



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2018/06/579)

**Dated: 24<sup>th</sup> July, 2018**

**Notice under Section 6 (2) of the Competition Act, 2002 given by Procter and Gamble Overseas India B.V.**

**CORAM:**

**Mr. Sudhir Mital**  
**Chairperson**

**Mr. U. C. Nahta**  
**Member**

**Mr. Justice G. P. Mittal**  
**Member**

**Legal Representatives of the parties:** Cyril Amarchand Mangaldas

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

1. On 26<sup>th</sup> June, 2018, the Competition Commission of India (**Commission**) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**), given by Procter and Gamble Overseas India B.V. (**Acquirer**).
2. The Notice was given pursuant to the execution of a Sale and Purchase Agreement between Procter & Gamble Company (**P&G**), Merck KGaA (**Merck**) and Merck Consumer Health Holding Germany GmbH on 19<sup>th</sup> April, 2018 (**Global SAPA**). Another Sale and Purchase Agreement dated 19<sup>th</sup> April, 2018 was entered into between Acquirer, Merck, Merck Internationale Beteiligungen GmbH, Chemitra GmbH and Emedia Export Company mbH, for the purpose of acquisition of Merck Limited (**Merck India**), in India (**India SAPA**).



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3. By way of the proposed combination, the Procter & Gamble group envisages to acquire the consumer health business of Merck group globally. The details of the combination are as under:
- 3.1. *Merck Specialities Transaction:* Pursuant to the Global SAPA, P&G group would, *inter alia*, acquire the assets of Merck Specialities Pvt. Ltd. (**Merck Specialities**), an Indian entity of Merck Group, that are related to its consumer health business.
- 3.2. *Merck India Sale:* Pursuant to the India SAPA, the Acquirer would purchase 51.8% of the equity share capital of Merck India. Since the target is a listed company in India, in accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, the Acquirer and P&G have made an open offer to public shareholders to acquire up to 26% of the equity share capital of Merck India. If the offer is fully accepted, the Acquirer will acquire up to 77.80% of the equity share capital of Merck India.
- 3.3. *Transfer of non-consumer health business of Merck India:* Following the closing of Merck India Sale, its non-consumer health business (*i.e.* the businesses exclusively constituting the performance materials, life sciences and bio-pharma segments) will be transferred, on a going concern basis by way of slump sale, to Merck Life Science Pvt. Ltd. or any of its affiliate.
4. P&G is a publically held company listed on New York Stock Exchange and headquartered in Cincinnati, Ohio, USA. It is a global manufacturer of consumer goods, including beauty care, grooming, health care, fabric and home care, baby, feminine and family care. Globally, the health care segment of P&G comprises oral care - toothbrushes, toothpaste, other oral care, and personal health care - gastrointestinal, rapid diagnostics, respiratory, vitamins/ minerals/ supplements, other personal healthcare products.



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5. The Acquirer, i.e. Procter and Gamble Overseas India B.V., is a private limited liability company registered under the laws of Netherlands. P&G is the ultimate holding company of the Acquirer. The Acquirer is not directly engaged in providing any service or good in India. However, it is present in India through its subsidiaries namely P&G Home Products Pvt. Ltd., Gillette Diversified Operations Pvt. Ltd., P&G Hygiene & Health Care Ltd. and Gillette India Ltd. These subsidiaries provide a broad range of consumer products in India, including fabric care/home care products, health care products, personal hygiene products and hair/beauty care products.
6. Merck is a multinational pharmaceutical, chemical and life sciences group, headquartered in Darmstadt, Germany. The consumer health business of Merck, which is a part of the pharmaceuticals and health segment, comprises primarily of eight global brands namely, Neurobion, Bion3, Nasivion, Seven Seas, Vigantol, Dolo-Neurobin, Femibion and Kytta. The consumer health portfolio of Merck includes both over the counter (**OTC**) and prescription based products.
7. Merck India is headquartered in Mumbai and is listed on Bombay Stock Exchange and National Stock Exchange. Merck is the ultimate holding company of Merck India. Merck India is engaged in the business of manufacturing, marketing, distribution, imports and exports of pharmaceutical products and chemical products.
8. As a result of the proposed combination, P&G group would acquire control over the consumer health business of Merck group globally including India.
9. The parties to the combination are not engaged in activities that are at different levels of the production chain. However, as per the notice, both the parties to the combination are engaged in 'pain and cold segment' of consumer health business in India. In this segment, Merck India manufactures and sells syrups, tablets, nasal sprays and nasal drops under the brand names 'Cosome' and 'Nasivion'. The products of P&G in this segment are tablets, vaporub, inhaler and oral cough drops, sold under the brand name 'Vicks'.



10. Based on the information provided by the parties, it was found that the business of the parties to the combination exhibit horizontal overlap in tablets used for treating pain and cold. The details of the brand and composition of the overlapping products are as under:

**A. P&G Group**

- Vicks Action 500 Extra : (a) Paracetamol 500 mg;  
(b) Caffeine (anhydrous) 32 mg; &  
(c) Phenylephrine HCl 10 mg.
- Vicks Action 500 : (a) Paracetamol 500 mg;  
Advanced (b) Diphenhydramine HCl 25 mg;  
(c) Phenylephrine HCl 5 mg; &  
(d) Caffeine (anhydrous) 30 mg.

**B. Merck Group**

- Nasivion : (a) Caffeine 30 mg;  
(b) Diphenhydramine 25 mg;  
(c) Paracetamol 500 mg; &  
(d) Phenylephrine 5 mg
- Cosome : (a) Paracetamol 125 mg;  
(b) Phenylephrine 2.5 mg; &  
(c) Chlorpheniramine 1 mg.

11. While the Cosome tablet is a prescription based medication, Nasivion tablet is an OTC product. Vicks Action 500 is stated to be a prescription drug but sold as an OTC product.
12. In the past, the Commission has defined the relevant market for prescription drugs based on molecular composition (*In Re: Sun/ Ranbaxy*, Combination Reg. No. C-2014/05/170). For OTC products, the competition assessment was done at the level of therapeutic use as well as at the molecular composition (*In Re Novartis/ GlaxoSmithKline*, Combination Reg. No. C-2014/07/188).
13. All the above tablets (Vicks Action 500, Cosome and Nasivion) fall under the category of ‘cold preparations’ based on ATC 3 classification and ‘cold



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preparations without anti-infectives' based on ATC 4 classification. The Acquirer has submitted that based on data of IMS Health Database for cold preparations comprising both prescription drugs and OTC products, their combined market share is less than a percent. Even if separate markets are defined for prescription drugs and OTC products, the market share of the parties would remain insignificant.

14. As may be seen above, Vicks Action 500 Advanced (P&G) and Nasivion Tablet (Merck) appear to have similar formulation. However, there are several other players offering such formulation intended for similar therapeutic use. The presence of several brands with similar formulation reinforces that the markets for the concerted products are fragmented and incremental change, if any, on account of the proposed combination is not likely to raise competition concerns.
15. With respect to geographical dimensions, the Commission notes that both the parties appear to operate on pan-India basis and the conditions of consumer healthcare business across India appears to be similar. Given that the proposed combination is not likely to pose competition concerns in any of the plausible relevant market definitions, the Commission does not find it necessary to precisely define the relevant market.
16. Considering the facts on record, 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 the 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 any 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.
17. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.



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18. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
  
19. The Secretary is directed to communicate to the Acquirer accordingly.