**COMPETITION COMMISSION OF INDIA**

(Combination Registration No. C-2018/07/583)

**10th August, 2018**

**Notice under sub-section (2) of Section 6 of the Competition Act, 2002 given by The Walt Disney Company and TWDC Holdco 613 Corp.**

**CORAM:**

Mr. Sudhir Mital
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

**Legal representatives:** AZB & Partners

**Order under sub-section (1) of Section 31 of the Competition Act, 2002**

1. On 9th July, 2018, the Competition Commission of India ("**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by The Walt Disney Company ("**TWDC**") and TWDC Holdco 613 Corp. ("**Holdco**"), for acquisition of Twenty-First CenturyFox ("**21CF**"). (Hereinafter, TWDC and Holdco are collectively referred to as "**Acquirers**").

2. The notice was filed pursuant to 'Agreement and Plan of Merger', dated 13th December, 2017, entered into between, TWDC, TWC Merger Enterprises 2 Corp., and TWC Merger Enterprises 1, LLC. and 21CF. Further, TWDC, Holdco,

WDC Merger Enterprises I, Inc. (“**Delta Sub**”), WDC Merger Enterprises II, Inc. (“**Wax Sub**”) and 21CF entered into ‘Amended and Restated Agreement and Plan of Merger’ on 20th June, 2018. It has been submitted by the Acquirers that Holdco is a wholly owned subsidiary of TWDC. Further, Delta Sub and Wax Sub are wholly owned subsidiaries of Holdco. (Hereinafter, TWDC and 21CF are collectively referred to as the “**Parties**”).

3. The proposed combination relates to the acquisition of 21CF, including its film and television studios, cable and international TV businesses, by TWDC. The proposed combination involves following steps: (i) Prior to the acquisition, 21CF will separate the portfolio of 21CF’s news, sports, and broadcast businesses, including the Fox News Channel, Fox Business Network, Fox Broadcasting Company, Fox Sports, Fox Television Stations Group, and sports cable networks FS1, FS2, Fox Deportes, and Big Ten Network, and certain other assets (“**Separated Assets**”). These Separated Assets do not form part of the proposed combination and accordingly, will be grouped in a newly listed company that will be spun off to existing shareholders of 21CF; (ii) Subsequently, Delta Sub will merge with and into TWDC, resulting in TWDC becoming a wholly owned subsidiary of Holdco, with Holdco’s shareholding structure mirroring TWDC’s shareholding prior to this step. Thereafter, Wax Sub will merge into 21CF; (iii) As a result of the aforementioned steps, TWDC and 21CF will become wholly owned subsidiaries of Holdco. Further, current shareholders of 21CF will get shares of Holdco equivalent to approx. 19 percent stake in TWDC on a pro forma basis, remaining shares would be held by current shareholders of TWDC.

4. In terms of the provisions of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011, *vide* letter dated 25th July, 2018, the Acquirers were required to provide certain information. The Acquirers filed their response on 1st August, 2018, after seeking extension of time. The Acquirers also made certain additional submissions on 7th August, 2018 and 8th August, 2018.

5. TWDC, incorporated in Delaware, U.S., is listed on the New York Stock Exchange. At global level and in India, the TWDC is primarily active in the following business segments, *inter alia,* theatrical distribution of films, supply/licensing of audio-visual and interactive content, operation and wholesale supply of TV channels *etc*. It also offers travel packages and provides cruises through the Disney Cruise Line. TWDC is present in India through its subsidiary UTV Software Communications Limited ("**UTV**"). In India, the TWDC undertakes its services under the brand names Disney, The Walt Disney Company, UTV, Pixar, Lucasfilms, ESPN, Marvel, bindass, Indiagames, Hungama TV.

6. 21CF, incorporated in Delaware, USA, is a multinational mass media corporation listed on the NASDAQ. 21CF is active, *inter alia*, in theatrical distribution of films, supply/licensing of audio-visual content and operation and wholesale supply of TV channels both at global level and in India. Through Fox Star Studios ("**FSS**"), 21CF is present in India in movie production and distribution business. Star supplies general entertainment, music, sports, movies and other non-news TV channels in India. In India, 21CF also holds certain equity interest in Tata Sky Limited, a direct-to-home broadcast ("**DTH**") satellite television provider: this is discussed in detail later. 21CF undertakes its services under the brand names Twenty-First Century Fox, Twentieth-Century Fox, Fox, Star, FX, FXX, FXM, FS1, Fox News, Fox Business Network, FOX Sports, National Geographic, Hotstar, Asianet, Vijay and Maa.

### *A. Horizontal Overlaps*

7. Based on submission given by the Acquirers, the business segments in which activities of the Parties overlap in India and their competition assessment are, as follows:

   7.1 *Overlap in production and supply of films to third-party distributors and exhibitors for theatrical release in India*

i. The Acquirers have submitted that activities of the Parties overlap in the business of production and supply of films to third-party distributors for theatrical release in India. Given that the films can be sub-segmented on the basis of language, the Commission assessed overlap in production and supply of films to third-party distributors and exhibitor for theatrical release in India separately for English films, Bollywood films and Regional films. However, the exact delineation of relevant market is being left open.

ii. Based on the submission, the Commission notes that the combined market share (based on the gross box office receipt) of the Parties for English movies distributed in India has gone down from 60 – 65 percent in 2016 to less than 30 – 35 percent in 2017. In this context, the Commission observes that the production shares can vary from year to year, illustrating the hit-driven nature of the business. Further, in this business sub-segment, the Commission also notes that there are other global players (market share for 2017, based on gross box office receipt, indicated along with) such as Warner Brothers (20 – 25 percent), Universal (15 – 20 percent), Sony Pictures (15 – 20 percent), Viacom 18 (Paramount) (10 – 15 percent), which would continue to provide competitive constraint to the Parties, post-combination.

iii. Further, on analysis of the top 5 grossing films across 15 years, the combined market share of the Parties, for English films is approximately 20 – 25 percent, which is almost equal to the number of 'top 5' grossing films produced by Warner Bros for the same period.

iv. With respect to presence of the Parties in the production and supply of Bollywood films in India, it has been submitted by the Acquirers that the combined market share of the Parties for Bollywood films have come down to around 15 – 20 percent in 2017 from 35 – 40 percent in 2016. Further, the Acquirers submitted that this business sub-segment is characterized by presence of other players (market share for 2017, based on gross box office receipt, indicated along with) such as Yash Raj Films (10 – 15 percent); Excel

Entertainment, T-Series, Rohit Shetty Films Pvt. Ltd. and Nadiadwala Grandsons Entertainment, each with market share in between 5 – 10 percent, which would continue to compete with the Parties post-combination.

v. With respect to business sub-segment of production and supply of regional movies to third party distributors and exhibitors in India, the Commission notes that the combined market share (based on gross box office receipt) is 0 – 5 percent for 2017. Therefore, there is no likelihood of any competition concern in this business sub-segment.

vi. With respect to distribution of films through distributors, the Commission, based on the submission by the Acquirers, notes that the Parties supply their films to third-party distributors who remain free to distribute for other producers as well. Further, with respect to distribution of films through exhibitors, it has been submitted that exhibitors retain significant negotiating power even after a film's initial theatrical release. The exhibitor may renegotiate key terms such as number and duration of screenings. This extends to allowing an exhibitor to reduce the number of screenings of an underperforming title. On the basis of foregoing, the Commission observes that third-party distributors and exhibitors too would continue to impose a competitive constraint on the Parties' behavior, post-combination.

vii. Based on the foregoing, the Commission observes that the proposed combination is not likely to result in appreciable adverse effect ("**AAEC**") on competition in the business of production and supply of films to distributors and to exhibitors, including its sub-segments.

7.2 *Overlap in the business of licensing of audio-visual contents in India*

i. The Commission notes that the activities of the Parties overlap in the business of licensing of audio-visual contents in India. The Acquirers have submitted that there are overlaps between the Parties in the following sub-segments on the basis of genre, namely, business for the licensing of film-content rights, business for the licensing of sports-content rights and business for the licensing of 'non-film and non-sports' content. The Commission noted the submissions of the Acquirers and decided to leave delineation of relevant market open.

ii. With respect to the business of licensing of film-content rights, based on the submission of the Acquirers, the Commission notes that the Parties produce a small proportion of films in comparison to the total number of films licensed for broadcast in India and accordingly, there is no likelihood of AAEC in this business sub-segment.

iii. In the business of licensing of sports-content rights, based on the submissions of the Acquirers, the Commission notes that whereas 21CF is present in this business sub-segment, TWDC is currently not active in this sub-segment as ESPN (entity of TWDC) has exclusively licensed its rights to Sony in India. It has been further submitted by the Acquirers that ESPN currently holds no TV rights for sports with mass appeal in India. Moreover, market share of ESPN in this business sub-segment is insignificant to raise any competition concern, if any.

iv. Similarly for the reasons discussed in relation to licensing of film-contents, the Commission notes that there is no AAEC concern in the business segment relating to licensing of non-film, non-sports content.

7.3 *Overlap in the business of operation and wholesale supply of TV channels*

i. Whereas TWDC is active in the business of operation and wholesale supply of TV channels in India through UTV, 21CF is active through Star channels. Thus, the activities of the Parties overlap in the business of operation and wholesale supply of TV channels. Given that the wholesale supply of TV channels can be sub-segmented such as, film, kids, Hindi general entertainment channels (“**GEC**”), English GEC, and infotainment and lifestyle channels, competition assessment have been carried out for the abovesaid sub-segments based on the market share figures provided by the Acquirers on the basis of viewership data. However, the exact delineation of relevant market is being left open.

ii. *Films:* In the year 2017, the market shares of TWDC (with two channels) and 21CF (with fourteen channels) was 5 – 10 percent and 15 – 20 percent, respectively, and combined market share was 25 – 30 percent. Further, the Parties face competition from other players in the market such as Zee Entertainment having seventeen channels and market share of 20 – 25 percent, Sony Pictures having nine channels and market share of 15 – 20 percent, TV18 Broadcast Ltd. having two channels and market share of 5 – 10 percent and Times Television Network having nine channels and market share of 0 – 5 percent. In view of the above, the Commission notes that there is no AAEC in the operation and wholesale supply of Films’ channel in India.

iii. *Infotainment and Lifestyle:* For the year 2017, the market share of TWDC was 5 – 10 percent (with three channels) and 21CF had 15 – 20 percent (with six channels), and combined market share of the Parties was 25 – 30 percent. Further, the Parties face competition from players in the market such as Discovery Network having nine channels and market share of 30 – 35 percent, Zee Entertainment (with two channels) and Sony Pictures (with two channels) and each having market share of 0 – 5 percent, Food Food having one channel and market share of 0 – 5 percent. In view of the above, the Commission notes that there is no AAEC in the operation and wholesale supply of Infotainment and Lifestyle channels in India.

iv. *Kids:* In the year 2017, the market shares of TWDC was 30 – 35 percent (with four channels), however, 21CF has insignificant presence in this sub-segment. Further, the Parties face competition from players in the market such as TV18 Broadcast Ltd. having four channels and market share of 25 – 30 percent, Turner International India having three channels and market share of 20 – 25 percent, Sony Picture having one channel and market share of 0 – 5 percent and Sun TV Network having four channels and market share of 5 – 10 percent. In view of the above, the Commission notes that there is no AAEC in the operation and wholesale supply of Kids channels in India.

v. *Hindi GEC:* In 2017, market share of TWDC (with one channel) was 0 – 5 percent, while, market share of 21CF (with seven channels) was 25 – 30 percent, and combined market share of the Parties was 25 – 30 percent. It may be noted that the Parties face competition from other players in the market such as Zee Entertainment having seven channels and market share of 25 – 30 percent, Sony Pictures having five channels and market share of 20 – 25 percent, TV18 Broadcast Ltd. having four channels and market share of 15 – 20 percent and Discovery Networks Asia Pacific having one channel and market share of 0 – 5 percent. In view of the above, the Commission notes that there is no AAEC in the operation and wholesale supply of Hindi GEC in India.

vi. *English GEC:* In 2017, market share of TWDC was 0 – 5 percent with one channel, while, market share for 21CF was 15 – 20 percent with four channels, and the combined market share of the Parties was 15 – 20 percent. Given that incremental market share is insignificant and the Parties face competition from other players in the market such as Zee Entertainment having two channels and market share of 15 – 20 percent, Sony Pictures having two channels and market share of 30 – 35 percent, and TV18 Broadcast Ltd. having four channels and market share of 30 – 35 percent, the Commission notes that there is no likelihood of AAEC in the said sub-segment.

vii. *Regional GEC:* The Commission notes that in the year 2017, TWDC had no presence in this genre, while, market share of 21CF was 20 – 25 percent (with twelve channels). Further, there are other competitors such as Zee Entertainment (with fourteen channels), TV18 Broadcast Ltd. (with thirteen channels), Sun TV Networks (with eight channels) present in this sub-segment, which would provide competitive constraint to the Parties post-combination.

viii. *Music:* The Commission notes that in 2017, market share of TWDC as well as 21CF was 0 – 5 percent. Further, in this sub-segment, the Parties face competition from other players in the market such as 9X Media having five channels and market share of 15 – 20 percent, TV18 Broadcast Ltd. having seven channels and market share of 5 – 10 percent, Zee Entertainment having two channels and market share of 0 – 5 percent, Sony Pictures Networks having two channels and market share of 5 – 10 percent, *etc*. On the basis of the foregoing, the Commission observes that there is no likelihood of AAEC in this sub-segment.

ix. *Sports:* The Commission notes that though 21CF has sizeable market share in this business sub-segment, however, for reasons already discussed above (paragraph 7.2 (iii)), there would be no change in the market dynamics as result of the proposed combination.

7.4 *Retail Supply of Audio Visual Content in India*

i. The Commission notes that the Parties are present in the retail supply of audio-visual content in India through over-the-top applications ("**OTT**"). Whereas 21CF is present in this segment through its online video streaming platform 'Hotstar' and 'BabyTV' applications, TWDC is present through its 'Bindass' application. The Commission notes that combined market share of the Parties post-combination would be 30 – 35 percent with a negligible increase on account of TWDC. The Commission observes that this sector is characterized by presence of various OTT players offering premium (*i.e.* paid) and non-premium (*i.e.* free) services. Major competitors of the Parties includes Netflix, Amazon Prime, Youtube, ErosNow, Sony Liv, Voot *etc.* which would continue to provide competitive constraint to the Parties post-combination.

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ii. The Commission also notes that because of certain shareholding of 21CF in Tata Sky (present in DTH business), as aforementioned, 21CF is present in retail supply of audio-visual content in India through DTH business. However, there is no overlap between the Parties in this business segment.

7.5 *Supply of advertising airtime on TV channels in India*

i. The Commission observes that both the Parties are present in the business of supply of advertising airtime on television channels. In this regard, it has been submitted that advertisement on television does not always confine itself to a specific genre. Further, the Acquirers submit that targets of advertisement, *i.e.* viewers, are largely genre agnostic. Accordingly, the Commission notes that whereas the market share of 21CF in this business segment is 20 – 25 percent, the increment in the market share on account of the combination is insignificant to raise any competition concern.

7.6 *Supply of consumer products*

i. The Commission notes that the Parties are present in 'character merchandising' only by licensing of intellectual property. Character merchandising is a business involving the adaptation of a character (real or fictional) in relation to goods or services to create demand for acquiring these services due to customer's affinity with the particular character. However, given that, combined market share of the Parties is insignificant, the Commission observes that there is no likelihood of AAEC in this business segment.

7.7 *Licensing of Music rights in India*

i. The Parties are present in the music industry as licensors of music. The Commission, based on the submission of the Acquirers, notes that each of TWDC and 21CF has insignificant market share in the said business segment in India. Based on the foregoing, the Commission notes that the Proposed Combination is not likely to raise any competition concern in this business segment.

7.8 *Licensing of Publication Rights in India*

i. The Commission, based on the submission of the Acquirers, notes that neither TWDC nor 21CF actually publish any books in India. However, TWDC and 21CF are present through the licensing route – *i.e.* they license their intellectual property to third-party publishers who publish non-academic books and magazines (such as comic books, graphic novels *etc*.) in India. Thus, the Parties' revenues from the market for publishing are solely on account of the fees / royalty earned through such licensing. The combined presence of the Parties in the market for publishing is insignificant, and as such, the Commission notes that there would be no adverse impact on competition in this business segment due to the proposed combination.

7.9 *Interactive Media in India*

i. Interactive media is a means of actively engaging with the customers by providing an interactive form of entertainment, which includes games and digital media, music, video, mobile and graphics. The Parties are engaged in the interactive media by licensing of intellectual property (such as characters) as well as audio-visual content to a variety of companies, including companies which make games (such as Ubisoft) as well as telecom companies who use such content and intellectual property to provide value added services to their subscribers. Accordingly, the Commission observes that the activities of the Parties overlap in the interactive media business. In this regard, the Commission, based on the submission of the Acquirers, notes that the market share of the Parties is insignificant and therefore, there is no likelihood of AAEC in this business segment.

8. In view of the foregoing, the Commission is of the view that horizontal overlaps resulting from the proposed combination are not likely to result in any appreciable adverse effect on competition in any of the business segments, as discussed above.

### B. *Vertically related markets*

9. As already stated, both the Parties are large media and entertainment companies and the Parties are present in different stages of production chain and accordingly, the following vertically related markets have been identified for competition analysis:

   i. *Upstream segment of licensing of audio-visual content rights and downstream segment of (a) wholesale supply of TV channels, and (b) retail supply of audio-visual content;*
   
   ii. *Upstream segment of advertising on TV channels and downstream segment of sale of advertising airtime on TV channels by OTT; and*
   
   iii. *Upstream segment of licensing of music and downstream segment of sub-licensing of music.*

10. However, for reasons already discussed above, each of the above-mentioned markets is characterized either by insignificant presence of the Parties or presence of significant competitors. Therefore, the Commission is of the view that post combination, the Parties would not have the ability to foreclose the market for other competitors.

11. In addition, the vertically related markets involving upstream segment of operation and wholesale supply of TV channels and downstream segment of retail supply of audio visual content through DTH are also identified for possibility of any vertical foreclosure.

12. In the upstream segment relating to operation and wholesale supply of TV channels, for reasons already discussed above (in paragraph 7.3), it is noted that there is no likelihood of AAEC in this business segment as well as in its various sub-segments.

Further, for the downstream segment, the Commission notes that though 21CF holds certain equity shares of Tata Sky but the proposed combination is not likely to foreclose the market for other competitors as TRAI has issued various regulations, tariff orders and directions, *etc.* to generate competition and ensure fair play in the industry. Further, there are competitors of the Parties such as Tata Sky, Dish TV, Airtel DTH, Sun Direct *etc.* that would continue to provide competitive constraint to the Parties, post-combination. Therefore, the abovesaid vertical relationship is not likely to result in any vertical foreclosure.

13. Considering facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment 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.

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

15. The information provided by the Acquirers is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.

16. The Secretary is directed to communicate to the Acquirers accordingly.