



सत्यमेव जयते



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2019/09/688)

28th November, 2019

Notice under Section 6 (2) of the Competition Act, 2002 filed by Amazon.com NV Investment Holdings LLC.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

Order under Section 31(1) of the Competition Act, 2002

1. On 23rd September, 2019, Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”), filed by Amazon.com NV Investment Holdings LLC (“**Amazon / Acquirer**”). This notice was filed pursuant to the execution of Share Subscription Agreement (“**SSA**”) and Shareholders Agreement (“**SHA**”) each dated 22nd August, 2019. These agreements were entered into, *inter alios*, Amazon, Future Coupons Private Limited (“**FCL / Target**”) and the promoters of FCL.
2. The Proposed Combination entails acquisition of 49% shares of FCL by the Acquirer (“**Transaction I**”). The Proposed Combination also consists of certain other constituent steps *inter alia* involving intra-promoter group transaction(s) between FCL, Future



Corporate Resources Private Limited (“**FCRPL**”) and FRL (“**Transaction II and Transaction III**”). It includes transfer of certain shares of FRL held by FCRPL to FCL. It has been submitted that Transaction II and Transaction III are condition precedent to Transaction I. Further, prior to the Proposed Combination, FCL had acquired equity warrants of FRL, convertible into equity shares representing 7.30% of the share capital of FRL within a period of 18 months from the date of allotment.

3. It is submitted that FCL believes that the Proposed Combination will provide an opportunity to FCL to learn global trends in digital payments solutions and launch new products and usage of in-built payment mechanisms can lead to acquisition of customers’ base and increased loyalty.
4. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), letters dated 9th October, 2019 and 24th October, 2019 were issued to the Acquirer to remove certain information gaps in the notice. Response to these communications was submitted on 15th November, 2019, after seeking extension of time.
5. The Acquirer, a direct subsidiary of Amazon.com, Inc (“**ACI**”), is an entity incorporated in United States of America and does not have any direct or indirect subsidiaries in India. Further, it does not undertake any business activities in India.
6. ACI, the ultimate parent entity of the Amazon group, through its Indian and overseas subsidiaries (“**Acquirer Affiliates**”), has business operations in India, which *inter alia*, relates to the retail sector, digital payments, payments processing and cloud computing. In this regard, it is noted that ACI has *inter alia*, investment in the following Indian enterprises:
 - (a) Amazon Seller Services Private Limited (“**ASSPL**”/“**Marketplace Affiliate**”)
 - (b) Amazon Retail India Private Limited (“**ARIPL**”)
 - (c) Amazon Pay (India) Private Limited (“**APIPL**”)
 - (d) Amazon Wholesale (India) Private Limited (“**AWIPL**”)



(e) Amazon Transport Services Private Limited (“**ATSPL**”)

7. Further, it is noted that: (a) Marketplace Affiliate operates Amazon India Marketplace which offers ecommerce platform to third party sellers. It partners with various sellers and facilitates the sale of a variety of products offered by these sellers to end-consumers online; (b) ARIPL undertakes retail of food products manufactured and produced in India through the Amazon India Marketplace; (c) APIPL is engaged in the business of providing digital payment services to the customers on the Amazon India Marketplace, (d) AWIPL offers products in various categories such as health care, baby care, office supplies, food and beverage, medical supplies, home essentials, etc. to customers on a wholesale basis and (e) ATSPL provides services relating to the shipping of goods from sellers who list their products on the Amazon India Marketplace and under the Prime Now Programme. Additionally, the Acquirer has stated that it has certain non-controlling minority investments in entities (“**Acquirer Portfolio Companies**”) engaged in business activities in India.
8. The Commission noted that FCRPL, FCL and FRL belong to the Future group of companies. Prior to the Proposed Combination, FCL is a wholly owned subsidiary of FCRPL and is now principally engaged in marketing and distribution of corporate gift cards, loyalty cards and reward cards to corporate customers. Until FY19 i.e. 31st March, 2019, FCL was only engaged in the business-to-business wholesale trading of fabrics. It does not have any direct or indirect subsidiaries in India. It has been stated that so far (in Q1 of FY20), FCL only procured the gift cards and vouchers of Future group companies (such as FRL) and sold the same to its customers (such as Paytm).
9. FCRPL, an entity incorporated in India, is engaged in business of management consultancy services and trading in goods and services. FCRPL also has investments in various Future group of companies. FCL and FCRPL are owned and controlled by the promoter group led by Mr. Kishore Biyani (“**Promoter Group**”).
10. FRL, an entity listed on National Stock Exchange of India and BSE, is flagship retail entity of the Promoter Group with FCRPL being one of the promoters and the single



largest shareholder in FRL. FRL (including its subsidiaries) is active in the Indian retail market and currently operates multiple retail formats in hypermarkets, supermarkets and convenience stores under different brand names, including: Big Bazaar / Big Bazaar GenNxt / Hypercity (variety departmental chain); FBB (Fashion @ Big Bazaar); Foodhall (premium lifestyle food destination); Easyday (super market chain); Heritage Fresh (super market chain); Nilgiris (super market chain); WHSmith (books, stationery and traveller focused specialty retail chain); eZone (high end consumer electronics specialty store); and 7-Eleven.

Competition Assessment

11. With respect to the presence of Amazon Group and FCL in coupons / gift cards activities, the Commission, based on the submissions, noted that Amazon co-branded gift cards are issued by an independent third party, Qwiksilver Solutions Private Limited (“**Qwiksilver**”) and neither ACI nor any other Acquirer Affiliate hold any shares in Qwiksilver. Further, it is stated that neither APIPL nor any other Acquirer Affiliate is engaged in the business of issuing/distributing gift cards in India.
12. It is noted that the wholesale (**B2B**) and retail (**B2C**) activities of Acquirer or Acquirer Affiliates have horizontal overlap(s) and/or vertical relationship(s) with business activities of FRL (including its direct and / or indirect subsidiaries).
13. With respect to the presence of Future Group and certain Acquirer Affiliates in the business of B2C retail, the Commission carried out the assessment at overall India retail market level, separately for organised segment, and within organised segment separately for other narrower segments. The Commission observed that the presence of FRL and Acquirer Affiliates in overall B2C retail or in any narrower segment stated above is not such as to raise any competition concern. Therefore, the Proposed Combination is not likely to raise any competition concern and the exact relevant market definition is being left open.



14. With regard to potential as well as existing vertical relationship(s) in B2B sales, Amazon branded devices, digital payment and online marketplace/online intermediation services, it observed that:
- (a) AWIPL is a marginal player in B2B sales and does not make any B2B sales to the FCRPL Group entities. AWIPL is merely a wholesale reseller of branded products that are widely available through various other wholesale formats and any potential vertical relationship may not raise foreclosure concern.
 - (b) Currently ASSPL does not directly supply the Amazon branded devices to Future Group entities for retailing and in the presence of various other sellers of Amazon branded devices and other competing products in the market, any potential vertical relationship between ASSPL and Future Group entities may not raise any competition concern.
 - (c) There is no existing direct commercial agreement between ATSPL and FCRPL Group entities for provision of services relating to the shipping of goods from sellers listed on Amazon India Marketplace. It has been stated that there aren't any existing or potential direct business arrangement between ATSPL and FCRPL Group entities and multiple shipping and logistics service providers are present in India.
 - (d) Both APIPL and FCL have marginal presence in the overall payments market in India and currently APIPL has no existing business arrangement with FCL. It is also observed that in digital payments services, PayTM Payments Bank Limited is the biggest player in the m-wallet services and there are other players such as Google Pay and PhonePe providing similar services.
 - (e) The sales made by Future group entities including FRL through third party online marketplaces (including Amazon India Marketplace) are insignificant.
15. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combination on the basis of



factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.

16. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect. This approval should not be construed as immunity in any manner from subsequent proceedings before the Commission for violations of other provisions of the Act.
17. The information provided by the Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
18. The Secretary is directed to communicate to the Acquirer accordingly.