The Flipkart-Walmart Deal:
A Look into Competition and Other Related Issues

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Abstract: The Competition Commission of India approved India's highest valued acquisition, i.e., Flipkart by Walmart within the first phase of investigation itself, stating that it is '*not likely to have an appreciable adverse effect on competition in India*'. Unlike many other retail acquisitions, there has been strong protest from the traders and retailers' organisation to stop the deal and for the creation of an exclusive E-commerce policy and the regulator. Meanwhile, the Draft National E-Commerce policy, 2018 suggested greater regulatory scrutiny for M&As that may distort competition. In this context, the present study looked into the competition dimension of the deal and other related issues. The study suggests to evolve a regulatory system with long-term vision to sustain and support the domestically grown innovations while making the competition assessment more flexible to accommodate the challenges posed by digital revolution.

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The Competition Commission of India ('Commission' hereinafter) approved the so far India's highest valued acquisition, *i.e.,* the acquisition of Flipkart (an Indian start-up) by Walmart (US based retail giant) within the first phase of investigation[1] itself, stating that it is '*not likely to have an appreciable adverse effect on competition in India'* (CCI, 2018). Following this clearance, Walmart acquired 77% outstanding shares of Flipkart for an approximate value of US$16,000 Mn (Rs. 1,10,072 crores). As per Walmart, '*the investment will help to accelerate Flipkart's customer focused mission to transform commerce in India through technology and underscores Walmart's commitment to sustained job creation and investment in India, one of the largest and fastest growing economies in the world*'. Apart from growing the business, Walmart expects that the deal will benefit India by providing quality and affordable goods for consumers and by creating

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1 The second phase can be extended up to 210 days, which involves more detailed inquiry.

skill-oriented jobs and by generating new jobs for farmers, women entrepreneurs and small local suppliers.

Unlike many other acquisitions in the retail sector, this deal has generated wide public attention not only because the target is an Indian start-up with great growth potential and the acquirer is an international MNC, but also because it is expected to have implications for others especially the vast number of small traders and those dependent upon them. There have been strong protests from traders and retailers' organisations to stop the deal and for the creation of an exclusive E-commerce policy and regulator. These are reminiscent of the opposition when India tried to open up multibrand retail trade to FDI. According to media reports, the Draft National E-Commerce policy, 2018, suggested a relook into the entry barriers and anti-competitive practices, while greater regulatory scrutiny has been recommended for M&As that may distort competition. The government is expected to come out with a revised draft after taking into consideration the various responses.

In this context, the present study makes an attempt to look at the competition and other related aspects of the deal.

I. Competition Issues in the E-Commerce Sector

Under normal circumstances, competition issues pertain directly to the consumers and the producers (or service providers). In the e-commerce sector, it can be classified under three categories:

(i) Competition within the online platform: This involves

- (a) competition between producers reflected in competition between different brands of same products, and
- (b) seller competition reflected in different prices for the same product.

(ii) Competition with other online platforms: Most online consumers compare prices at alternative online platforms. Fair competition among producers and sellers is good. However, a variety of anti-competitive practices are used to make some products preferred over others. OECD (2018a) has discussed these issues across different countries in detail. The examples include, pop-up advertisements of preferred products, restricting entry of other producers'/sellers' brands/products either through hiking the commission rates applicable for registering with the online platform or through other modes, algorithmic collusion, predatory pricing strategy to drive out other producers from the market, unfair discounts and other offers, altering the rating of sellers/products.

(iii) Competition with offline market: This includes

(a) organised market such as supermarket and hypermarket, many of them like Walmart are involved in e-commerce trading too, through their websites.

(b) unorganised sector entities, which are most often incomparable due to their tiny operations, though they are seen to be 'perfect substitutes' for the organised sector products.

Offline market also consists of wholesale and retail traders, however, from point of view of competition assessment, the distinction between them lies only in pricing and there is no change in the products compared to the retail sector.

Emergence of E-commerce has increased competition in trading, especially for the organised retailing. It is to be admitted that with the increase in the spread of internet, the mode of purchase has changed substantially, and it will further increase in the coming years with the increasing internet accessibility and the busy life styles of consumers. Hence, when the online and offline traders combine their operations, it is likely to affect competition in both the markets. We now take a look into whether the proposed deal adversely affects the various sections of the society.

II. A Look into the Assessment made by the Commission

While assessing competition, the Competition Act considers various factors such as market shares, substitutability of products, competitiveness of other players, entry barriers and so on. The ultimate objective is to sustain 'fair competition', which is considered to bring the best welfare outcomes for both consumers and producers. Before getting down to competition assessment, the Commission in its approval order[2] stated that the "…Commission considers it pertinent to elaborate its legal mandate while assessing a combination as opposed to a conduct related to the anti-competitive agreements and abuse of dominance. Unlike anti-competitive agreement and abuse of dominance conduct, that are *prohibited,* combinations are only *regulated* under the Act (p. 5 of the order)". However, as per 6(1) of the Competition Act (2002), "No person or enterprise shall enter into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and *such combination shall be void*". Going by the order, the Commission's

[2] https://www.cci.gov.in/sites/default/files/Notice_order_document/Walmart%20PDF.pdf, Accessed on 9th August, 2018.

mandate in respect of combination regulation appears to be is very limited, but as per the Competition Act, it is not!

a. Identification of Relevant Market

Identification of the relevant product market is basically to identify whether there is any horizontal or vertical overlap in the activities. The Competition Commission of Singapore (CCS) brought out a Handbook on E-Commerce and Competition in ASEAN, which well-illustrated various issues surrounding the definition of relevant market in e-commerce. It says that growth of e-commerce has resulted in the emergence of *many multisided markets*[3] like online trading platforms and price comparison websites, which makes the traditional techniques inappropriate while defining relevant market. A more holistic market assessment is required, by considering the competitive constrains faced by a firm from *all sides of the market* and the presence of adequate substitutes. Further, while assessing the multi-sided markets, the nature of competition, especially the competition between all sides of the market including *network effect and any additional feedback effects* to be examined (Competition Commission of Singapore, 2017).

As per publicly available information, Walmart in India is engaged in the business of wholesale cash and carry of goods (B2B sales). B2B sales is carried out through 21 cash & carry stores in India[4] under the brand name 'Best Price Modern Wholesale Stores' in nine states across India. A typical Best Price store spans over 50,000 square feet offering more than 5,000 items across various product categories such as packaged food and non-food consumer items, general merchandise, household electronics, appliances, fresh fruit, vegetables, meat, and dairy[5]. Walmart markets various products under the brand names, 'Right Buy' and 'Members Mark'.

Flipkart in India is engaged in (i) offline B2B sales, (ii) market place based e-commerce platforms, which is not allowed to stock inventories as per the FDI regulations, and (iii) ancillary services which includes (a) payment gateway related services, (b) advertising, (c) information technology product related

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[3] A two or multi-sided market is defined as 'one in which distinct but related customer groups are connected by a common platform' (CCS, 2017). Eg. A ticket booking website connects travellers and the airlines.

[4] CCI Order listed it 20 http://www.wal-martindia.in/our-locations, Accessed on 9th August, 2018.

[5] Based on the information given in http://www.wal-martindia.in, Accessed on 18th July, 2018.

services, (d) logistics, courier and other related services, (e) installation, repair and allied services, (f) technology based services, and (g) private labelling services. The Flipkart group's sales in India during 2017-18 was US$7.5 bn.[6] (Rs. 51,447 crore) against Rs. 4 crore[7] during 2008-09, the initial year of operation.

Based on the products listed above, both Flipkart and Walmart in India are primarily engaged in 'trading'. Ideally, the relevant product market should go beyond the normal classification since the term 'trading' itself consists of large number of diversified products, both for online and offline markets. The only difference lies in the mode of transaction of goods: the former primarily sells products online and the latter offers products offline. While defining the relevant market in e-commerce sector, the Competition Commission of India, in its note submitted to OECD stated that '*in many cases dealing with e-commerce sector, CCI considered both online and offline market as two alternate sources of distribution of the same products and not two separate relevant product markets'*(OECD, 2018b)[8]. Further, regarding the market definition for B2B and B2C market (which means selling to retailer in the first case, while selling directly to customers in the latter), it is to be noted that the major distinction between B2B and B2C lies in prices of products while there exists no difference in the products sold through wholesale and retail market (eg. Clothing and home appliances). Any future change in prices of wholesale products will be passed on to the final consumer. Hence, wholesale and retail markets are complementary to each other. Offline market further consists of organised and unorganised sector. Unorganised sector should not be considered as perfect substitute for organised sector, since one Best Price store of Walmart spans over 50,000 square feet offering more than 5,000 items, which will not become perfect substitute for small shops at any ground.

Figure 1, captures the broad product profile of both Walmart and Flipkart in India. Horizontal overlap exists in B2B market (wholesale) of both the parties. While vertical overlap exists in wholesale trading (B2B) of Walmart and online retail trading of Flipkart. In addition, the ancillary services of Flipkart (like payment related, logistics, technology) can have vertical link with the services

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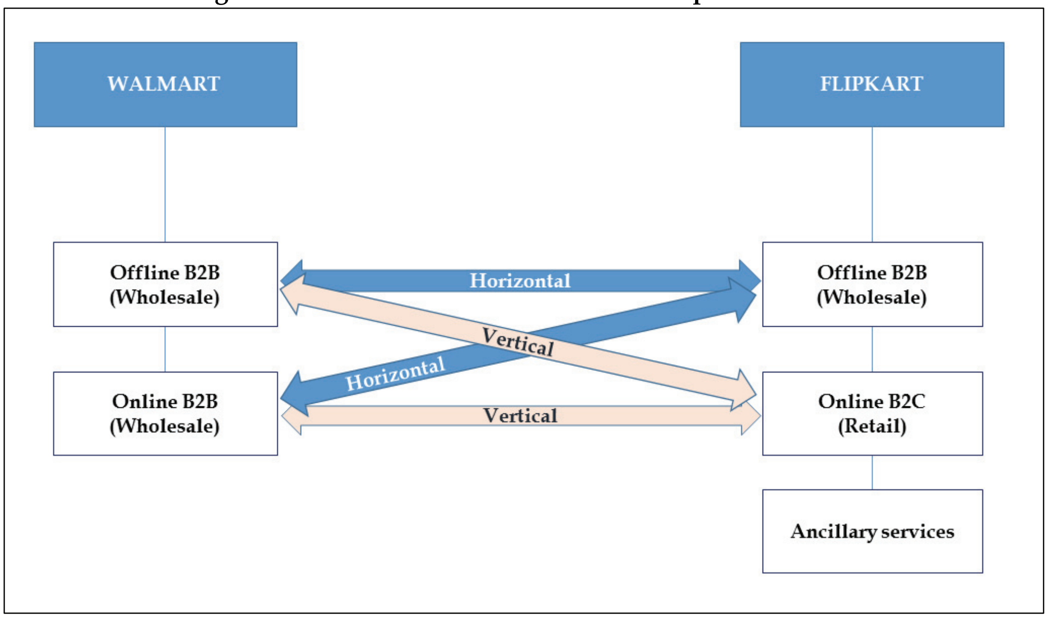
6 Walmart-Flipkart Group Investor Presentation, https://cdn.corporate.walmart.com/5d/11/4968b4d745159149c8e8b0295a3f/walmart-flipkart-ir-presentation.pdf, Accessed 10th July, 2018.

7 Singh, R and M. Kasi, Advertising *Strategies of Flipkart and their Effects on Students of BHU,* project report, BHU.

8 For a detailed discussion on Walmart's operations in India, see Rao and Dhar (2015).

of Walmart. In this scenario, competition assessment should have made separately for (i) organised sector offline wholesale products, (B2B) and (ii) the combined product-wise market shares of both online and organised sector offline products. This second category is important since the deal will provide an opportunity for backdoor entry into the inventory based e-commerce and also into the multi-brand retail trading in which FDI cap is now 51 percent.

Figure 1: Product Profile of Walmart and Flipkart in India



Source: Author's compilation

The Commission and the parties made a distinction between B2B and B2C and found that overlap exists only in the B2B market. The Commission stated that there exists minimal horizontal overlap in the B2B segment (offline) of lifestyle products, which includes skincare, haircare, oral care, baby and feminine hygiene, personal wash, apparel and shoe& accessories. The order of the Commission further stated that even if the organised and unorganised B2B market is defined, the market is competitive with the presence of Reliance Retail, Metro Cash and Carry, Amazon wholesale, etc. However, this is not substantiated with appropriate data across sub-sectors for which, the parties cannot claim confidentiality as it simply shows the market presence of the companies. If it is due to the non-availability of data, the government has to find out permanent solution for it (see Saraswathy, B, ch. 8, 2018 for a discussion on this). It is obvious that Walmart and Flipkart will coordinate their operations in wholesale trading, which will help Walmart to compete in the offline (along with online) B2B market with Reliance, Pantaloons, Spencer etc., by using the combined marketing channels.

The Commission completely ruled out the major concern, i.e. the combined future presence of Walmart[9] in online market (which captures B2C) along with offline market (B2B), by merely stating that due to the existing FDI regulation *Walmart cannot enter into B2C market.* Thus, the important issue of vertical linkages (combined wholesale-retail market presence, through online and offline channels) and the possibility of backdoor entry into the inventory-based model[10] and also into the multi-brand retail trading in which FDI cap is 51 percent left unanswered. The Competition Act does not have the authority to look into FDI regulations, however, it has the responsibility to look into the possible channels through which competition can be affected. In this context, we need to look at the relevant FDI regulations pertaining to the trading sector too (see Table 1).

Table 1: Important FDI Regulations on Trading Sector in India

Sector	*Opened to FDI since*	*%Equity/ FDI Cap*	*Entry Route*	*Notes*
Cash & Carry Wholesale Trading	2006 Feb (1997- 100% under approval route)	100	Automatic	(i)WT include resale, processing and sales thereafter, bulk import with ex-port/ex-bonded warehouse business sales and B2B e-commerce (ii) The yardstick of WT would be type of customers to whom sales is made, and not the size/volume
Single-brand product retailing	2012 Jan*	100	Automatic	(i) For FDI above 51%, sourcing of 30% of the value of goods purchased, will be done from India. (ii) For products with 'state of art' and 'cutting-edge' technology and where local sourcing is impossible, sourcing norm excepted for first three years
Multi-brand retail trading	2012 Sep	51	Government	(i)Minimum FDI $100 Mn. (ii)50% of first tranche on back-end infrastructure development within first three years (iii) min.30% sourcing from MSMEs (iv) outlets in cities with >10 lakh population or with

9 Walmart is already present in online market through its website.

10 As per the media reports, the Draft E-commerce policy 2018 suggests, that 49 percent FDI may be allowed in inventory based e-commerce

Sector	*Opened to FDI since*	*%Equity/ FDI Cap*	*Entry Route*	*Notes*
				state government's permission
E-commerce: Market based	2016 Mar	100	Automatic	(i)Engage only in B2B; (ii) one vendor or their group shall not constitute >25% of sales value in an year (iii) Won't influence the price of goods sold.
E-commerce: Inventory based	-	Not allowed	-	-
Manufacturers in India	2015 Nov	100	Automatic	Manufacturers are permitted to sell their products manufactured in India through wholesale and/or retail, including through e-commerce without government approval.
Food Products Manufactured in India	2016 Jun	100	Government	For food products manufactured and/or produced in India, 100% FDI under government approval route is allowed for retail trading, including through e-commerce. *However, it is not clear from the available government documents, whether the provision is equally applicable for market place and inventory based e-commerce.*

Source: Compiled from (i) various reports of DIPP, Govt. of India; (ii) Rao and Dhar (2015)
Note*: Date is for FDI under government approval route

The crucial question is whether the deal will enable Walmart to enter Flipkart's profile for marketing their products. As per DIPP, '*a manufacturer is permitted to sell its products manufactured in India though wholesale and/or retail, including through e-commerce without government approval (*DIPP, Press Note 5, 2016; Consolidated FDI Policy, 2017*)*'. It also informed that "*notwithstanding the FDI policy provisions on trading sector, 100% FDI under government route is allowed for retail trading, including through e-commerce, in respect of food products manufactured and/or traded in India*". If one goes by this, it appears that:

i) Walmart India can sell food products *manufactured in India* directly through Flipkart (being a group company, subject the limit of 25 percent of Flipkart's sales). As per recent media reports, Mr. Ramesh Abhishek (Secretary, DIPP) said that "…*there are no plans to allow foreign investments* *in the B2C e-commerce sector for goods produced in India.*[11]" However, there is no formal clarification on Press Note 5 mentioned above. It is to be recalled, the Amazon's investment proposal of Rs. 3500 crore in food retail was approved in August, 2017.

ii) Will Walmart US sell on Flipkart and avoid the 25 percent rule? It seems, In India, it may be limited because of the time and cost factors involved in imports.

iii) The deal may enable Walmart to enter Flipkart's profile for many products in the model of Cloudtail, which is a joint venture (JV) formed by Amazon and Catamaran Ventures. This JV may get 'preferential treatment' compared to other sellers in the online platform.

iv) Walmart may also sell its offline wholesale products at discounted rates to 'preferred retailers' and the said retailers can sell them in Flipkart online.

Currently, only 12 states/union territories allowed multi-brand retailing (DIPP, 2017). If backdoor entry enabled through Flipkart's online market, Walmart may conveniently bypass such regional restrictions, too. It can be seen from the table that the relaxation of FDI regulations has been implemented since long back in the sector.

b. Market Share of Flipkart and its Main Competitors

The Commission did not assess the market share of Flipkart in the online segment, which is important since it is going to exist in the market as a Walmart entity in future. Recent data on product-wise market shares of Flipkart or for that matter any other e-commerce competitor are not available to public from government sources now. The only sources is the market research undertaken by private agencies and some newspaper reports, but that too is minimal. The issues regarding the data requirement and reliability in the context of FDI has been has been discussed in detail by Rao and Dhar (2018). Based on these figures, sales through the Flipkart group's is around US$7.5 bn., while the size of entire ecommerce sector is estimated to be around US$38.5 bn. Hence, the approximate market share of Flipkart would be 20 percent. As per some other media reports, Amazon and Flipkart have a market share of 31 and 32 percent respectively[12]

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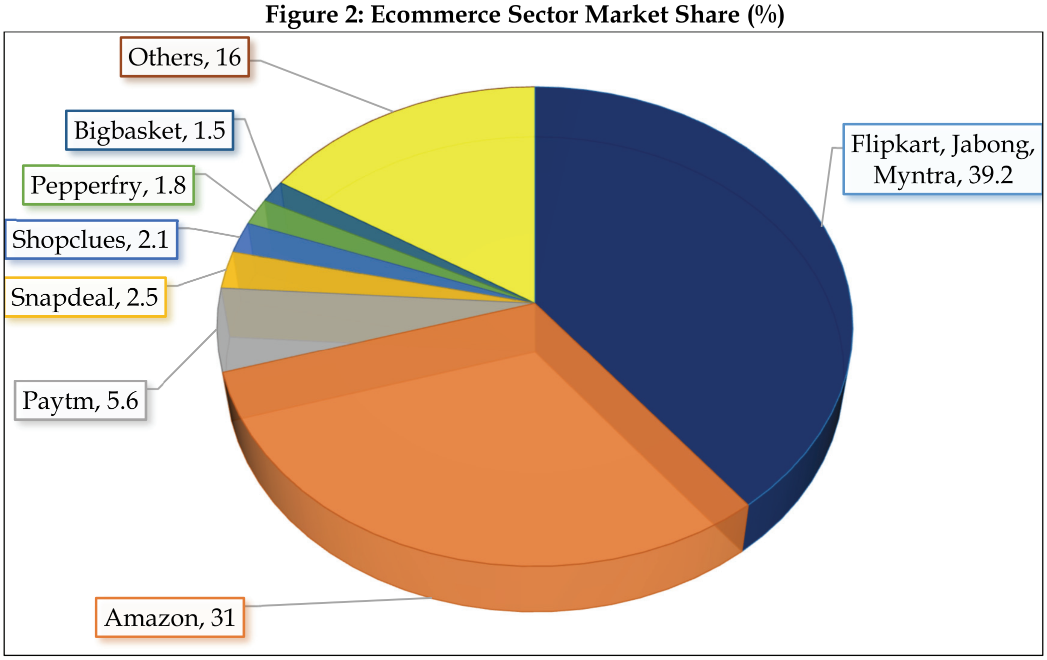
[11] https://www.firstpost.com/business/dipp-secretary-ramesh-abhishek-says-govt-wont-allow-49-fdi-in-e-retail-of-limited-inventory-indian-goods-5073511.html, Accessed on 4th September, 2018.

[12] The difference in market shares may be on account of the broad categorisation of e-commerce

(Figure 2). Together with Jabong and Myntra, Flipkart's share will become 39.2 percent. During the investor presentation, Walmart made it clear to its shareholders that Flipkart ranks number one in various product categories such as mobile phones, e-fashion, large appliances and number two in the sales of electronics. In products such as fashion clothing, household electronics, appliances and other lifestyle products, an overlap might exist. Product-wise assessment was required to determine the combined market presence of Walmart and Flipkart. Amazon is next with a 31 percent market share and a gross merchandise value of US$5 bn. Beyond the general trends, one needs to assess whether competition exists at the disaggregated level. Earlier, there were many other potential competitors in the market, such as eBay, Jabong, Myntra and so on. Many of them have been taken over by Flipkart, the details of which are discussed in the next session. Snapdeal was the second player in the market, which lost its market share substantially. By adding Walmart's products, Flipkart may further diversify its product portfolio, especially in categories like grocery and food products which are currently absent and may compete with Amazon in the newly added segments. The possibility of importing Walmart's globally available products has not been considered.

Figure 2: Ecommerce Sector Market Share (%)



Source: Based on Forrester (2018), as reported in Bloomberg/Quint.

sector in the former data. https://www.bloombergquint.com/business/2018/03/23/this-is-why-amazon-hasnt-beaten-flipkart-in-india-yet, Accessed on 19th July, 2018. See also https://www.businesstoday.in/current/corporate/amazon-india-valuation-16-billion-e-commerce-flipkart-market-share/story/277375.html, Accessed on 17th July, 2018.

c. ***Acquisitions undertaken by Flipkart:***

Flipkart has made 23 strategic acquisitions in various categories[13] including Myntra, Jabong, Letsbuy, PhonePe and so on. The acquisitions substantially increased the active consumer base of Flipkart and strengthened its product profile, digital platform as well as product delivery so that it is able to withstand competition. Despite being an Indian start-up, Flipkart could become a strong competitor to Amazon because of these acquisitions. For example, before acquiring Myntra in May 2014, Flipkart had only around 20 percent market share in fashion sales, which increased to 50 percent, with the addition of 30 percent from Myntra[14]. Further, Flipkart made another strategic move by acquiring Jabong through its subsidiary Myntra in July 2016, through which the combined market share of Flipkart group in online fashion sales has become 70 percent[15], and it acquired a clear edge over Amazon and Snapdeal[16]. Currently, Flipkart group is holding the number one position in this segment. Flipkart allowed most of the targets to keep their separate identities, it has placed key personnel on their boards.

d. ***Implications for Other Online Sellers***

Applying the logic of multisided markets and network effects (Filistrucchi, L, 2017; Johnson, P.A., 2017), the concern here is that when concentration emerges in online platforms, the registered sellers will be affected in two ways: (i) the platforms can directly increase the rates of various commissions, which will lead to hike in the prices of products traded and (ii) more importantly, they can differentiate the commissions across various sellers and thereby discourage/favour some sellers over others long run through high commission rates. This happens when the online platforms have their own products or interested sellers' products, which compete directly with other sellers. Needless to say, Walmart has several offline products. With near zero or low rate of marketplace commission, shipping rates and other applicable charges, these products can be made relatively cheaper. These products would also get good publicity through advertising and other online marketing techniques. In

[13] Sixteen of them directly by Flipkart and the rest through Myntra. Data is based on Venture Intelligence. The list is available on request.

[14] https://www.gadgetsnow.com/tech-news/Flipkart-Myntra-merge-in-Rs-2000-crore-deal/articleshow/35493912.cms, Accessed on 13th July, 2018.

[15] https://economictimes.indiatimes.com/small-biz/startups/flipkart-owned-myntra-pips-snapdeal-and-future-group-acquires-jabong-for-70-million/articleshow/53390609.cms, Accessed on 13th July, 2018.

[16] Flipkart also initiated takeover plans with Snapdeal, which recently failed.

the long run, other sellers may find it difficult to cope with this strategy and may leave the market. When other sellers disappear from the market, the resultant monopoly power will enable Walmart to hike the prices of its products.

In December 2016, Flipkart had a registered seller base of 1.4 lakh[17] however, recent figures are not available. Amazon had a registered seller base of 3 lakh in India in 2018[18]. While selling products through online platforms the sellers have to pay various commissions such as market place commission, service tax on commission, marketplace payment fee, service tax on payment fee, GST and shipping charges. On an average, these charges constitute around 30 percent of the product price. Keeping the product and GST rate constant, this rate varies from portal to portal. The charges will increase according to the weight of the product. We have examined this with the help of an example of a mobile phone, with a selling price of Rs. 7,000. Applying a GST of 12 percent, the net earnings for the seller would be Rs. 4,988- if it is sold through Flipkart, and Rs. 5,801- through Amazon. Most of this difference is coming on account of the variance in the market place commission. Currently Flipkart and eBay charge 15 percent while Amazon and Paytm charges only 5 percent and 2 percent respectively[19].

Related to this, the Commission recognized that '*a small number of sellers in Flipkart's online marketplace contributed to substantial sales*' (CCI, 2018; pp. 10-11). Most of them were customers of Flipkart's B2B sales as well. They were availing significant discounts from Flipkart, both from online and offline segments. However, the Commission decided that '*this issue was pre-existing in the market, and hence unlikely to alter market competition*!' It is worth examining whether the deal will further enhance such anti-competitive practices. The purpose of competition regulation fails if combination regulations (i.e. one component of it) facilitate anti-competitive practices.

[17] https://www.indianweb2.com/2017/06/14/amazon-india-now-sellers-flipkart/, Accessed on 27th July, 2018

[18] https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/amazon-india-crosses-3-lakh-sellers-mark-on-its-marketplace/articleshow/62969808.cms, Accessed on 20th July, 2018.

[19] We have used www.browntape.com to arrive at these figures. This is an automatically calculated figures, which may vary according to the product, GST, etc. The reduced rates of Amazon may be to capture market share. Detailed table is available on request.

e. Entry Barriers:

During the initial years of e-commerce emergence, setting up an online platform was relatively an easy affair, as competition was non-existent. Flipkart used that advantage to the maximum. Currently, competing with the existing players is a difficult task, especially for small players, given the nature of various discounts such as points on credit/debit card, discounts and so on offered by the existing platforms. The success of an e-commerce venture depends greatly on winning the minds of customers. In order to achieve this, three factors are crucial: (i) consumer friendly web-design and easy mode of online payment options (ii) strong tie-ups with various producers across the regions and (iii) efficient product delivery infrastructure.

The first category is mainly driven by adopting the best available digital technology and giving maximum information to the consumer on various products and brands. The second ensures that all major branded and other products are available to the customer at cheap prices compared to other online platforms and offline markets. This helps to widen the customer choice, too. The third factor is very crucial. If the customer does not get the product within a short time, the positive image created by the firm will vanish. Hence, product delivery and the network become crucial factors in the success of e-commerce business. Established firms would have a strong network and delivery service, which makes fresh entry extremely difficult. Competition Commission of Singapore (2017) described various possibilities of entry barrier in e-commerce, especially for the new entrants. Compared to the large incumbent firms, the new entrants will find it difficult to share marketing cost over large quantity of goods, which act as a barrier to entry and growth. Further, the possession of 'big data' on consumers by the incumbent firms, high switching cost for consumers from established firms due to various reasons such as uncertainty on the quality of services, time required for creating new account creation etc., loyalty reward schemes introduced by the existing firms, network effects[20] in favour of existing established firms especially in the case of single homing service, and more importantly the conduct of large incumbent firms may restrict new entry.

[20] Network effect is defined as the 'utility that a given user derives from the good depends upon the number of other users who are in the same network as is he or she' (CCS, 2017).

Flipkart has, approximately more than 10 crore registered customers as of now, which is very high by any standard, and the users might be representing households in many cases. This is going to be an asset for Walmart. Access to the consumer data enables the personalisation of retail offering, including recommendations for future purchases, individualised pricing based on the consumer's willingness to pay and so on (OECD, 2018). This aspect has not been appropriately addressed by the Commission. Network effects is also important here since the registered sellers/users places high value to Flipkart due to the large number of registered active customers/sellers. The e-commerce in India can be considered multi-home[21] rather than single home due to the presence of competitors such as Amazon. However, if someone prefer to depend on an efficient Indian e-commerce provider, Flipkart was the single option, which is going to lose now.

In addition to the above mentioned factors, one need to look into the presence of multi-sided markets (such as the advertisers, associated banks/financial instruments, courier agencies, marketing outlets and so on) and network effects in detail, to assess the impact of the deal more comprehensively.

III. A Strong Message to the Indian Start-ups and the Regulators

The Walmart-Flipkart deal has brought multiple but related issues into focus. The more important ones are: competition, FDI policy, emergence of national champions, finance and livelihoods of the multitude of small traders and those dependent upon them. The Competition Act under its present form cannot directly address the problem of foreign acquisitions. The liberal FDI policy, too, has opened the doors for such acquisitions. On the other side, it has placed hurdles in the emergence of a national champion by not distinguishing between different types of foreign investors (financial investors versus global traders). Besides, the nature of non-promoter investors has been such that they necessarily need an exit route.

The Flipkart-Walmart deal serves yet another warning to the regulatory system in India. It reflects poorly on India's FDI policymaking process -- that even after many years of opening up of the trading sector in general and e-commerce in particular to FDI, vagueness and serious implementation gaps remain. With no worthwhile data (and studies) to go by, coupled with India's desire to attract

[21] Single home refers to the use of only one platform such as Flipkart, while multi-home refers to the use of more than one platform such as Flipkart and Amazon (CCS, 2017).

large amount of FDI, the situation is ripe for powerful vested interests to have their way. The deal means that the domestically developed capabilities of not only Flipkart, but also of all other firms acquired by Flipkart have been transferred into foreign hands. The deal sends a clear message from global payers to Indian start-ups that '*if you prove yourself, you will be in our pocket one day*!' From the start-up entrepreneur's point of view, there is nothing wrong in it; in fact, this is a great achievement, both in terms of performance and value of acquisition. However, creating domestic capabilities to compete with global firms in the present situation is an arduous task. Losing such national champions will have long-term adverse impact on the economy. Since the competition regulation cannot address this issue there should be additional mechanism to support and sustain the growth of start-ups and other domestically grown initiatives. In addition, competition assessment in India should be made more flexible to accommodate the challenges from digital revolution such as network effects, multi-sided markets, single/multi-home, big data on consumers.

The Commission considered many issues raised by the traders and others during the investigation such as the impact of the deal on small and medium enterprises, retailing, employment, entrepreneurship, predatory pricing possibility and so on as '*not competition related issues.*' It is true that some of them are not directly related to competition. The Commission's stance, however, does not solve their concerns. There is an urgent need to evolve a regulatory system with a long-term vision of sustaining and supporting domestically grown innovations internally. More importantly, all regulatory agencies should work in a complementary manner to achieve this common goal. At another level, there should be compulsory post-merger/entry monitoring to ensure that all commitments are honoured and regulatory objectives are met.

On the positive side, since a major hurdle for new entrants in the e-commerce being access to a countrywide marketing network, it can be addressed through the involvement of Indian postal service, which has the maximum customer outreach -- in every corner of the country. While easing the e-commerce entry barrier, this will become a great opportunity for the postal department also in terms of job creation and revenue generation. Post office savings can also be used as a mode of online payment. This will enable MSMEs and traditional industries like *khadi* to directly sell their products online, without even registering with established platforms.

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