



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2021/12/893)

9th March 2022

Notice under Section 6(2) of the Competition Act, 2002 given by Amazon Asia-Pacific Resources 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 22nd December 2021, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), given by Amazon Asia-Pacific Resources Private Limited (**Amazon Asia-Pacific**). The Notice has been given pursuant to the execution of Exit Framework Agreement between Catamaran Advisors LLP (**Catamaran**), Amazon Asia-Pacific and Amazon Eurasia Holdings S.a.r.l. (**Amazon Eurasia**) on 9th August 2021 (**Exit Framework Agreement**); and Share Purchase Agreement between Amazon Asia-Pacific, Prione Business Services Private Limited (**Prione**) and Catamaran on 21st December 2021 (**SPA**). Catamaran entered into these agreements, acting as the trustee for and on behalf of Hober Mallow Trust. Hereinafter, Amazon Asia-Pacific and Amazon Eurasia Holdings S.a.r.l. (**Amazon Eurasia**) are together referred to as **Amazon**.
2. The Commission, *vide* its communication dated 4th January 2022, 7th January 2022 and 4th February 2022, issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011, required the notifying party to remove defects in the Notice and furnish certain information relevant for the purpose of assessment of the Proposed Combination. The notifying party submitted its response *vide* its submissions dated 25th January 2022, 27th January 2022, 29th January 2022 and 8th February 2022. The notifying party also made a voluntarily submission *vide* its communication dated 21st February



2022.

3. The Proposed Combination envisages acquisition of 76% of the share capital of Prione (**Transfer Shares**) by Amazon Asia-Pacific from Hober Mallow Trust. Transfer Shares represent 100% of the shareholding of Hober Mallow Trust in Prione. Post the proposed Combination, Amazon Asia-Pacific and Amazon Eurasia would have 100% stake in Prione and Cloutail India Private Limited (**Cloutail**), a wholly owned subsidiary of Prione.
4. Amazon Asia-Pacific is an indirect wholly owned subsidiary of Amazon.com, Inc. (**Amazon.com**). Amazon.com is the ultimate parent entity of the Amazon group. Amazon.com has certain indirect subsidiaries either registered in India or having business operations in India (**Acquirer Affiliates**). The Acquirer Affiliates are engaged in businesses relating to retail (**B2C**) sales, payments processing, wholesale (**B2B**) sales, *etc.* Further, some of the indirect subsidiaries of Amazon.com have stakes in certain entities operating in India.
5. Prione offers services such as digital cataloguing, advertising, training and consulting, advisory and value-added services, adoption of digital payments and other overall enablement services to small and medium businesses (**SMBs**) to run their online businesses efficiently. It also provides services related to seller acquisition and on-boarding and other services to the Acquirer Affiliates.
6. Cloutail commenced its operations in or around August 2014. It is primarily engaged in B2C sales. It is engaged in B2C sales only through the online marketplace, *viz.*, www.amazon.in (**Amazon Marketplace**), operated by Amazon Seller Services Private Limited (**ASSPL**). Cloutail is also engaged in B2B sales of products through online channel, including through the marketplace www.amazon.in/business (**Amazon B2B Marketplace**) operated by ASSPL, as well as offline channels. Offline presence of Cloutail is limited to B2B sales.
7. The notifying party has submitted that, in terms of the applicable Foreign Direct Investment Policy (**FDI Policy**), foreign direct investment is not permitted in the inventory-based model of e-commerce. Accordingly, to enable Amazon Asia-Pacific and Amazon Eurasia to acquire 100% shareholding in Prione, and indirectly 100% stake in Cloutail, Cloutail will cease its B2C business. Prione will undertake all necessary corporate actions to ensure that Cloutail ceases B2C business operations on or prior to the Closing Date [*i.e.*, the date on which the transaction of sale and purchase of the



Transfer Shares shall be consummated] (**B2C Cessation Date**). B2C Cessation Date would be after the date of receipt of the approval of the Commission for the Proposed Combination. On and from the B2C Cessation Date, Cloudtail will cease its B2C business operations in India. Further, one of the Acquirer Affiliates, viz., Amazon Wholesale (India) Private Limited (**AWIPL**), is engaged in B2B business and it would be efficient to operate only the existing B2B business of AWIPL. Cloudtail will also cease B2B business operations after the Closing Date. Post-Closing, Cloudtail will undertake limited B2B sales for a period not exceeding six months from the Closing Date. These limited B2B sales will be undertaken to dispose of any balance inventory lying in the books of Cloudtail (**Balance Inventory**) on the B2C Cessation Date, and Cloudtail will not engage in B2B sales otherwise as a systematic business activity. Cloudtail would cease online B2B and B2C operations (including through the Amazon Marketplace and the Amazon B2B Marketplace) within 45 days from the date of receipt of the approval of the Commission under Section 31 of the Act. The disposal of Balance Inventory would be undertaken only through offline B2B sales.

8. The focus of analysis of the effect of horizontal overlap(s) in a proposed combination is to examine whether the combined entity would have market power to cause or likely to cause an appreciable adverse effect on competition (**AAEC**). Amazon group is the existing shareholder of Prione, with a presence on its Board. Pursuant to the Proposed Combination, Amazon group would acquire complete control over Prione and Cloudtail. Thus, it would be relevant to examine whether complete control of Amazon group over Prione and Cloudtail and the exit of Cloudtail from its business operations would increase the overall market power of Amazon group that is likely to cause an AAEC in India. In this regard, the Commission observes that, during FY 2020 – 21, about one-fifth of the total GMS of Amazon Marketplace was generated through sales made by Cloudtail. For most of the sub-categories of products sold on Amazon Marketplace, the contribution of Cloudtail in the GMS generated on Amazon Marketplace is significant. For 1 out of 23 product sub-categories, the contribution of Cloudtail in the GMS generated on the Amazon Marketplace was more than 90%; for 3 out of 23 product sub-categories, the contribution of Cloudtail in the GMS generated on the Amazon Marketplace was between 50%–90%; for 10 out of 23 product sub-categories, the contribution of Cloudtail in the GMS generated on the Amazon Marketplace was between 25%–50%; and for 4 out of 23 product sub-categories, the contribution of Cloudtail in the GMS generated on the Amazon Marketplace was between 10%–25%. For the remaining product sub-categories, the contribution of Cloudtail in the GMS generated on the Amazon Marketplace was less than 10%. The position was more or less similar for FY 2019 – 20. Given that Cloudtail



is a seller of significance on the Amazon Marketplace and exclusively operates on Amazon Marketplace in the B2C space, the exit of such a seller would not increase the overall market power of Amazon group in the B2C space such as to raise competition concerns as a result of the Proposed Combination. Further, considering the volume of sales made by Cloudtail in the B2B space being not significant, the Proposed Combination is not likely to raise competition concerns in the B2B sales space.

9. When parties to a combination are placed at different levels of the supply chain, it may be relevant to examine whether the risk of input foreclosure or customer foreclosure leading to competition harm arises. If the combined entity has significant market power in the upstream market and also has the incentive to foreclose inputs to its competitors in the downstream market, the risk of input foreclosure arises. Input foreclosure may be achieved by the merged firm by stopping supply of inputs to its rivals in the downstream market or by raising the cost of rivals in the downstream market by increasing their input prices, whereas the downstream entity of the merged firm still has access to the input at a lower price, thus gaining a competitive advantage over its competitors. Customer foreclosure may occur where the downstream firm of significant size exclusively purchases inputs from the upstream divisions of the merged firm. Due to vertical integration, other players in the upstream market may have a smaller addressable market, which could make it difficult for them to recover their costs.
10. In the instant matter, activities of the Acquirer Affiliates and Cloudtail exhibit vertical interfaces. ASSPL operates the Amazon Marketplace and provides technology and logistic support services to these sellers. Cloudtail is one of the sellers which works with ASSPL to list products for sale on the Amazon Marketplace. Cloudtail also undertakes B2B sales through the Amazon B2B Marketplace. AWIPL is engaged in B2B trading of Amazon branded devices such as Alexa, Echo and Kindle. Cloudtail has entered into agreements with AWIPL to procure Amazon-branded devices on B2B basis. Cloudtail has also entered into an agreement with Westland Publications Private Limited (**Westland**), an Acquirer Affiliate engaged in the publication and supply of books on a B2B basis, for B2B supply of printed books. The products of Sanghvi Beauty & Technologies Private Limited (**Sanghvi Beauty**), one of the investee entities of the Amazon group, are sold by Cloudtail on the Amazon Marketplace. In this regard, the Commission observes that, as Cloudtail would cease its operation, foreclosure concerns would not arise.



11. Activities of the Acquirer Affiliates and Prione also exhibit vertical interfaces. Prione provides services related to seller acquisition and on-boarding and other services to the Acquirer Affiliates. Post-consummation of the Proposed Combination, Prione would continue with its business operations, and therefore, the existing and potential vertical overlaps between the Acquirers subsidiary(ies) and the Acquirer Affiliates on the one hand and Prione on the other hand would continue to exist. In this regard, the Commission observes that during FY 2019 – 20 and 2020 – 21, Prione generated more than 99% revenue from Amazon Affiliates and Cloudbtail. The share of revenue generated from other parties in the overall revenue of Prione is not significant. Based on the value and nature of services provided by Prione to entities other than Amazon Affiliates and Cloudbtail, it appeared that this vertical interface is not likely to raise concerns of foreclosure to third parties.
12. Earlier, the Commission, in Case No. 40/2019 *vide* its order dated 13th January 2020, issued under Section 26(1) of the Act, directed the Director General to cause an investigation in relation to certain alleged practices on marketplaces, as detailed therein.
13. On 14th January 2021, Confederation of All India Traders (CAIT), under Section 33 of the Act, filed an application (**Application**) with the following prayer:
 - Pass an order blocking or keeping in abeyance the Proposed Combination till pendency of Case no. 40/2019, *Delhi Vyapar Mahasangh and Flipkart Internet Private Limited and ors.*
 - Pass any order as may be deemed appropriate under the facts and circumstances.
14. The Commission, in its meeting held on 19th January 2022, considered the Application and took the same on record, noting that the objections raised by CAIT shall be considered while assessing the effect or likely effect of the Proposed Combination on competition, if any, in accordance with law, at an appropriate stage. In view of the above, the Commission decided that no other or further order or direction is required to be passed upon the Application at that stage.
15. In the Application, CAIT has, *inter alia*, contended that only a few sellers (primarily Cloudbtail and Appario) get preference in listing, and consequently, most of the consumer traffic is diverted to these preferred sellers. Preference is being given to Cloudbtail when Amazon only has a 24% stake in Cloudbtail. The complete acquisition of Cloudbtail by Amazon will further compromise the neutrality of the platform. Cloudbtail will get further



support of Amazon in terms of subsidized/ no commission, along with other resources such as access to data and funds of Amazon. If the Proposed Combination is approved, Amazon would serve as both a marketplace and a competitor in the marketplace. Further, both Amazon and Cloudtail will become a single economic entity. In this scenario, the preferential treatment by Amazon to Cloudtail, if any, may not be addressable. The public stance of Amazon that Cloudtail will cease operations from May 2022 cannot be taken at face value, especially considering the blatant misrepresentations that they have made in the past with respect to giving no preference to any sellers.

16. The Commission has perused the Application and the averments made therein. It suffices to observe that if any person conceals/suppresses and/or misrepresents to the Commission and obtains approval, the Commission is fully empowered to deal with such conduct in accordance with the provisions of Sections 44 and 45 of the Act. Section 44 of the Act provides that if any person, being a party to a combination (a) makes a statement which is false in any material particular, or knowing it to be false; or (b) omits to state any material particular knowing it to be material, such person shall be liable to a penalty which shall not be less than rupees fifty lakhs but which may extend to rupees one crore, as may be determined by the Commission. Further, Section 45 of the Act stipulates that if a person, who furnishes or is required to furnish under the Act any particulars, documents or any information, (a) makes any statement or furnishes any document which he knows or has reason to believe to be false in any material particular; or (b) omits to state any material fact knowing it to be material; or (c) wilfully alters, suppresses or destroys any document which is required to be furnished as aforesaid, such person shall be punishable with a fine that may extend to rupees one crore as may be determined by the Commission. Additionally, Section 45 of the Act also empowers the Commission to pass such other order as it deems fit. Statements and submission made by the notifying party before the Commission cannot be disregarded merely on the ground of suspicion, raised by a third party. As regards alleged preference and its accentuation post consummation of the Proposed Combination, it is observed that Amazon Asia-Pacific has already submitted that Cloudtail would cease online B2B and B2C operations (including through the Amazon Marketplace and the Amazon B2B Marketplace) within the specified time period. Thus, the issue of alleged preference and its accentuation, if any, is not relevant for the assessment of the likely effect of the Proposed Commission on competition in India, and accordingly, does not warrant any remedy pursuant to the Proposed Combination. So far as investigation into past conducts is concerned, it needs no reiteration that past conducts contravening provisions of the Act, if any, would be dealt with as per the provisions of the Act.



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17. Considering the material on record, including details provided in the Notice given under Section 6(2) of the Act and assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s), and therefore, the Commission hereby approves the same under Section 31(1) of the Act.
18. This order may be revoked if, at any time, the information provided by the notifying party is found to be incorrect.
19. The information provided by the notifying party is confidential at this stage in terms of and subject to the provisions of Section 57 of the Act.
20. The Secretary is directed to communicate to the notifying party accordingly.