

Ref. No.: 3198/1/50

08<sup>th</sup> November, 2021

**Shri Ashok Kumar Gupta,  
Chairman, Competition Commission of India,  
Office Block – Tower-1, 9<sup>th</sup> Floor,  
Kidwai Nagar (East),  
New Delhi – 110023**

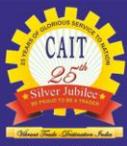
**Dear Sir,**

**Sub: Amazon’s investment and acquisition of strategic rights in Future Retail – disguised as investment in Future Coupons Private Limited.**

**Ref: Media Reports of letter from Independent directors of Future Retail Limited to the Competition Commission of India.**

- 1) We have time and again brought to your notice the anti-competitive practices of Amazon that have led to closure of a large number of small shops and impacted the livelihood of millions of traders and their families.
- 2) The recent media reports on the letter from independent director of Future Retail Limited (*copy of the letter enclosed as Annexure*) have brought out yet another case of cheating and violation of Competition Act and its Regulations by Amazon. This is not surprising. Amazon’s only intent is to destroy livelihood of crores of small traders by any means -hook or crook. Amazon has been carrying on business only by anti-competitive practices and annihilating competition.
- 3) None other than the independent directors of Future Retail Limited (“FRL”) have brought out the truth to the CCI. It is clear that Amazon had lied, concealed facts, made misrepresentations and false representations to the Commission while seeking its approval for its investment in Future Coupons Private Limited (“FCPL”).
- 4) According to the letter of Independent Director of FRL, Amazon has falsely represented that that it was investing in the business of Future Coupons Private Limited (“FCPL”) and taking indirect protective rights in FRL to protect its investment and obtained CCI approval. Whereas the actual fact is Amazon was indirectly investing in Future Retail and obtaining strategic material and special rights over FRL.
- 5) The details of the case are:
  - (a) Amazon submitted its application to CCI for approval on the following basis.
    - (i) Amazon was investing in and acquiring 49% of FCPL to grow FCPL’s business of gift and loyalty cards.





- (ii) This is under automatic route for FDI investment.
- (iii) Amazon's indirect rights (through FCPL) over FRL were only for the purpose of protection of its investment.
- (iv) Amazon will not exercise rights over FRL directly but only through FCPL.
- (v) The rights obtained by FCPL over FRL were negotiated independently of Amazon's investment. Amazon had nothing to do with the shareholders agreement between FRL and FCPL.
- (vi) Amazon has no strategic interest in FRL.

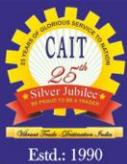
(b) But now before the arbitrators Amazon itself has filed averments under oath from which it is clear that :

- (i) Amazon invested in FCPL only because it obtained strategic material and special rights over FRL. Otherwise they would not have invested in FCPL. (The meaning of this is Amazon did not invest to grow FCPL's business)
- (ii) The shareholders agreement between FCPL and FRL was at the behest of and as per the requirement of Amazon. Amazon planned the transaction in such a manner that (A) First FCPL takes strategic rights over FRL through FRL SHA and (B) Amazon will take (usurp) these strategic rights through the shareholders agreement between FCPL and Amazon (FCPL SHA).
- (iii) The retail assets and business of FRL was strategic to Amazon.
- (iv) Amazon has direct enforceable rights over Amazon (not through FCPL) so as to prevent the Board of FRL from discharging its fiduciary duties namely sale of retail business in the interest of lakhs of shareholders, banks and creditors and prevent a write down of Rs.30,000 crore of loans extended by Public sector banks.

6) It does not require expertise to note the contrast and contradiction. It is clear that all representations made by Amazon to CCI at the time of seeking approval are false representation, misrepresentation and concealment. It is deliberate and intentional only to obtain approval by any means so that controlling rights over FRL are obtained.

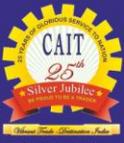
7) A beginner in the study of Competition Act will tell that had the truth been told to CCI, the CCI would have examined the entire transaction with a different lens. The lie and concealment cannot be dismissed that the Commission had considered the combination and its impact on the retail industry as a whole or that Amazon had attached the FRL shareholders agreement among the thousands of pages in its application.





- 8) If Amazon had informed the facts:
  - (a) The CCI would have sent the matter to SEBI for examination whether Amazon had taken control and if it was liable to make an open offer.
  - (b) CCI would have become wary and forwarded the papers to DEA for examination if the acquisition of controlling rights is allowed under FEMA regulations. ( Amazon has cleverly prevented CCI from doing this and has taken shelter that its investment in FCPL is under automatic route.)
  - (c) CCI would have examined the business arrangements between Amazon and FRL whether with these strategic rights over FRL, Amazon can misuse its platform ( which any way Amazon always does) to cause detriment to lakhs of small traders on its platform.
- 9) Justice Mukta Gupta, Hon'ble High Court of Delhi has held that the strategic rights claimed to have been acquired by Amazon by the integrated nature of the FRL SHA and the FCPL SHA transgresses to 'control' by Amazon over FRL.
- 10) It is clear that Amazon submitted a different transaction than the one which was proposed to be undertaken by it. It did not seek approval for the actual transaction. So the approval of CCI automatically becomes void. It will be legally wrong to even contend that the transaction which actually took place was approved by CCI. Amazon has by deceit avoided reporting and assessment by the CCI of the actual transaction effected by Amazon including that of the commercial agreements.
- 11) The proof that Amazon committed a deceit is brought out in the FRL Independent Directors letter. Arbitrators have accepted the contentions and averments of Amazon. No more proof is required to revoke the approval given.
- 12) Further the Commission has wide powers under the Competition Act and Regulations to call for all records, correspondences leading to the transaction available with Future Retail and Amazon. It will be clear from these records that the actual transaction is one which has been averred by Amazon before the courts.
- 13) Paragraph 16 of the Commission's order dated 28-11-2019 approving Amazon's investment in FCPL states that ***the approval given by the Commission to the Combination stands revoked if, at any time, the information provided by the Acquirer is found to be incorrect.*** So in our view the Commission has no alternative to revoking the approval.
- 14) The CCI cannot derelict from its duty of revoking the approval given by using its powers under section 45 of the Competition Act. Any other action of Commission,





such as levy of penalty, will not suffice and will be illegal and will be against public policy and cause public harm.

15) Sir, we are writing this to your good-self because FRL is at the brink of bankruptcy and possesses serious risk as mentioned below:-

- (a) Future group employs 50,000 people – their families will be on the road;
- (b) Rs. 10,000 crore is owed by Future group to over 6,000 SMEs - the survival of these SMEs is at stake;
- (c) Public sector banks have lent over Rs. 30,000 crore to Future group – this public money is at stake;
- (d) Lakhs of small shareholders who have invested in shares of Future group companies will lose their entire investment.

16) We are at pain to see that despite the pressing urgency of matter in which livelihood of lakhs of people and huge sum of public funds is involved, CCI has not taken any action for over 8 months, since the time the complaint was made to CCI during the month of March 2021.

17) Considering the urgency of the matter and the attached public interest and public good, we request you to take immediate action of declaring that the approval granted to Amazon stands revoked and respond to our letter at the earliest.

Thanking you. With kind regards

Yours truly

**Praveen Khandelwal**  
**National Secretary General**  
**Confederation of All India Traders**

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Fayde ka Sauda

Copy:

- 1) Smt Nirmala Sitaraman, Hon'ble Minister of Finance
- 2) Sh Piyush Goyal, Hon'ble Minister of Commerce & Industry,
- 3) Shri S. Ghosh Dastidar, Secretary, Competition Commission of India
- 4) Shri M Govil, Advisor, Combination, Competition Commission of India



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