



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/08/202)

10.11.2014

Notice under section 6(2) of the Competition Act, 2002 given by:

- New Moon B.V.

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

1. On 12.08.2014, 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 given by New Moon B.V. (hereinafter referred to as the the “**Acquirer**”). The notice was filed pursuant to the Business Transfer Agreement and Plan of Merger (hereinafter referred to as the “**BTA**”), entered into between Abbott Laboratories (hereinafter referred to as “**Abbott**”), Mylan Inc. (hereinafter referred to as ‘**Mylan**’), Acquirer and Moon of PA Inc. (hereinafter referred to as “**Merger Sub**”), on 13.07.2014 (hereinafter Abbott, Mylan, Acquirer and Merger Sub are collectively referred as the ‘**Parties**’).
2. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (‘**Combination Regulations**’), vide letter dated 29.08.2014, the Acquirer was required to remove certain defects and provide information/document(s). The Acquirer submitted its reply vide letter dated 10.09.2014, which was found to be incomplete; and therefore, another letter was sent to the Acquirer on 15.09.2014 in terms of Regulation 14 of the Combination Regulations. The reply to the said letter was received from the Acquirer on 07.10.2014, after seeking an extension. However, as the said reply was still incomplete, the Acquirer was again asked to submit required information vide our letter dated 13.10.2014. The Acquirer submitted certain clarifications on 14.10.2014; however, since these clarifications were not sufficient, the Acquirer was further asked to provide complete information vide our letter dated 16.10.2014. The response of the Acquirer in this regard was received on 22.10.2014. The Acquirer was further sent a letter on 27.10.2014 under Regulation 14 of the Combination Regulations for which the Acquirer filed its final response on 03.11.2014.



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3. The Acquirer is stated to be a private limited liability company under the laws of the Netherlands, incorporated for the purpose of the proposed combination. Mylan incorporated in Pennsylvania, U.S.A., is stated to be the ultimate holding company of the Acquirer. Mylan is a global pharmaceutical company engaged in the development, licensing, manufacturing, marketing and distribution of generic, branded generic and specialty pharmaceuticals. Mylan is present in India through its six Indian entities namely, Mylan Laboratories Limited, Astrix Laboratories Limited, Agila Specialities Private Limited, Onco Therapies Limited, Mylan Pharmaceuticals Private Limited and Mylan Laboratories India Private Limited. Merger Sub, a newly incorporated company formed for the purpose of consummating the proposed combination and a wholly owned subsidiary of the Acquirer is incorporated under the laws of Pennsylvania, U.S.A.
4. Abbott, incorporated under the laws of Illinois, U.S.A., is a global healthcare company. As stated in the notice, it has four major business segments viz. nutritionals, medical devices, branded generics and speciality pharmaceuticals, and diagnostics. Abbott is stated to be present in India through its four subsidiaries namely, Abbott India Limited, Abbott Healthcare Private Limited, Abbott Medical Optics Private Limited and Abbott Truecare Pharma Private Limited.
5. As per the information given in the notice, the proposed combination contemplates the transfer of Abbott's Established Pharmaceuticals Products ('EPP') segment which includes branded generics and speciality pharmaceuticals products business of Abbott in Europe, Japan, Australia, New Zealand and Canada to the Acquirer, which will thereafter, hold all of Mylan's existing business and the business proposed to be acquired from Abbott. In consideration for the said transfer of EPP segment from Abbott to the Acquirer, as originally stated in the notice, Abbott was to acquire approximately 21 per cent shareholding of the Acquirer. Further, to effectuate the said transaction, Merger Sub will merge into Mylan, with Mylan being the surviving entity. Further as per the information given in the notice, as a result of the said merger of Merger Sub into Mylan,



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Mylan's common stock will be cancelled and the Acquirer will issue its shares to the former shareholders of Mylan and consequently, the Acquirer will become the parent company of Mylan.

6. It is also noted that an intimation of change to the notice under Regulation 16 of the Combination Regulations was filed by the Acquirer vide letter dated 03.11.2014, pursuant to execution of an Amendment Agreement signed between the Parties on 21.10.2014. As per the information furnished by the Acquirer, the Amendment Agreement (i) adjusts the pricing terms pursuant to which the affiliates of Abbott will manufacture and supply products for affiliates of the Acquirer, and (ii) increases the number of shares to be issued to Abbott, as a result of which, the former shareholders of Mylan will own approximately 78 per cent and Abbott and its affiliates will own approximately 22 per cent of shareholding in the Acquirer. The Commission considered the above said changes in the proposed combination and noted that the said changes are not likely to affect the factors for determination of the appreciable adverse effect on competition in India. The Commission, accordingly, took on record the said changes in the proposed combination as intimated by the Parties.
7. As regards the transfer of EPP segment of Abbott in Europe, Japan, Australia, New Zealand and Canada to the Acquirer, it has been stated in the notice that the said transfer will have no impact in India as Mylan and Abbott will continue to operate the said business in India.
8. It has also been submitted by the Acquirer that the proposed acquisition of 22 per cent shareholding by Abbott in the Acquirer, as per the Amendment agreement dated 21.10.14, would be exempt in view of Regulation 4 read with Item 1 of Schedule I to the Combination Regulations, as the said acquisition of shares by Abbott in the Acquirer would be made solely as an investment, which would not result in acquisition of control by Abbott over the Acquirer.
9. In this regard, it is observed that an acquisition of shares or voting rights, even if it is of less than 25 per cent, may raise competition concerns if the acquirer and the target are either engaged in business of substitutable products/services or are



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engaged in activities at different stages or levels of the production chain. Such acquisitions need not necessarily be termed as an acquisition made solely as an investment or in the ordinary course of business, and thus would require competition assessment, on a case to case basis, under the relevant provisions of the Act.

10. In view of the above, the Acquirer was asked to provide information related to business activities of Mylan and Abbott in India. As per the data provided by the Acquirer, it is observed that there is horizontal overlap between the pharmaceutical products of Mylan and Abbott in India with respect to certain molecules namely, colecalciferol, progesterone, human menopausal gonadotrophin, chorionic gonadotrophin, emtricitabine tenofovir disoproxil and tenofovir disoproxil. However, it is observed that in all of the said overlapping molecules, the combined market share of Mylan and Abbott is between [6-10] per cent and the incremental market share is between [0-5] per cent. Accordingly, it is observed that the horizontal overlap between the pharmaceutical products of Mylan and Abbott in India is insignificant to raise any competition concern in India. Further, as per the information provided in the notice, there is no vertical relationship between the Abbott and Mylan in India. In addition to above, as stated in the notice, the proposed acquisition of 22 per cent shareholding by Abbott in the Acquirer would also not provide Abbott any affirmative voting rights or veto rights in the Acquirer.
11. 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.
12. This approval is without prejudice to any other legal/statutory obligations as applicable.



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13. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
14. The Secretary is directed to communicate to the Acquirer accordingly.