



सत्यमेव जयते



Fair Competition  
For Greater Good

## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/08/197)

4<sup>th</sup> September 2014

### Notice under Section 6 (2) of the Competition Act, 2002 given by Kotak Mahindra Bank Ltd

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

1. On 1<sup>st</sup> August 2014, the Competition Commission of India (hereinafter referred to as '**Commission**') received a notice under Section 6 (2) of the Competition Act, 2002 (hereinafter referred to as '**Act**') given by Kotak Mahindra Bank Ltd. (hereinafter referred to as '**Kotak**' or '**Acquirer**').
2. The proposed combination relates to the acquisition of fifteen percent equity interest in Multi Commodity Exchange of India Limited (hereinafter referred to as '**MCX**') from Financial Technologies (India) Ltd. (hereinafter referred to as '**FTIL**' or the '**seller**') by Kotak. The notice was filed pursuant to the Share Purchase Agreement (hereinafter referred to as '**SPA**') entered into between Kotak and FTIL on 20<sup>th</sup> July 2014.
3. Kotak is a listed company incorporated under the Companies Act, 1956. Kotak offers a wide range of banking and financial services. Some of the services provided by Kotak and its subsidiaries include consumer and commercial banking, wholesale banking, investment banking and broking, and asset management services. As stated in the notice, Kotak also has an existing investment of forty percent equity interest in Ahmedabad Commodity Exchange, renamed as Ace Derivatives and Commodity Exchange Limited (hereinafter referred to as '**Ace**'), which is a national multi commodity exchange.
4. MCX is a listed company incorporated under the Companies Act, 1956. MCX is a commodity exchange which offers trading in varied commodity future contracts across segments, including bullion, ferrous and non-ferrous metals, energy and agricultural



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commodities. Being an online commodity exchange, MCX provides commodity trading to its members across India.

5. FTIL is incorporated under the Companies Act, 1956. FTIL promoted MCX in 2003. It is promoted by the Financial Technologies Group offering technology and domain expertise to trade on financial markets across all asset including equities, commodities, currencies and bonds among others.
6. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as '**Combination Regulations**'), vide letter dated 7<sup>th</sup> August 2014, the Acquirer was required to remove defects and furnish certain information/document(s). The Acquirer filed its response on 12<sup>th</sup> August 2014. As the response filed by the Acquirer was incomplete, vide letter dated 25<sup>th</sup> August 2014, the Acquirer was again asked to furnish the required information by 28<sup>th</sup> August 2014. The Acquirer filed its response on the due date.
7. The commodities exchanges in India are regulated by the Forward Markets Commission (hereinafter referred to as '**FMC**'), which is the regulatory authority for the commodity future markets in India. It is observed that FMC has been progressively revising norms *inter alia* regarding the shareholding, ownership, net worth, fit and proper criteria of the nationwide multi commodity exchanges with a view to diversify their ownership structure and attract more institutional investors.
8. FMC recently revised norms regarding shareholding, ownership, net worth, fit and proper criteria etc. of the nationwide multi commodity exchanges on 6<sup>th</sup> May 2014 (hereinafter referred to as '**May Revised Norms**'). FMC also revised norms for constitution of board of directors, committees, nomination and role of independent directors, appointment of managing director/chief executives, etc at the nationwide multi commodity exchanges on 11<sup>th</sup> June 2014 (hereinafter referred to as '**June Revised Norms**').
9. As per the May Revised Norms issued by the FMC, at least fifty one percent of the paid up equity share capital of a recognised commodity exchange shall be held by public. Further, no person in India at any time, directly or indirectly, either



individually or together with persons acting in concert, can acquire or hold more than five percent of the paid-up equity share capital in a recognized commodity exchange. However, the ceiling in respect of a commodity exchange / stock exchange, depository, banking / insurance company or a public financial institution has been kept upto fifteen percent of the paid-up equity share capital of a recognised commodity exchange. Further, as per the May Revised Norms, the shareholding or voting rights of any person in a registered commodity exchange shall not exceed the limits as specified in the said norms at any point of time.

10. The June Revised Norms of FMC regarding the board of commodity exchange *inter alia* specifies that: (a) Not less than fifty percent of the strength of the board of directors shall be independent directors of whom, four independent directors shall be appointed by the FMC and the remaining shall be appointed by the respective commodity exchange with the prior approval of FMC. (b) The remaining posts of directors of the board, other than those appointed as independent director, shall comprise of shareholder directors, which will include any full time executive director other than the managing director/ chief executive, and shall be appointed by the respective commodity exchange with the prior approval of FMC. (c) The managing director shall be an ex-officio director of the board and shall not be included in either category of independent directors or shareholder directors. (d) The chairperson of the board of directors of the commodity exchange shall be an independent director and shall be appointed with the prior approval of FMC.
11. As stated by the Acquirer, Kotak would be required to reduce its shareholding in Ace to fifteen percent within a period of five years from the date of the revised guidelines issued by FMC on 6<sup>th</sup> May 2014.
12. As stated in the notice and documents submitted by the Acquirer, post combination, it would hold fifteen percent non-controlling equity interest in MCX. Further, as submitted by the Acquirer, as per the FMC's said revised norms, Kotak would not have any contractual right to appoint directors to the board of MCX, in proportion to its shareholding in the exchange.
13. It is observed that amongst the national level multi-commodity exchanges, MCX is a leading market player followed by National Commodity and Derivatives Exchange



Limited and others, with Ace having a market share of approximately less than one percent.

14. As stated in the notice, for the financial year 2013-14, there were nine overlapping products in the agricultural, base metals and energy sectors that were traded on Ace and MCX's exchanges. It is noted that in refined soy oil, whereas Ace had a market share of less than five percent, MCX had negligible market share. Further, as regards four other overlapping products i.e., silver, copper, gold and crude oil, MCX is a dominant player with a market share of more than ninety-nine percent in all the said categories, whereas Ace is only a marginal player. In the case of guar seed and guar gum, whereas, Ace accounts for negligible market share, MCX has market shares of more than fifteen percent and five percent respectively. In two commodities i.e. cotton bales and crude palm oil, Ace and MCX had a combined market share of almost hundred percent. However, it is observed that cotton bales and crude palm oil constitute only around one percent of the total market volumes traded in the commodity exchanges. In this regard, it has also been submitted by the Acquirer that though Ace and MCX operate in the commodity derivative exchange market in India and the underlying commodities traded by Ace and MCX would be similar, however, in these exchanges, the specifications of the derivative contracts, have certain differences so as to cater to the needs of the different market participants. As stated by the Acquirer, the differences in the contract specifications of these exchanges are in relation to the notified delivery centres, quality of product acceptance, grades and trading units etc.
15. Apart from the fact that Kotak's forty percent stake in Ace, which as aforementioned, would have to be brought down to fifteen percent by the year 2019 in accordance with the FMC revised norms, it has also been stated by the Acquirer that neither Kotak nor any of its subsidiaries, affiliates or joint venture, either directly or indirectly, has any investment in any other commodity exchanges in India.
16. In view of the foregoing it is noted that the proposed combination is not likely to have any adverse effect on competition.



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17. Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.
18. This approval is without prejudice to any other legal/statutory obligations as applicable.
19. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
20. The Secretary is directed to communicate to the Acquirer accordingly.