



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2013/06/124)

**01.08. 2013**

**Termination of Proceedings in the matter of notice u/s 6 (2) of the  
Competition Act, 2002 given by:**

- Zulia Investments Pte. Ltd.
- Kinder Investments Pte. Ltd.

1. On 6<sup>th</sup> June, 2013, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) given by Zulia Investments Pte. Ltd. (hereinafter referred to as “**Zulia**”) and Kinder Investments Pte. Ltd. (hereinafter referred to as “**Kinder**”), both indirect wholly owned subsidiaries of Temasek Holdings (Private) Limited (hereinafter referred to as “**Temasek**”) (hereinafter Zulia, Kinder and Temasek are collectively referred to as the “**Acquirers**”), in relation to a proposed acquisition of 439,000,000 new ordinary shares of DBS Group Holdings Ltd. (hereinafter referred to as “**DBSH**”). As the abovesaid notice was given to the Commission beyond the time limit as prescribed under sub-section (2) of Section 6 of the Act, Zulia and Kinder also filed an application requesting for condonation of delay in giving the notice.
2. The Commission in its Ordinary meeting held on 18<sup>th</sup> June, 2013, considered the said belated notice along with the application for condonation of delay and inter-alia decided that:



- a. In terms of Regulation 7 of the Combination Regulations, the belated notice be admitted without prejudice to Section 43A of the Act.
  - b. The period of 30 days and 210 days mentioned in Regulation 19 of the Combination Regulations and sub-section (2A) of Section 6 of the Act respectively, shall be computed from the day on which the belated notice has been admitted i.e. from 18<sup>th</sup> June, 2013.
  - c. Separate proceedings shall be initiated under Regulation 48 of the Competition Commission of India (General) Regulations, 2009 regarding imposition of penalty under Section 43A of the Act.
3. As per the information provided in the notice, it is observed that the aforementioned proposed acquisition followed from and was a result of the Share Purchase Agreement (hereinafter referred to as the “SPA”), dated 2<sup>nd</sup> April, 2012, executed between Fullerton Financial Holdings Pte Ltd (hereinafter referred to as “Fullerton”), an indirect wholly owned subsidiary of Temasek, and DBS Group Holdings Ltd (hereinafter referred to as “DBSH”), whereby Fullerton agreed to sell and DBSH agreed to purchase, 100 per cent of the issued shares in Fullerton’s direct wholly owned subsidiary, Asia Financial (Indonesia) Pte. Ltd., which in turn, held approximately 67.37 per cent of the equity share capital of an Indonesian Bank, PT Bank Danamon Indonesia Tbk.
4. Pursuant to the terms of the said SPA, in satisfaction of the consideration for the 100 per cent acquisition of Asia Financial (Indonesia) Pte. Ltd., DBSH was to issue 439,000,000 new ordinary shares in DBSH to Fullerton or Temasek or such other wholly owned subsidiaries of Temasek or their respective nominee(s) holding on their behalf, as Fullerton might direct DBSH. As stated in the notice,



thereafter, as per the terms of the SPA, an Undertaking Agreement, dated 13<sup>th</sup> May, 2013 was executed between Fullerton, Zulia and Kinder, in which Zulia was to receive 219,400,000 new ordinary shares of DBSH and Kinder was to receive 219,600,000 new ordinary shares of DBSH. Accordingly, as stated in the notice, in terms of the SPA, Fullerton, vide letter dated 13<sup>th</sup> May, 2013 directed DBSH to issue the respective shares to Zulia and Kinder on the date of completion of the SPA.

5. In terms of Regulation 14 of the Combination Regulations, vide letter dated 20<sup>th</sup> June, 2013, the Acquirers were required to remove certain defects and provide information/document(s). The response of the Acquirers was received on 5<sup>th</sup> July, 2013. As the said response of the Acquirers continued to have defects, therefore, on 10<sup>th</sup> July, 2013, another letter in terms of Regulation 14 of the Combination Regulations was issued to the Acquirers to remove the continuing defects and provide information/document(s). The response of the Acquirers was received on 22<sup>nd</sup> July, 2013.
6. The Acquirers, vide their letter dated 5<sup>th</sup> July, 2013, filed in terms of Regulation 16 of the Combination Regulations, also informed the Commission of certain changes in the information provided in the notice. The Commission in its meeting held on 10<sup>th</sup> July, 2013, considered the said changes, as intimated by the Acquirers vide application dated 5<sup>th</sup> July, 2013, under Regulation 16 of the Combination Regulations, noted the changes and took them on record, as these would not affect the factors for determination of any appreciable adverse effect on competition.
7. In this regard, the Acquirers, during the course of a personal hearing before the Commission on 1<sup>st</sup> August, 2013, in relation to the proceedings regarding the imposition of penalty under Section 43A of the Act, informed the Commission that DBSH, on 31<sup>st</sup> July, 2013, had made an announcement that the SPA would lapse after 1<sup>st</sup> August, 2013, as the initial long stop date with respect to the proposed



combination, which initially was 12 months from the date of the SPA and was extended to 1<sup>st</sup> August, 2013, was not extended further. Accordingly, based on this development, the Acquirers intimated the Commission that the SPA would terminate and the proposed combination will not proceed. The Acquirers also submitted a copy of their letter dated 1<sup>st</sup> August, 2013, informing the Commission that they were withdrawing the notice given to the Commission on 6<sup>th</sup> June, 2013, with a request to the Commission to also terminate the proceedings initiated against the Acquirers under Section 43 A of the Act.

8. The Commission, in its meeting held on 1<sup>st</sup> August, 2013, noted the aforementioned development that the proposed combination would not take place and the proceedings under the Act, relating to the proposed combination, will be terminated in terms of Regulation 17 of the Combination Regulations, with effect from 1<sup>st</sup> August, 2013 i.e. the date on which the Commission was intimated by the Acquirers that the said notice is being withdrawn by them. The Commission also observed that if, at a subsequent date, the Acquirers further propose to enter into the said combination between them, then the provisions of the Act relating to the regulation of combinations, as applicable at that time, would have to be complied by the Acquirers. This decision of the Commission shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
9. The Commission also considered the request of the Acquirers to terminate the proceedings initiated against the Acquirers under Section 43 A of the Act for failing to give notice to the Commission within the prescribed time as prescribed under the provisions of sub-section (2) of Section 6 of the Act, and decided that since it was a separate proceeding for imposition of penalty under Section 43A of the Act, a separate order in this regard will be issued by the Commission.



## COMPETITION COMMISSION OF INDIA



10. The Secretary is directed to communicate to the Acquirers accordingly.

(Ashok Chawla)  
Chairperson

(Geeta Gouri)  
Member

(Anurag Goel)  
Member

(M. L. Tayal)  
Member

(S.N. Dhingra)  
Member

(S.L. Bunker)  
Member