



Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA
(Combination Registration No.C-2016/02/376)

1st June 2016

**Notice under Section 6 (2) of the Competition Act, 2002 (“Act”) jointly given by
Johnson Controls, Inc. (“JCI”) and Tyco International Plc (“Tyco”)**

CORAM

Devender Kumar Sikri
Chairperson

S. L. Bunker
Member

Sudhir Mital
Member

U. C. Nahta
Member

M.S. Sahoo
Member

G. P. Mittal
Member

Legal Representatives of the parties: AZB & Partners

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

1. On 23rd February 2016, the Competition Commission of India (“**Commission**”) received a notice jointly given by Johnson Controls, Inc. (“**JCI**”) and Tyco International Plc (“**Tyco**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice pertains to the proposed merger of Tyco with JCI. (Hereinafter, JCI and Tyco are collectively referred to as “**Parties**”). The notice has been given pursuant to approval of the proposal relating to merger by the respective board of directors of the Parties (merging entities) on 23rd January 2016.



2. The proposed combination is structured as a reverse triangular merger and contemplates following steps: (i) Tyco's newly incorporated indirectly wholly-owned subsidiary, Jagara Merger Sub LLC ("**Jagara**" or "**Merger Sub**"), will merge with and into JCI with JCI surviving as an indirectly wholly-owned subsidiary of Tyco; (ii) Tyco will be renamed 'Johnson Controls plc' and its shares will be listed on the New York Stock Exchange ("**NYSE**") under JCI's current ticker symbol; (iii) Pursuant to the consummation of the aforementioned steps of the proposed combination, shareholders of JCI will own majority of the merged companies' shares (approximately 56%) and the remaining shares (approximately 44%) would be held by Tyco's shareholders.
3. JCI is a public company based in USA and listed on NYSE. It is stated to be the parent company of the JCI group, which is engaged in, *inter alia*, manufacture of automotive parts such as automotive batteries, electronics and interior systems for automobile. It is present in India through Johnson Controls (I) Pvt Ltd, Johnson Controls Automotive Ltd. and others, which are engaged in the area of automotive experience, building efficiency and power solutions.
4. Tyco is public company headquartered in Ireland and listed on NYSE. It is the parent company of Tyco group and is engaged in the business of, *inter alia*, installation and maintenance of fire detection and alarm system. It is present in India through Tyco Fire & Security India Private Limited, Tyco Safety Products (India) Private Limited and others in the area of security and fire protection.
5. The Parties, at the time of filing the notice, gave an undertaking under Regulation 5(6) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**") to provide the information gaps in the notice, which they submitted on 23rd March 2016. Further, in terms of Regulation 14 of the Combination Regulations, *vide* letter dated 12th April 2016, the Parties were required to remove defects in the notice and furnish certain information / document(s) including market share of the competitors by 19th April 2016. The Parties filed their response on 27th April 2016, after seeking extension of time.
6. The Commission observed that the notice was initially filed as an acquisition of control of Tyco by JCI. However, given the structure of the proposed combination, *vide* letter dated



12th April 2016, the Parties were asked to provide justification as to why the combination may not be treated as a merger.

7. In this regard, the Parties, *vide* their letter dated 27th April 2016, stated that they were under a *bona fide* belief that the proposed combination is an acquisition and that the Agreement and Plan of Merger dated 24th January 2016, was to be treated as the trigger document for the purpose of notification to the Commission. Along with their response, the Parties submitted certain documents including a copy of the board resolution of JCI, executed on 23rd January 2016, approving the proposed combination.
8. The Commission, in its meeting held on 1st June 2016, observed that the structure of the proposed combination is such that it is a case of merger within the meaning of clause (c) of Section 5 of the Act. Further, the Commission accepted the aforementioned documents submitted by the Parties.
9. In view of the observation of the Commission that the proposed combination is a merger in terms of extant provisions of the Act, the notice ought to have been filed with the Commission within thirty days of approval of the proposal relating to merger by the respective board of directors of merging parties. However, in the instant case there was a delay of one day in filing the notice from the date of approval of the proposed merger by the respective board of directors of the merging entities. The Commission, considered the matter and decided that in terms of the provision of Regulation 7 of the Combination Regulations, the belated notice be admitted and no proceedings under the provisions of Section 43A of the Act be initiated as the Parties were under a *bona fide* belief that the proposed combination is an acquisition and that they had continuously engaged with the Commission since the time of pre-filing consultation.
10. As submitted in the notice, the activities of the Parties overlap in the business of manufacturing, installing, marketing and maintaining: (i) Electronic security systems (“**ES Systems**”); and (ii) Fire detection and alarm systems (“**Fire D&A Systems**”) in India. The competition assessment of the proposed combination in terms of the overlapping businesses of the Parties relates to the following business segments in India, namely: (i) ES Systems; (ii) Installation and after sale services (maintenance) of ES Systems; (iii) Fire D&A Systems; and (iv) Installation and after sale services



(maintenance) of Fire D&A Systems. Based on the submissions of the Parties, for each overlapping business segments the Commission observed as follows:

- 10.1 As regards the ES Systems, the combined market share of the Parties is less than 10%. Further, the competitors (along with their market share) such as Hikvision (less than 10%), Dahua (less than 5%), Bosch (less than 5%), etc. would continue to provide competitive constraint to the Parties.
- 10.2 The combined market share of the Parties in installation and after sale services (maintenance) of ES Systems is less than 10%. However, the incremental market share of the Parties is insignificant. Further, the said business segment is fragmented and presence of significant competitors such as Schneider, Honeywell, Panasonic (Firepro) etc. would continue to provide competitive constraint to the Parties.
- 10.3 In the Fire D&A Systems, the combined market share of the parties is less than 5 percent and presence of competitors such as Honeywell, UTC with sizeable market share would pose competitive constraint to the Parties.
- 10.4 In respect of installation and after sale services (maintenance) of Fire D&A Systems, the combined market share of the Parties is less than 5%. Moreover, competitors of the Parties such as Honeywell, Panasonic (Firepro), etc. would provide competitive constraint to the Parties.
11. As regards vertical relationship, the Commission observed that although there is some degree of vertical integration in some of the segments at the global level, however, there is no vertical relationship between the businesses of the parties in India. Furthermore, there are other vertically integrated players like Honeywell, Schenider etc. present in India. In view of foregoing, the Commission noted that the proposed combination is not likely to adversely affect competition in markets in India.
12. 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 appreciable adverse effect



*Fair Competition
For Greater Good*

on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.

13. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.

14. The Secretary is directed to communicate to the Parties accordingly.