

COMPETITION COMMISSION OF INDIA

Dated: 25 August, 2011

Combination Registration No. C-2011/08/02

In the matter of:

The Walt Disney Company (Southeast Asia) Pte. Limited

.....Acquirer

And

UTV Software Communications Limited

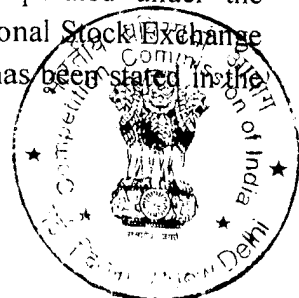
...Acquired Enterprise

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

1. The Competition Commission of India (hereinafter referred to as the “**Commission**”) on 1st August 2011, received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as “**the Act**”) of a proposed combination between the Walt Disney Company (Southeast Asia) Pte. Limited (hereinafter referred to as “**the Acquirer**”) and UTV Software Communications Limited (hereinafter referred to as “**the Acquired Enterprise**”).
2. The notice was filed with the Commission under sub-section (2) of Section 6 of the Act, pursuant to the passing of Director’s resolution of the Acquirer dated 20th July 2011, approving the acquisition of sole control of the Acquired Enterprise by the Acquirer by way of acquisition of shares of the Acquired Enterprise held by the public shareholders through a delisting offer in terms of Securities and Exchange Board of India (Delisting of Equity shares) Regulations, 2009, and subsequent acquisition of shares of the Acquired Enterprise held by Rohinton Screwvalla and his associates in accordance with the draft share purchase agreement approved therein, which was signed on 25th July 2011 by and among Rohinton Screwvalla and his associates and the Acquirer.



3. As stated in the notice, the acquisition of shares of the Acquired Enterprise by the Acquirer is proposed to be completed through a two-step transaction in the following manner:
 - (a) acquisition of shares held by the public shareholders through a delisting offer. As a part of the process of the delisting offer, those shareholders who choose not to tender their shares through the delisting offer have an exit option that shall remain open for a period of one year; and
 - (b) subject to a successful delisting offer, acquisition of shares from Rohinton Screwvala and his Associates.
4. It is stated in the notice that the proposed two-step transaction would result in sole control of the Acquired Enterprise and its entire business conducted either directly or through its subsidiaries. It has been further stated that a single notice in terms of Regulation 9 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as "**the Combination Regulations**") is being filed by the Acquirer as the ultimate intended effect of the combination would be achieved through a series of steps that are related to each other.
5. As additional information was required for the purpose of examination of the notice in terms of sub-regulation (4) of Regulation 5 read with sub-regulation (2) of Regulation 19 of the Combination Regulations, the same was sought by the Commission from the Acquirer on 10th August 2011. The reply in this regard was filed by the Acquirer on 16th August 2011.
6. The Acquirer, a company registered in the Republic of Singapore, which in turn is a wholly owned subsidiary of Disney Enterprises Inc., USA, a wholly owned subsidiary of Disney USA, which is the holding company, directly or indirectly, of all of the entities referred to generally as the "**Disney Group**". The Acquirer has stated in the notice that the Disney Group is active in India through Walt Disney Company (India) Private Limited (hereinafter referred to as "**Disney India**"). Disney India is an indirect subsidiary of Disney USA held through its subsidiaries incorporated in the U.S.A being Disney Enterprises, Inc. and TWDC Holdings (India), LLC. Disney India is active in the businesses of motion pictures, TV broadcasting and related activities, interactive media and character merchandising and publishing.
7. The Acquired Enterprise is a public limited company incorporated under the provisions of the Companies Act, 1956 and is listed on the National Stock Exchange of India Limited and the Bombay Stock Exchange Limited. It has been stated in the



notice that the Acquired Enterprise along with all its controlled subsidiaries constitutes the “UTV Group”.

8. As stated in the notice, the UTV Group is engaged in the businesses of motion pictures, TV Broadcasting and related activities and interactive media. The Acquirer, which holds 50.44 percent of the equity shares of the Acquired Enterprise, is in joint control of the Acquired Enterprise along with Rohinton Screwvala and his associates. The Acquirer is engaged in broadcasting of TV channel Hungama in India. The Disney Group, through Disney India, is involved in those lines of businesses in which UTV Group is present.
9. The proposed combination relates to the media and entertainment industry, which comprises of films, television, radio, print, music, advertising, interactive media including animation, gaming etc. It is stated in the notice that the Disney Group and the UTV Group are engaged in the businesses of motion pictures, TV Broadcasting and related activities and interactive media in India. The Disney Group is also stated to be in the business of character merchandising and publishing in India.
10. As regards the business of motion pictures, the Acquirer has stated in the notice that the Disney Group is primarily in the business of producing and releasing motion pictures in the English language. Between 2008 and 2010, the Disney Group has released in India, twenty eight English language motion pictures produced by them, whereas it has produced and released, on an experimental basis, only two Hindi language motion pictures in India. On the other hand, UTV Group is stated to be primarily in the business of producing and releasing Hindi language motion pictures. Between 2008 and 2010, the UTV Group has produced and released twenty seven Hindi language motion pictures in India, whereas it has produced and released, on an experimental basis, only one English language motion picture and four regional language motion pictures in India. Further, it is also stated in the notice that the motion pictures market in India is wide and fragmented consisting of a significant number of players, both large and small. The market is also characterized by relative ease of entry and exit for the players. Further, the market shares of the players vary largely based on the quality of the motion pictures produced and the audience response to such motion pictures.
11. As regards the business of TV broadcasting and related activities in India, the Acquirer has stated in the notice that presently the Disney Group has three TV channels whereas the UTV Group has five TV channels. The Disney Group also creates content for broadcasting on its own channels. Further, Disney India also syndicates Disney Group’s international content to leading broadcasters in India. The



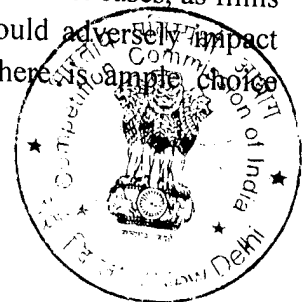
UTV Group also produces content, both for broadcasting on its own channels and for sale to channels of other broadcasters.

12. The permission to broadcasters for uplinking and downlinking of TV channels is granted by the Ministry of Information and Broadcasting (hereinafter referred to as "MIB") for "news" and "non-news" channels. As per the information available on the website of the MIB, till 20th July 2011, 727 channels were granted permission for up-linking and downlinking of TV channels in India, out of which 359 were news channels and 368 were non- news channels. It has also been stated in the notice that in India, the Disney Group and the UTV Group operate only in the non-news channels and that on the date of filing of the notice, the Disney Group and UTV Group together were broadcasting eight non-news channels targeting different set of audiences. Moreover, it has been stated in the notice that TV broadcasting market is in a constant state of evolution and transformation, largely because of intense competition amongst the players within this market. Quoting the FICCI-KPMG Report 2011, the Acquirer has stated that ninety new channels have entered this market since the year 2009. It has also been stated by the Acquirer that apart from a requirement of license from the MIB, there are no barriers to entry in this market and the growth in this industry will ensure further intense competition. Further, the market shares of the players vary largely, based on the audience response to specific content/programs, and to some extent on the market strategies of the distributors, and therefore, no individual channel may be considered to hold the position of dominance. It has been stated by the Acquirer that the Telecom Regulatory Authority of India (hereinafter referred to as "TRAI") functions as a regulator for the broadcasting and cable services sector in India.
13. As regards the business of interactive media and related activities, the Acquirer has stated in the notice that the interactive media business refers to the development and dissemination of digitized content (music, video, audio, cinema, games and graphics) across various platforms such as processor-based equipments, internet, mobile and consoles. The interactive content can be a derivative of the content produced for the TV and motion pictures or conceptualized and developed specifically for the digital platforms. It has been stated by the Acquirer in the notice that interactive media market is a new, emerging and dynamic market across the world and is characterized by ease of entry. It has been further stated by the Acquirer that in the market for content creation and distribution, there are a large number of players and the market is characterized by intense competition. The Acquirer has stated that while both Disney India and the UTV Group create content, the UTV Group also distributes its content and third parties' content through its subsidiaries. However, it has been



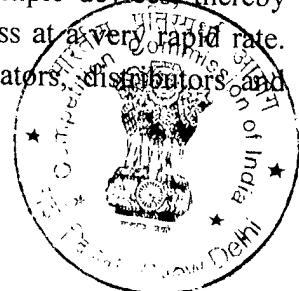
stated that both Disney India and UTV Group also distribute content through their websites.

14. As regards the business of character merchandising and publishing, the Acquirer has stated in the notice that only the Disney Group is engaged in character merchandising and publishing through its Indian subsidiary Disney India and that the UTV Group is not engaged in this business.
15. The Commission considered the proposed combination relating to the media and entertainment industry in its ordinary meeting on 25th August 2011.
16. The Media and Entertainment industry is one of the fastest growing sectors in the country. Media and Entertainment comprises segments like films, television, radio, music, animation, gaming, print and advertising etc. In the context of the proposed combination relating to acquisition of sole control of Acquired Enterprise by the Acquirer, it is observed that both the Disney Group and the UTV Group are engaged in the businesses of motion pictures, TV broadcasting and related activities and interactive media in India. Additionally, the Disney Group also operates in the business of character merchandising and publishing in India.
17. According to the Annual Report of the Central Board of Film Certification (CBFC) 2010, India has the largest film industry in the world, making on an average, nearly one thousand feature films and nearly one thousand five hundred short films every year. The films can be publicly exhibited in India only after they have been certified by the CBFC. According to the Annual Report of CBFC, 2010, for the years 2009 and 2010, as many as 1288 and 1274 Indian feature films respectively were certified by the CBFC, out of which 235 and 215 respectively were Hindi Feature films. Further, as per the Annual Report of CBFC 2010, for the years 2009 and 2010, as many as 283 and 298 foreign feature films respectively were certified by the CBFC. It is observed that for the period 2008 to 2010, the Disney Group produced and released 28 English and 2 Hindi movies in India. On the other hand, in the same period, the UTV Group produced and released 27 Hindi and 1 English movie(s) in India.
18. It is observed that in the business of motion pictures in India, there are large numbers of market players, big as well as small, with relatively low barriers to entry. The commercial success in the business of motion pictures is dependent on the preference and response of the audience. It is also not in the commercial interest of producers and distributors of the films to restrict the supply in the market in most cases, as films tend to have a short commercial life and restricted supply would adversely impact their returns. Further, from the viewer's perspective also, there is ample choice



available to the viewer ensuring thereby that he can watch the movies out of the wide choice of different channels of exhibition such as multiplexes, single screen theatres, video and TV as available to him in the present day.

19. In last few years, there have been many changes in Indian television segment both in content creation and broadcasting, with increase in number of channels available to viewers, emergence of digital distribution medium such as DTH, Internet Protocol Television (IPTV) etc. It is observed that there are a large number of players, both big and small, in the business of TV broadcasting and related activities catering to diversified target audiences. The broadcasting and cable services sector in India is regulated by TRAI, which includes monitoring the interconnection, tariff, quality of service, licensing issues relating to broadcasting and cable services, examination of issues relating to modernization/digitalization of broadcasting services and introduction of new broadcasting services etc. The permission for uplinking and downlinking of TV channels in India is granted by MIB. According to the information available on the website of the MIB, as on 20th July 2011, 727 channels were granted permission by the MIB, out of which 359 were news channels and 368 were non- news channels. It is observed that in India, the Disney Group has three (03) TV channels under the 'kids' genre and the UTV Group has five (05) TV channels, of which four are movie channels and the fifth is a 'youth entertainment' channel. The presence of a number of significant players in this business offering a large number of channels, including for each of the genres, competing for viewership and prime-time slots, existence of regulatory oversight and overall growth in the last few years in the number of channels and options available to the viewers, make this business highly competitive, innovative and dynamic.
20. The business of interactive media in India is at a nascent stage and is poised to grow rapidly in future. Realizing the potential of interactive media in India and worldwide, a number of players have started entering this business. The business of interactive media consists of gaming (online, computer, mobile and console) and digital media (music, video, mobile and graphics etc.). It is observed that both Disney India and UTV Group create content in this particular business segment. The UTV Group also distributes its content and other third parties content through its subsidiaries; however, both Disney India and UTV Group also distribute content through their websites.
21. In the business of interactive media, which is also referred to as new media, the consumers prefer to access content across platforms on multiple devices, thereby resulting in continuous growth and innovation in this business at a very rapid rate. This leads to intense competition amongst the content creators, distributors and



retailers to cater to this market, characterized by ever-increasing demand for new and innovative products. In view of the enormous scope for development and innovation in this emerging business, there are a large number of players who are entering or intend to enter this market in India, particularly after the launch of the 3G services.

22. In recent years, character merchandising has become a popular commercial activity across the world. 'Character merchandising' refers to adaptation of a character (real or fictional) in relation to goods or services, to create demand for acquiring those goods and services due to customers' affinity with that particular character. The character merchandising business operations include a diverse range of product categories, significant among which are toys, apparel, home décor and furnishings, stationery, accessories, health and beauty, food, footwear and consumer electronics etc. It is understood that Disney Group's products in character merchandising are also varied and include multiple product categories such as food, health and beauty, stationery, home, apparel, accessories, footwear, toys and consumer electronics, etc.
23. It is further observed that only the Disney group is engaged in the business of character merchandising and publishing through Disney India and that the UTV Group is not engaged in this business.
24. Based on the facts on record and the notice of the proposed combination filed by the Acquirer under sub-section (2) of Section 6 of the Act, and the examination of the businesses involved which are commonly characterized by the presence of a large number of players and prevalence of intense competition among them, availability of ample choice and variety of products to the consumers, demand driven nature of the business, interchangeable and converging nature of the businesses involved, relative ease of entry and exit in these businesses, less likelihood of any co-ordinated or exclusionary behaviour, regulatory oversight in TV broadcasting and the future growth potential in addition to the fact that the Acquirer is already in joint control of the Acquired Enterprise, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act as it is not likely to have an appreciable adverse effect on competition.
25. The approval is without prejudice to compliance of any other statutory obligations applicable.
26. This order shall stand revoked if, at any stage, the information given in notice is found to be incorrect.



27. The Secretary is directed to communicate to the Acquirer accordingly.

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New Delhi

25/8/2011