



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/05/276)

25.06.2015

Notice u/s 6 (2) of the Competition Act, 2002 given by

- Cairnhill CIPEF Limited (“CCL”) and
- Cairnhill CGPE Limited (“CGL”)

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

1. On 19.05.2015, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) given by CCL and CGL (hereinafter, CCL and CGL are collectively referred to as the “**Investors**”).
2. The proposed combination relates to the acquisition of 11 per cent of equity shares of Mankind Pharma Limited (‘**Mankind**’ or the ‘**Target**’) by the Investors i.e. 10.77 per cent from Monet Limited and 0.23 per cent from Ms. Dinaz Kaul. For the purpose of the proposed combination, as stated, two Share Purchase Agreements (‘**SPAs**’) i.e. (i) Share Purchase Agreement dated 31.03.2015 between CCL, CGL and Monet Limited (‘**SPA 1**’); and (ii) Share Purchase Agreement dated 02.04.2015 between CCL, CGL and Ms. Dinaz Kaul (‘**SPA 2**’) were executed. The Investors have submitted that on standalone basis, the execution of above SPAs would not trigger Section 6 of the Act on account of specific exemption under Schedule 1 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”).
3. Subsequently, a Shareholders Agreement was entered into amongst the Investors, Mankind and the promoters of Mankind on 06.05.2015 (“**SHA**”). As submitted, the SHA confers certain rights on the Investors which are in the form of minority shareholders' rights and do not result in the Investors acquiring control over Mankind. Accordingly, the proposed combination is stated to be covered under Item 1 of



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Schedule I of the Combination Regulations. The Investors have submitted that they have filed the notice on 19.05.2015 out of abundant caution and that the cause of action, if any, to file the notice under sub-section (2) of Section 6 of the Act arose only on 06.05.2015, on execution of the SHA.

4. Regulation 4 of the Combination Regulations read with Item 1 of Schedule 1 of the Combination Regulations provides that the notice in respect of a combination need not normally be filed if the acquisition of shares or voting rights (a) does not entitle the acquirer to hold twenty five per cent or more of the total shares or voting rights of the target; (b) does not result in acquisition of control over the target by the acquirer; and (c) is made solely as an investment or in the ordinary course of investment.
5. In relation to applicability of Item 1 to the proposed combination, it is noted that the SHA entitles the Investors to appoint 1 (one) director on the board of directors of Mankind. Further, the SHA confers certain affirmative rights to the Investors *inter alia* including commencement of a new business. Moreover, an acquisition could be considered to be made solely as an investment if the acquirer has no intention to directly or indirectly participate in the formulation and determination of the business decisions of the target. In view of the above, the acquisition of 11 per cent of equity share capital of Mankind would not be treated as solely as an investment and thus, the Commission is of the view that the proposed combination is not covered under Item 1 of Schedule 1 of the Combination Regulations and is notifiable under sub-section (2) of Section 6 of the Act.
6. It is also observed that the trigger for notification under sub-section (2) of Section 6 of the Act, in respect of the proposed combination, arose from the acquisition of shares in terms of the provisions of the SPAs. Further, as per the SPAs, the execution of SHA was a condition precedent for the closing of the proposed combination. Therefore, in terms of regulation 9(4) of Combination Regulations, the execution of SPAs and SHA are interconnected and interdependent on each other. Accordingly, it appears that the notice in the instant case ought to have been filed within 30 days of the execution of the SPA 1.



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7. In terms of Regulation 14 of the Combination Regulations, vide letter dated 03.06.2015, the Investors were required to remove certain defects and provide information/document(s). The Investors filed their response on 11.06.2015 after seeking extension of time. The Investors also filed certain voluntary information on 01.06.2015.
8. CCL and CGL, both incorporated in Mauritius are the private equity investors, managed and advised by the Capital Group, stated to be engaged as a foreign institutional investor in India. Mankind is a company incorporated in India and is engaged in the business of manufacturing and trading of pharmaceutical and health care products.
9. As stated in the notice, neither the Investors nor the funds managed and advised by Capital Group hold any investments in pharmaceutical sector in India or in an overseas pharmaceutical company that in turn undertakes pharmaceutical operations in India. Thus, there is no horizontal overlap between the Investors and the Target. Further, since the Investors do not have any investment in pharmaceutical sector in India, there is no possibility of any vertical foreclosure resulting from the proposed combination.
10. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the combination after considering the relevant factors mentioned 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 any appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.
11. This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.
12. This order shall stand revoked if, at any time, the information provided by the Investors is found to be incorrect.



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13. The Secretary is directed to communicate to the Investors accordingly.