



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2018/10/606)

15th January 2019

Notice under Section 6 (2) of the Competition Act, 2002 filed by Witzig Advisory Services Pvt. Ltd., Amazon.com NV Investment Holdings LLC and Samara Alternate Investment Fund.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U.C. Nahta
Member

Ms. Sangeeta Verma
Member

Legal Representative: P&A Law Offices for Amazon.com NV Holdings LLC;
Cyril Amarchand Mangaldas for Witzig Advisory Services Private
Ltd. and Samara Alternate Investment Fund.

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

1. On 17th October, 2018, the Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”), filed by Witzig Advisory Services Private Ltd. (“**Witzig**”). Thereafter, Amazon.com NV Holdings LLC (“**Amazon**”) and Samara Alternate Investment Fund (“**Samara**”), respectively, submitted themselves as joint notifying parties for the proposed combination under Regulation 16 of the Competition Commission of India (Procedure in regard to the transactions relating to combinations) Regulations, 2011 (“**Combination Regulations**”). (Hereinafter, Witzig, Amazon and Samara are collectively referred to as “**Acquirers**”). The notice was filed pursuant to



simultaneous execution of 3 agreements on 19th September, 2018, namely, Share Purchase Agreement (“SPA”), *inter alia*, between Witzig and Aditya Birla Retail Ltd. (“ABRL” / “Target”); and Share Subscription Agreement (“SSA”) and Shareholders Agreement (“SHA”), *inter alia*, between Amazon, Witzig and Samara. (Hereinafter the Acquirers and Target are together referred to as “Parties”).

2. The proposed combination entails following steps: (i) acquisition of 99.99% of the equity share capital of ABRL by Witzig, currently a wholly owned subsidiary of Samara Fund; and (ii) acquisition of 49% of the equity share capital of Witzig by Amazon (collectively referred to as “Proposed Combination”).
3. *Vide* letter dated 12th November, 2018, issued under Regulation 14 of the Combination Regulations, the Acquirers were required to remove certain defects in the notice. A partial response to the said Commission’s communication was received on 3rd December, 2018 and complete response was received on 27th December, 2018. Further, *vide* letter dated 2nd January, 2019, issued under Regulation 19(2) of the Combination Regulations, certain additional information were sought from the Acquirers, response to which was received on 4th January, 2019.
4. Witzig, as aforementioned, is a wholly owned subsidiary of the Samara Fund, an alternate investment fund (“AIF”) registered with the Securities and Exchange Board of India in terms of the SEBI (Alternative Investment Fund) Regulations, 2012 (“AIF Regulations”). Witzig is stated to be engaged in the business of facility management services comprising use of third party service providers for maintenance of building/office facilities and broadly comprises cleaning services, support services, property services, *etc.* Samara Fund and Witzig belong to the Samara Capital Group, a private equity group that manages funds. Samara Capital Group have investments through their direct/indirect subsidiaries/affiliates/portfolio companies, in entities that are engaged in the businesses involving consumer products, retail and facility management services such as SMS Integrated Facilities Management Services Private Limited (“SMS”) and Innov Services, Innov Security, Innov Facilities (collectively, “Innov”).



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5. Amazon is a direct subsidiary of Amazon.com Inc (“ACI”) and belongs to the Amazon group. ACI is stated to be the ultimate parent entity of the Amazon group. Various direct or indirect subsidiaries of ACI have business operations in India and are engaged in businesses such as provision of e-commerce marketplace, B2B sales, payments processing, cloud computing *etc.*
6. ABRL, belongs to the Aditya Birla conglomerate and is engaged in multi-brand retail trading through its ‘More’ brand and it includes fast moving consumer goods, food, groceries, beverages, apparel *etc.* through supermarkets and hypermarkets, along with sale of the foregoing products on the online store – www.mystore.com and other e-commerce websites such as www.zopnow.com and through the Prime Now Seller Program on Amazon India Marketplace (e-commerce marketplace) operated by Amazon Seller Services Private Limited (“ASSPL”), an affiliate of Amazon.

Horizontal overlaps

7. Based on the submissions of the Acquirers, the Commission noted that there are horizontal overlaps between the activities of the Parties, as follows:
 - a. *In the B2C offline sales segment:* ABRL is present in this business segment through its ‘More’ brand supermarket and hypermarket. Further, affiliates of Samara Fund hold stakes in Flemingo International Limited, which is engaged in operating duty free retail outlets, and Monte Carlo Fashions Limited, which is engaged in the business of retail of apparel under the ‘Monte Carlo’ brand.
 - b. *In the B2C online sales segment:* ABRL is present in the said business segment through www.mystore.com. Amazon is present in this segment through its Amazon India Marketplace, which facilitates online sales. Affiliates of Amazon such as, *inter alia*, Amazon Export Sales LLC offers certain products on the Amazon India Marketplace and Amazon Retail India Private Limited undertakes retail of food products manufactured and produced in India through Amazon India Marketplace.



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8. The Commission considered market share of the Parties in the organized sector for online as well as offline retail business segments. The Commission further assessed the presence of the Parties in different product categories.
9. As regards the market share of the Parties, the Commission noted that the post-combination market share (in terms of gross merchandise value), in the online segment (within the organized segment), would be 25-30 percent. However, the incremental market share is miniscule. Further, in the offline segment (within the organized segment) the combined market share is less than 5 percent. Based on the submissions, the Commission noted that the presence of the Parties in the organized segment of the said overlapping business activities is not likely to raise any competition concerns, and accordingly decided to leave the exact delineation of relevant market open. Further, the Commission noted that given the presence of the Parties in the given product market is insignificant, the Proposed Combination is not likely to cause any significant change in competition dynamics in the retail market.

Vertical relationship

10. The Commission further noted that there exists potential vertical relationship between the Parties, as follows:

- a. *In the organized B2B sales in the upstream and B2C sales in the downstream:* Affiliates of Amazon are present in the upstream business activity of B2B sales. An affiliate of Amazon, *i.e.* Amazon Wholesale (India) Private Limited, is a wholesale reseller of branded products. Further, Amazon Seller Services Private Limited is engaged in the business of supply of Amazon branded devices such as Kindle, Echo, *etc.*, on a B2B basis. Further, ABRL is present in the downstream business segment of B2C sales. In the context of upstream business segment of B2B sales, the Commission observed that there are other competitors of Amazon such as Walmart India, Metro Cash-and-Carry, Reliance Cash-and-Carry, Flipkart *etc.*, along with the unorganized B2B players. With regard to Amazon branded products, the Commission, based on the submission of the Acquirers, noted that various other sellers are active in



selling Amazon branded devices and its competing products. Therefore, presence of Amazon in upstream B2B sales is not likely to result in any input or customer foreclosure.

- b. *ABRL lists its product (upstream) on the Amazon India Marketplace operated ASSPL, an affiliate of Amazon (downstream) and sells its product:* The Commission noted that ABRL lists its products on the Amazon India Marketplace under its Prime Now Seller Program, which is operated by ASSPL, an affiliate of Amazon. In this regard, the Commission observed that the sales made by ABRL in different product categories are miniscule to the total sales made on Amazon India Marketplace for respective product categories and accordingly, is not likely to result in any foreclosure of input or customer by Amazon, post-combination.
- c. *ABRL (in upstream) may use semi-closed mobile wallet services ('Amazon pay') provided by Amazon Pay (India) Private Limited, an affiliate of Amazon (downstream):* The Commission observed that in the semi-closed mobile wallet service, there are various other players such as PayTM, PhonePe, Airtel Money, Freecharge etc., which would provide competitive constraint to the parties post-combination. Further, there is no likely incentive or ability on the part of the combined entity to foreclose the business of semi-closed mobile wallet services. Therefore, the Proposed Combination is not likely to raise any competition concern.
- d. *Amazon Internet Services Private Limited ("AISPL"), an affiliate of Amazon, provides cloud based data storage and hosting services to customers in India under the 'Amazon Web Services' brand (upstream business activity). ABRL also hires cloud based data storage services (downstream business activity):* In this context, the Commission noted that the potential vertical relationship between the Parties is not likely to raise any competitive concerns, as there are other competitors of Amazon, which can provide such cloud based data storage and hosting services at competing prices.



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e. *Samara Capital Group may provide facilities management services (upstream) to ABRL post combination (downstream). Also, ABRL (upstream) may use logistics facilities of Amazon Transportation Services Pvt Ltd. (“ATSPL”) (downstream), an affiliate of Amazon:* As aforementioned, certain portfolio entities of Samara Capital Group are present, *inter alia*, in facilities management services, staffing and security services, which may provide such services to ABRL post-combination. In this regard, the Commission, based on the submission noted that several major players are present, *inter alia*, in facility management services business, such as, CBRE Group, Inc., Jones Lang LaSalle Incorporated (JLL), SIS Group Enterprises, Qess Corp Ltd., Cushman & Wakefield, Colliers International Group Inc., Knight Frank India Private Limited, Sodexo, EFS Facilities Services, and Updater Services Private Limited. Based on the foregoing, any potential vertical relationship between Samara Capital Group and ABRL is not likely to raise any concern of vertical foreclosure in India. With respect to the presence of Amazon in logistics facilities, the Commission observed that there are various such logistics providers and are active in the said business segments. Therefore, the potential vertical relationship between Amazon and ABRL in logistics services is not likely to raise any competition concern.

11. The Commission, further noted that the duration of the non-compete covenant, as entered amongst the sellers of ABRL (i.e. Kanishtha Finance and Investment Private Limited, and RKN Retail Private Limited) and their affiliates is beyond what is necessary for the implementation of the Proposed Combination and therefore not ancillary in terms of the Commission’s Guidance on Non-Compete Restrictions and jurisdictional practices of the Commission.

12. 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.



13. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
14. The information provided by the Acquirers shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the Acquirers accordingly.