



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/01/371)



13th May 2016

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

- Black River Food 2 Pte. Ltd.

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

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M.S. Sahoo
Member

Legal representative: M/s Trilegal

1. On 27th January 2016, 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 (“**Act**”) from Black River Food 2 Pte. Ltd (Hereinafter referred to as “**Acquirer**”/ “**Black River 2**”).



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/01/371)



2. The notice has been filed pursuant to the execution of: (a) Investment Agreement (“**IA**”); (b) Strategic Alliance Agreement (“**SAA**”); and (c) Letter agreement, entered into and between Future Consumer Enterprise Limited (“**FCEL**”) and Acquirer, each dated 25th January 2016. (Hereinafter, the Acquirer and FCEL are together referred to as ‘**Parties**’)
3. The proposed combination relates to the subscription of 30,150 compulsorily convertible debentures (“**CCDs**”) and 100 equity shares of FCEL (by Black River 2. Upon conversion of all CCDs, Black River 2 expects to hold a maximum shareholding of 8.19% of the fully diluted share capital of FCEL. Under the terms of the IA, Acquirer has a right to nominate one director on Board of FCEL.
4. The proposed combination falls under Section 5 (a) of the Act.
5. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (‘**Combination regulations**’), a letter dated 24th February 2016 seeking certain information was issued to the Acquirer and response to same was received on 1st March 2016 after seeking an extension of time to file the response.
6. As per information given in notice, Acquirer, a private limited company incorporated in Singapore, is registered as a Foreign Venture Capital Investor under the Securities and Exchange Board of India (Foreign Venture Capital Investors) Regulations, 2000. It is a wholly-owned subsidiary of Black River Food 2 LP (‘**Black River LP**’), which is one of the several private equity funds managed by Proterra Investment Partners LP (‘**Proterra**’), an investment advisor registered with US Securities Exchange Commission. (Black River 2 and Black River LP are together hereinafter referred to as ‘**Black River**’). Black River specializes in investments in the food industry and agribusiness value chain.
7. As per the Notice, the Acquirer does not have investments or presence in India. However, Black River Capital Partners Fund (Food) LP (“**BR1**”), which is managed by Proterra, has the following investments in India:



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/01/371)



- a. BR1 holds around 23.66 percent stake along with the right to nominate two directors and certain commercial rights in Dodla Dairy Limited (“**Dodla**”). Dodla, a public limited company incorporated under Companies Act 1956, procures, processes and sells milk and milk products across India.
- b. It also holds around 54.5 percent stake in Citrus Processing India Private Limited (“**Citrus**”), a private limited company incorporated under Companies Act, 1956. Citrus is engaged in manufacture and sale of frozen concentrated juice to bottlers in India and abroad.

As per notice, apart from the above, the funds managed by Proterra do not have any presence or investments in India.

8. FCEL, an entity belonging to Future group¹ is a public limited company listed on the BSE Ltd. and the NSE Ltd. It is stated to be an integrated food company engaged in the business of sourcing, branding, marketing and distribution of fast moving consumer goods, food and grocery products in India.
9. It has been stated in the notice that the Acquirer and FCEL do not produce / provide similar or identical or substitutable products. As stated above, BR1, currently has two investments in India, namely, in Dodla and Citrus. In this regard, it is observed that both Dodla and FCEL are engaged in the business of milk and milk products in India. With regards to the business carried on by Citrus i.e. manufacture and sale of frozen concentrated juice to bottlers, it is observed that FCEL uses juice concentrates for in-house consumption and does not sell the same in the open market. Thus, effectively there is no overlap.
10. In the present case, the exact definition of market is left open as the proposed combination does not give rise to competition concern irrespective of the manner in which the market is defined.

¹ Future Group is an Indian conglomerate engaged, inter alia, in operations of retail supermarket/hypermarket chains through its retail arms, FRL and Future Consumer Enterprise Ltd. (**FCEL**). Its fashion outlets such as Brand Factory, Central, Planet Sports etc. are operated through a subsidiary, viz., Future Lifestyle Fashions Ltd.



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/01/371)



11. With regards to the segment of processing and selling milk and milk products, it is noted that both Dodla and FCEL have insignificant presence and there are a number of significant players active at pan India and regional levels such as Amul, Mother Dairy, Nandini etc. providing similar products.
12. The Acquirers have stated that there are no existing vertical relationships between the activities of Acquirer, BR1 and FCEL.
13. The Commission considered and assessed the proposed combination in its meeting held on 30th March, 2016 and noted that certain clauses of the Letter agreement in the nature of non-compete covenants seemed to be unreasonable from competition perspective. Accordingly, the Commission called the Acquirer to justify the same. The Commission heard the submissions of the Acquirer and its authorised representatives ('AR') on this aspect on 12th April 2016. In this regard, vide its letter dated 12th April 2016, the Acquirer offered modification under sub-regulation (2) of Regulation 19 of the Combination Regulations on the aspect of the non-compete clause, proposing that the clause 7 of the Letter agreement shall be deleted ('**Proposed Modification**'). The clause 7 of the Letter agreement reads as under:

“The Promoters shall take all such actions which are within their control (including without limitation, exercising their voting rights whether at a board level or at shareholders level) to ensure that the Company and its Subsidiaries are the only entities which engage in the activity of production, procuring, processing, distribution and/or sale (other than retail) of food, food products, agricultural, meat, dairy, poultry, seafood products and/or FMCG products. However, the aforesaid restriction shall not apply to passive financial investments by any of the group companies in any entity which is engaged in the aforesaid activities.”

14. In its meeting held on 12th April 2016, considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act, written and oral submissions of the Acquirer and AR and Proposed Modification on the aspect of non-compete, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India, on the basis of factors stated in



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/01/371)



sub-section (4) of section 20 of the Act. Accordingly, the Commission approved the proposed combination under sub-section (1) of Section 31 of the Act, subject to carrying out of the Proposed Modification.

15. Vide its letter dated 4th May 2016, AR has informed that Parties have executed a fresh Letter Agreement on 22nd April, 2016 which terminated the earlier Letter Agreement and does not contain clause 7. Accordingly, the Commission noted that the Parties have carried out the Proposed Modification.
16. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
17. The Secretary is directed to communicate to the Acquirer accordingly.