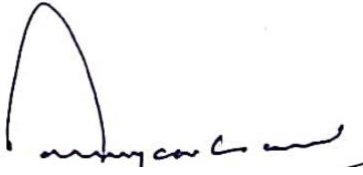
Rajendra Kumar Acharya
Regional Secretary, Asia & Pacific
UNI Global Union



Dharmendra Kumar,
Co-convener
Joint Action Committee against Foreign Retail and e-commerce (JACAFRE)



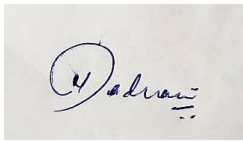
Parminder Jeet Singh
Executive Director IT for Change



Sanjeev Kumar Bandlish

General Secretary

All India State Bank of India Staff Federation(AISBISF)



Milind Nadakarni

President

UNI Indian Liaison Council

About the Signatories

UNI Global Union

UNI Global Union represents more than 20 million workers from over 150 different countries in the fastest growing service sectors in the world. UNI and our affiliates in all regions are driven by the responsibility to ensure these jobs are decent and workers' rights are protected, including the right to join a union and collective bargaining.

The Joint Action Committee Against Foreign Retail and E-commerce

The Joint Action Committee Against Foreign Retail and E-commerce (JACAFRE) is composed of key traders, farmers and workers groups in India, and other organisations supporting them. It was formed in 2018 to oppose the sale of Flipkart, then India's biggest e-commerce company, to Walmart. JACAFRE has since regularly highlighted the plight of small traders losing their livelihood under the assault of big e-commerce supported by Big Tech, and advocated for traders supporting policies .

IT for Change

IT for Change is an Indian NGO with Special Consultative Status with the UN. IT for Change works on the intersections of digital issues and progressive social change. Its main mode of work is through partnerships with organisations and groups in different sectors that are impacted by digital changes. We then together resist negative effects of digitalisation, especially caused by centralisation of digital power, and build and advocate alternative models that devolve and distribute digital power towards the peripheries.

All India State Bank of India Staff Federation

The All India State Bank of India Staff Federation (AISBISF) is the sole negotiating organisation representing nearly 150,000 workmen employees of SBI at bank level. It is the largest enterprise level union in the banking Industry in India. It has always taken a leadership role not only for SBI employees but for the banking workers across India. It is the largest constituent of National

Confederation of bank Employees and one of the major constituents of United Forum of Bank Unions."