



COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2020/12/792)

Public Version

20.01.2021

Notice under Section 6 (2) of the Competition Act, 2002 jointly filed by Flipkart Investments Private Limited

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 01.12.2020, Competition Commission of India (**'Commission'**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**'Act'**) filed by Flipkart Investments Private Limited (**'FIPL'**/ **'Acquirer'**). The notice has been filed pursuant to the Investment Agreement dated 23.10.2020 (**'Investment Agreement'**) entered into between FIPL and Aditya Birla Fashion and Retail Limited (**'ABFRL'**/ **'Target'**). Hereinafter, FIPL and ABFRL will be collectively referred to as **"Parties"**.
2. The proposed combination relates to FIPL's proposed acquisition of a minority shareholding of 7.8%, on a fully diluted basis, in ABFRL by way of subscription of its certain equity shares (**'Proposed Combination'**).
3. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**'Combination**



Regulations'), the Commission *vide* its email dated 21.12.2020, sought certain information(s)/ clarification(s), *inter alia*, relating to the activities of the Parties; response to the same was received on 28.12.2020. Subsequently, the Commission, *vide* its email dated 14.01.2021, issued in terms of regulation 14 of the Combination Regulations, further sought certain clarification(s); response to these were received on 18.01.2021¹.

4. FIPL is stated to be a newly incorporated company for the purpose of Proposed Combination, under the laws of Singapore. It is registered as a category II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 ('**FPI Regulations**'), and is a wholly-owned subsidiary of Flipkart Private Limited ('**FPL**'). FPL belongs to the Walmart Group, which comprises Walmart Inc. ('**Walmart**') and its affiliates.
5. Walmart was incorporated in Delaware, USA and is engaged in retail and wholesale operations in various formats around the world (including physical and digital retail). It is mentioned in the notice that the Walmart Group undertakes the following business activities in India:
 - a. **Wholesale cash and carry of goods (B2B sales):** The Walmart Group is engaged in the wholesale cash and carry of goods in India, across various product categories such as (a) mobiles; (b) electronics (including large appliances such as television, washing machine, etc.); (c) lifestyle (including AFA); (d) books & general merchandise (including groceries, toys); (e) home furnishing (including kitchenware); and (f) furniture.
 - b. **Provision of marketplace based e-commerce platforms to facilitate trade between customers and sellers in India:** It is stated in the notice that the Walmart Group runs multiple marketplace model based e-commerce platforms which facilitate trade between end customers and third party sellers in India. They act merely as an interface and platform between the third party sellers and end customers to facilitate such a sale transaction.

¹ Email received in evening of 15.01.2021.



- c. **UPI and prepaid payment instrument services:** It is stated in the notice that the Walmart Group (through PhonePe), also provides a UPI application and a mobile wallet to facilitate online payments in India. Both its UPI application and mobile wallet can be used to make instant payments both offline as well as online (on e-commerce platforms and marketplaces).
- d. Additionally, it is submitted that the Walmart Group's business activities in India also include the provision of various ancillary services such as: (i) payment gateway; (ii) advertising services; (iii) information technology product related issues; (iv) logistics, courier and other allied services; (v) Installation, repair and other allied services; and (vi) Technology based services. Further, it also sells select private label products, manufactured through third parties under certain brand names.
6. ABFRL is a public limited company incorporated in India, and is part of the Aditya Birla conglomerate. ABFRL (including through its subsidiaries) is engaged in the business of manufacturing and retailing branded apparels, footwear and accessories ('AFA'), through its retail stores, multi-brand outlets, departmental stores, online retail platforms and e-commerce marketplaces, across India.
7. ABFRL has the following three subsidiaries in India: a) Jaypore E-commerce Private Limited ('Jaypore'); b) TG Apparel & Décor Private Limited ('TG Apparel'); and c) Finesse International Design Private Limited ('Finesse').
8. In relation to identification of overlaps between activities of the Parties and the relevant market, it is submitted in the notice that the Walmart Group and Target (including its affiliates) have overlaps in "the market for B2B sales in India" (**Broad Relevant Market**) or narrowly in the segment for "B2B sale of AFA products in India" (**Narrower Relevant Segment**).
9. With regard to the vertical/ complementary relationship between the products/ services of the Parties, the following submissions have been made in the notice:



- a. **ABFRL's B2B sales and Walmart Group's B2B distribution:** ABFRL manufactures and sells products within the AFA category, and also sells jewellery, home décor & furnishing products to both B2B and B2C customers. The Walmart Group on the other hand, trades in products under various categories, within the B2B segment in India. As such, the Walmart Group is a customer of ABFRL, situated downstream to ABFRL in terms of its B2B sales.
- b. **Walmart Group's B2B sales and ABFRL's B2C sales/distribution:** ABFRL manufactures and sells products within the AFA category, and also sells jewellery, home décor & furnishing products to both B2B and B2C customers. The Walmart Group also undertakes B2B sales of its private labels within the AFA category, ABFRL may act as a downstream wholesaler or a retailer for these AFA products in India. Therefore, there exists a potential vertical relationship between the B2B business of the Walmart Group (upstream) and ABFRL (downstream) whereby the Walmart Group can supply its AFA category products to ABFRL on a B2B basis, which ABFRL may then sell on to end-customers.
- c. **Walmart Group's e-commerce marketplaces and ABFRL's B2C sales:** The Walmart Group is also engaged in the provision of e-commerce marketplace services in India. Further, ABFRL uses Walmart Group's e-commerce marketplace services as just one of the channels through which sales are undertaken.
- d. **PhonePe's UPI and wallet payment services and ABFRL's sales (both B2B and B2C):** It is submitted that PhonePe's UPI payment application and the mobile wallet are complementary to ABFRL's (both B2B and B2C) sales in India; and ABFRL could and does utilise it to undertake its sales in India, among various other digital payment solutions.
- e. **ABFRL's sales through the Walmart Group's e-commerce marketplaces and the Walmart Group's logistics services offered to sellers on its marketplaces:** ABFRL is a seller on the Walmart Group's e-commerce marketplaces in India. It



is stated in the notice that as an e-commerce marketplace services provider, the Walmart Group offers integrated logistics services (including warehousing facilities, distribution facilities, and allied solutions) to all the sellers that are listed on its marketplace, on the same terms *i.e.*, there is no exclusivity or preferential treatment towards any sellers, including ABFRL.

10. The Commission decided to leave the exact delineation of the relevant market open as the material available on record does not suggest that the Proposed Combination is likely to cause an appreciable adverse effect on competition in India.
11. Based on the submissions of the Acquirer, it is noted that the combined market share of the Parties in Broad Relevant Market and Narrower Relevant Segment is 0-5 per cent and 5-10 per cent respectively. Further, the incremental market share is insignificant in both the above segments and there are other players such as Amazon Wholesale, Reliance Retail and Metro Cash and Carry present in Broad Relevant Market and Page Industries, Raymond, and Arvind Limited in Narrower Relevant Segment who will pose competitive constraints to the Parties post the Proposed Combination.
12. Further, it is noted that neither existing nor potential vertical/ complementary relationship(s) between the products/ services of the Parties, as identified above, appears to be significant. Moreover, the presence of both the Acquirer and Target in upstream or downstream segments as discussed above is not significant to raise any competition foreclosure concerns in India.
13. 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 proposed combination is not likely to have an appreciable adverse effect on competition in India.
14. In addition to above, the Commission noted that the Acquirer has stated in the notice that FPL's Indian subsidiary, Flipkart India Private Limited (**FK India**) and ABFRL have, agreed to enter into a strategic commercial arrangement *i.e.*, the Commercial



Agreement. The Acquirer has submitted that this proposed Commercial Agreement does not independently require prior notification to, or approval from, the Commission; however, the details in relation to the proposed Commercial Agreement have been provided to the Commission in the present Notification Form, in accordance with Regulation 9(4) of the Combination Regulations. It is stated that ABFRL (including its subsidiaries), will, for a limited period and as per the terms of the agreement, neither directly nor indirectly sell, distribute or market, in India, certain specified branded products from their portfolio on certain specified e-commerce marketplaces or platforms. Some of the details of the commercial agreement provided in the notice are as follows:

“...**REDACTED**...

.....The Walmart Group runs multiple marketplace model based e-commerce platforms which facilitate trade between end customers and third party sellers in India. They act merely as an interface and platform between the third party sellers and end customers to facilitate such a sale transaction. Vendors who wish to sell their products through the Walmart Group's e-commerce marketplaces need to register themselves and then list their products on the platform(s) for sale to end customers.”

15. Having considered the above submissions of the Acquirer, the Commission observed that the said Commercial Agreement essentially relates to distribution of certain identified branded products of ABFRL through ecommerce platforms of Walmart Group (group to which the Acquirer belongs) to the exclusion of certain platforms identified therein. The Walmart Group runs e-commerce platforms like Flipkart, Myntra and Jabong which are prominent e-commerce platforms in India for AFA category products, amongst others. ABFRL, on the other hand, deals with/owns several premium clothing brands/ format retailer within AFA category products such as Louis Philippe, Van Heusen, Allen Solly, Peter England, and Pantaloons. Upon consideration of the proposed commercial agreement between these parties, the Commission is of the *prima facie* view that the exclusive arrangement envisaged by way of the commercial agreement between them raises a potential concern that the identified ABFRL brands therein may get preferential treatment in their respective product categories in terms of search ranking, *etc.*, on the e-commerce platforms run by the Acquirer's group in India, which may affect intra platform competition between brands/ sellers and result in the



market outcome being influenced or determined by the platform instead of it resulting from competition on the merits amongst the sellers/ brands. Hence, the Commission decides to issue an advisory to the Acquirer that it should not indulge in any such conduct which would amount to leveraging their control over the platform in favour of the identified ABFRL brands to the disadvantage of other sellers/service providers on the platform. Further, it may be noted that, irrespective of the approval granted herein, if any anti-competitive conduct results from any exclusive arrangement or otherwise, in any manner, in the future the same could be taken up under Section 3 and/or 4 of the Act.

16. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
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.