

**Competition Commission of India**  
**Combination Division**

2<sup>nd</sup> April, 2013

Combination Registration No. C-2013/02/109

**Order under Section 43 A of the Competition Act, 2002**

1. On 4<sup>th</sup> February, 2013, 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 (hereinafter referred to as the “**Act**”), given by Titan International, Inc. (hereinafter either referred to as “**Titan International**” or “**Acquirer**”) and Titan Europe PLC (hereinafter referred to as “**Titan Europe**”) (hereinafter Titan International and Titan Europe are collectively referred to as the “**parties**”).
2. The combination involves the acquisition of the entire share capital of Titan Europe by Titan International, as a consequence of which Titan International has indirectly acquired 35.91 per cent equity share capital of Wheels India Limited (hereinafter referred to as “**Wheels India**”) from Titan Europe. As stated in the notice, on 10<sup>th</sup> August, 2012, the parties announced that they had reached an agreement on the terms of a recommended share offer for the acquisition of the entire share capital of Titan Europe.
3. Along with the notice, the parties also submitted an application for condonation of delay as the notice was given to the Commission beyond the time period specified in sub-section (2) of Section 6 of the Act. The Commission considered the application for condonation of delay, in its meeting held on 20<sup>th</sup> February, 2013 and admitted the belated filing in terms of Regulation 7 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 without prejudice to the action that may be taken under Section 43A of the Act. The Commission in the said meeting *inter alia* decided to initiate separate proceeding regarding imposition of penalty under Section 43A of the Act as the notice was not given within the time specified in sub-section (2) of Section 6 of the Act and accordingly, a show cause notice dated 21<sup>st</sup> February, 2013, in terms of Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009 was issued to the Acquirer.
4. On 8<sup>th</sup> March, 2013, the Commission received the reply of the parties to the show cause notice wherein it was *inter-alia* submitted that:

*“..... The parties to the Combination are based in the United States of America and United Kingdom, respectively. The acquisition of the entire share capital of Titan Europe by Titan International resulted in the indirect acquisition of the 35.91 per cent equity share capital in Wheels India, which was held by Titan*

*Europe. The parties' omission to comply with Section 6(2) of the Act in the instant matter was altogether inadvertent and unintentional.*

*As these are still early days of implementation of competition laws in India, many companies globally (including the law firms advising them) are unaware of filing requirement in India especially for an indirect acquisition of shares or voting rights in an Indian company when the target enterprise (based abroad) has an interest in companies in many countries of the world. Further, the annual report of Titan Europe for the year ended 31<sup>st</sup> December, 2011, which the advisors of Titan International had referred to does not include the revenue from Wheels India in the consolidated revenue figures of Titan Europe because Wheels India is not a subsidiary of Titan Europe. The advisors of the parties to the combination omitted to refer to the section on associate and joint venture companies of the Annual Report for Titan Europe, which mentions its 35.91 per cent shareholding in Wheels India owing to the fact that they were seeking information on the significant revenue threshold that would trigger merger filings.*

*At the time of making share offer, Titan International was unaware that a filing or notification under Section 6(2) of the Act with the CCI with respect to the indirect acquisition of shares of Wheels India would be triggered in India.*

*We plead with the Commission to take a lenient view in the current circumstances as acts and omissions of the parties to the combination have not been guided by any mala fide intentions and they have filed the Form I as soon as possible after they became aware of the requirement to file under Section 6(2) of the Act.”*

5. The Commission considered the reply to the said show cause notice, given by the parties, in its meeting held on 19<sup>th</sup> March, 2013 and directed the Acquirer to appear before the Commission on 2<sup>nd</sup> April, 2013, to present its case as to why penalty in terms of Section 43A of the Act should not be imposed upon it as the notice was not given within the time specified in sub-section (2) of Section 6 of the Act. The Commission accordingly heard the legal representatives of the parties in its meeting held on 2<sup>nd</sup> April, 2013.
6. Under the provisions of sub-section (2) of Section 6 of the Act, “any person or enterprise, who or which proposes to enter into a combination, shall give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within thirty days of (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be; (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section”. The Commission in its Order dated 12<sup>th</sup> April, 2012, in the notice bearing

Combination Registration No. C-2012/02/40 noted that any person or enterprise, who or which proposes to enter into a combination, has to mandatorily give a notice to the Commission under sub-section (2) of Section 6 of the Act prior to entering into a combination.

7. In the instant case, the parties had reached an agreement on the terms of the recommended share offer for the acquisition of entire share capital of Titan Europe on 10<sup>th</sup> August, 2012 and therefore, in terms of sub-section (2) of Section 6 of the Act, the Acquirer ought to have given the notice to the Commission within thirty days of reaching the said agreement. However, the Acquirer failed to give notice to the Commission in accordance with sub-section (2) of Section 6 of the Act as, already noted earlier, the Acquirer gave the notice to the Commission only on 4<sup>th</sup> February, 2013 with a delay of around 147 days and that too after the combination had already taken effect.
8. It has been submitted that the Acquirer was unaware that a filing or notification under sub-section 2 of Section 6 of the Act with respect to the indirect acquisition of shares of Wheels India, by Titan International would be triggered in India and therefore, the Acquirers' omission to comply with sub-section 2 of Section 6 of the Act in the instant matter was altogether inadvertent and unintentional. However, considering the fact that the said notice as given by the parties was not only given belatedly but also after the combination had already taken effect, which is in contravention of the relevant provisions of the Act, the submission made by the parties, for not levying any penalty under Section 43A of the Act is not agreed to.
9. As per details provided in the notice, the value of assets and turnover of Titan International, Titan Europe and Wheels India are as follows:

<b>Details of Assets and Turnover</b>		
<b>Enterprise(s)</b>	<b>Asset</b>	<b>Turnover</b>
<b>Titan International*</b> <i>(in \$ billion)</i>	1.010	1.487
<b>Titan Europe*</b> <i>(in \$ billion)</i>	0.746	0.790
<b>Wheels India**</b> <i>(in INR crore)</i>	1082.99	2235.09

\*for the year ended 31.12.2011;

\*\* for the year ended 31.03.2012

10. In terms of Section 43A of the Act, if any person or enterprise fails to give notice under sub-section (2) of Section 6 of the Act, the Commission shall impose on such person or enterprise a penalty which may extend to one per cent of the total turnover or the assets, whichever is higher, of such a combination. It is, therefore, observed that although, in terms of Section 43A of the Act, the maximum penalty that may, therefore, be imposed on the Acquirer comes to approximately INR 145 crore<sup>1</sup>, however, considering the fact

<sup>1</sup> Represent one per cent of the total turnover of Titan International, Titan Europe and Wheels India. Turnover of Titan International and Titan Europe has been converted into INR taking US\$ 1= INR 54.

that (a) both Titan International and Titan Europe are based outside India; (b) the said combination resulted from the acquisition of one foreign enterprise based outside India by another foreign enterprise based outside India; and (c) the parties, notwithstanding the delay, have voluntarily given the notice under sub-section (2) of Section 6 of the Act; the Commission considers it appropriate to take a lenient view and impose a smaller amount of penalty on the Acquirer under the provisions of Section 43A of the Act. Therefore, in exercise of the powers under Section 43A of the Act, a penalty of INR 1,00,00,000/- (INR One Crore only) is imposed on the Acquirer. The Acquirer shall pay the penalty within 60 days from the date of receipt of this order.

11. The Secretary is directed to communicate to the Acquirer accordingly.