



2<sup>nd</sup> May 2016

**Order u/s 43A of the Competition Act, 2002 (“Act”) in the notice given by Piramal Enterprises Limited**

**CORAM:**

Devender Kumar Sikri

Chairperson

S. L. Bunker

Member

Sudhir Mital

Member

Augustine Peter

Member

U. C. Nahta

Member

M. S. Sahoo

Member

G. P. Mittal

Member

**Legal representative / Appearances:** Ms. Nisha Kaur Uberoi, Advocate, Cyril Amarchand Mangaldas, Mr. S.K. Honnesh, General Counsel, Piramal Enterprises Limited, Ms. Jayati Handa, Advocate and Ms. Atreyee Sarkar, Advocate



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2015/02/249)



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1. On 18<sup>th</sup> February 2015, the Competition Commission of India (“**Commission**”) received a notice in Form II given by Piramal Enterprises Limited (“**PEL**”/“**Acquirer**”), pursuant to the directions of the Commission under sub-section (1) of Section 20 of the Competition Act, 2002 (“**Act**”) read with sub-regulation (2) of Regulation 8 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”).
2. The combination relates to the acquisition by PEL of: (a) 9.96 percent stake in Shriram Transport Finance Company (“**STFC**”) on 10<sup>th</sup> May 2013 from the stock exchange by way of a contract note (“**STFC Transaction**”); (b) 20 percent equity stake (directly and indirectly) in Shriram Capital Limited (“**SCL**”), pursuant to the execution of a Collaboration Agreement dated 17<sup>th</sup> April 2014, entered into, *inter-alios*, between PEL and SCL (“**SCL Transaction**”); and (c) 9.99 percent stake in Shriram City Union Finance Limited (“**SCUF**”) on 3<sup>rd</sup> June 2014, pursuant to a preferential allotment (“**SCUF Transaction**”).
3. In accordance with the powers conferred on the Commission under sub-section (1) of Section 20 of the Act, in its meeting held on 20<sup>th</sup> October 2014, the Commission decided to initiate a *suo motu* inquiry into the above said acquisitions and to send a communication to the Acquirer under sub-section (1) of Section 20 of the Act. Accordingly, a letter dated 28<sup>th</sup> October 2014 was sent to PEL to explain in writing the reasons for not filing the notice with the Commission and also provide certain information on the above said acquisitions. The response to the abovementioned communication was received on 25<sup>th</sup> November 2014. The Commission considered the response filed by the Acquirer and, *vide* its letter dated 16<sup>th</sup> January 2015, directed the Acquirer to file notice in Form II in terms of sub-section (1) of Section 20 of the Act read with sub-regulation (2) of Regulation 8 of the Combination Regulations.
4. The Commission considered and assessed the combination and approved the same *vide* its order dated 26<sup>th</sup> May 2015 under sub-section (1) of Section 31 of the Act. Further, the Commission also directed that penalty proceedings under Section 43A of the Act be initiated against the Acquirer. Accordingly, in terms of Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009, a show cause notice dated 10<sup>th</sup> June 2015 was issued to the Acquirer to show cause, in writing, within 15 days of the receipt of notice as to why penalty, in terms of Section 43A of the Act should not be imposed on it for not



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2015/02/249)



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having filed the notice within the time prescribed under sub-section (2) of Section 6 of the Act. The Acquirer filed its response to the show cause notice (“**Response**”) with the Commission on 14<sup>th</sup> July 2015.

5. In the Response, the authorised representatives of the Acquirer has, *inter-alia*, submitted the following arguments:
- a. That the SCL Transaction was a notifiable combination under the provisions of the Act, but PEL did not notify the SCL Transaction due to a different understanding of the definition of “control” under the Act and a different interpretation of the exemption under Item 1, Schedule I to the Combination Regulations. It has been submitted that PEL had a *bona fide* understanding that the SCL Transaction was ordinarily not notifiable to the Commission under Item 1, Schedule I to the Combination Regulations;
  - b. Each of the STFC Transaction and the SCUF Transactions are separate stand-alone transactions and are independent of the SCL for the reasons below:
  - c. **STFC Transaction:** The STFC Transaction was consummated almost one year before the SCL Transaction. This gap of one year demonstrates that there was no simultaneous or consequent conclusion/execution of the STFC Transaction and the SCL Transaction. Further, the STFC Transaction was an "on the exchange" purchase, i.e., a secondary market purchase, which took place in accordance with the rules and regulations prescribed by the Securities and Exchange Board of India. This on-exchange purchase of shares was not part of any negotiated deal between PEL, STFC or SCL;
  - d. **SCUF Transaction:** The SCUF Transaction was implemented on the basis of a preferential allotment of shares to PEL by SCUF. The Explanatory Statement to the notice issued by SCUF in relation to the extraordinary general meeting of the shareholders of SCUF held on 30<sup>th</sup> May 2014, indicates that the preferential allotment of the shares was approved due to the capital requirements of SCUF and not in furtherance of the SCL Transaction. Further, the decision to issue preference shares of SCUF to PEL was based on the financial needs of SCUF and was independent of the SCL Transaction;



**COMPETITION COMMISSION OF INDIA**

(Combination Registration No. C-2015/02/249)



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- e. That the SCL Transaction on the one hand and the STFC and SCUF Transactions on the other, do not form part of the same combination and their notifiability must be assessed independently with reference to only the rights and documentation involved in each individual transaction. It has been further submitted by the Acquirer that the subject matter of the STFC and SCUF Transactions and the SCL Transaction was completely different based on the transaction documents, rationale, mode of transfer, business and entities involved and timing of each transaction;
- f. That the SCL Transaction and the STFC and SCUF Transactions would constitute independent “concentrations” when tested under EU merger control rules. The Acquirer has stated that in the EU, transactions are closely connected when linked by condition or are in the form of a series of transactions in securities taking place within a reasonably short period of time. The Acquirer has submitted that the SCL Transaction and the STFC and SCUF Transactions are not inter-related transaction as they are not linked by condition or otherwise, taking place at different times; and
- g. That each of the STFC and SCUF Transactions is ordinarily not notifiable to the Commission under Item 1, Schedule I to the Combination Regulations. The Acquirer has submitted that each of STFC and SCUF Transactions was in the nature of a minority, non-controlling acquisition by PEL in each of SCUF and STFC. The Acquirer has further stated that since there are no horizontal overlaps or vertical relationships between the services provided by PEL and the services provided by SCUF and SCUF, each of the STFC and SCUF Transactions should not be considered to be strategic. Accordingly, the Acquirer has stated that each of the STFC and SCUF Transactions is exempt from notification to the Commission under Item 1, Schedule I to the Combination Regulations; and
- h. The Acquirer also submitted a number of mitigating factors to be considered by the Commission in levying a penalty on the Acquirer, including that PEL is a competition law complaint organization, that PEL has exercised limited veto rights, that the combination caused no appreciable adverse effect on competition (“AAEC”) in the relevant markets, that the failure to give notice of the SCL Transaction was on account



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2015/02/249)



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of an incorrect understanding of the definition of “control” and that there was no *mala fide* intention to evade compliance or the provisions of the Act.

6. On the request of the Acquirer, the Commission heard the authorised representatives of the Acquirer in its meeting held on 27<sup>th</sup> January 2016, wherein the following additional submissions were made:
  - a. That pursuant to the insertion of Explanation to Item 1, Schedule I to the Combination Regulations *vide* the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2016, the STFC and SCUF Transactions would be exempt from notification to the Commission under Item 1, Schedule I to the Combination Regulations. The Acquirer relied upon the *GS Mace Holdings / Max India* (C-L2011/12/03) case, where the Commission did not require GS Mace to give a notice for the combination under sub-section (2) of Section 6 of the Act, as the combination would have been exempt from notification to the Commission pursuant to a subsequent amendment to Item 1 of the Combination Regulations (amended on 23<sup>rd</sup> February 2012). The Acquirer has submitted that the Commission should extend the same benefit to the Acquirer as the SCUF Transaction and the STFC Transaction would be exempt from notification to the Commission under the Explanation to Item 1, Schedule I to the Combination Regulations, within 30 days of the execution of the Collaboration Agreement; and
  - b. That the Commission has observed in the *Zulia Investments Pte. Ltd./Kinder Investments Pte. Ltd.* (C-2013/06/124) case, a *suo motu* inquiry into a combination cannot be initiated after the expiry of one year from the date on which a combination takes place.
7. The submissions of the Acquirer, both written and oral, were duly considered by the Commission in its meetings held on 27<sup>th</sup> January 2016 and 2<sup>nd</sup> May 2016, it was held as under:
  - a. In relation to the SCL Transaction, it is observed that PEL acquired a 20 percent equity stake (direct and indirect) in SCL pursuant to a Collaboration Agreement dated 17<sup>th</sup> April 2014. In addition to the effective 20 percent equity stake in SCL, PEL also



## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/02/249)



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acquired certain affirmative voting rights over *inter alia* the following matters: (i) approval of the appointment of the Chief Executive Officer and the Chief Financial Officer of SCL; (ii) alteration of charter documents; (iii) determining the business plan and annual budget; (iv) appointment or removal of auditors; and (v) commencement of any new business line by SCL. It was therefore observed that these matters for which consent of PEL is required include strategic commercial decisions of SCL and the same cannot be considered as mere minority protection rights. It was accordingly observed that the SCL Transaction envisages PEL's joint control over SCL and therefore the SCL Transaction does not fall under Item I, Schedule I to the Combination Regulations, and a notice for the same ought to have been given to the Commission in terms of the sub-section (2) of Section 6 of the Act;

- b. In relation to the SCUF Transaction and the STFC Transaction, it is observed that the Acquirer, in its Annual Report for year 2014-2015, has stated *"Through strategic investments in Shriram Group companies, the Company has also gained exposure to of the retail financing segments such as used and new commercial vehicles, small and medium enterprises, consumer and gold loans, and other products such as life Insurance, general insurance, etc."*. Similarly, the Acquirer's Annual Report for the year 2013-14 has stated *"We entered into a long term partnership with the Shriram Group, a pioneer in providing financial services to the under-served sections of the society .... The partnership with the Shriram Group began with the acquisition of ~10% stake in Shriram Transport Finance Company Limited, a listed NBFC, in May 2013. In April 2014, we further acquired an effective 20% stake in Shriram Capital Limited, the holding company for Shriram Group's financial services and insurance businesses. We have also acquired ~10% stake in the Group's retail focused NBFC, Shriram City Union Finance in June 2014. With this, our total investment in the Shriram Group aggregates to ~ INR 4,440 crores"*;
- c. Subsequent to the three acquisitions, Mr. Ajay Piramal, the Chairman of PEL was appointed as Chairman of SCL on 15<sup>th</sup> November 2014.( SCL is the holding company of the Shriram Group's Financial Services and Insurance businesses). The Acquirer's Annual Report for 2014-2015 states *"We have diversified our Financial Services business through our long term partnership with the Shriram Group. Our investments*



## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/02/249)



Fair Competition  
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*in the Financial Services businesses of the Shriram Group serve as an example of the alignment in cultures and values of the Piramal and Shriram Group of companies. I also took additional responsibility as Chairman of Shriram Capital Limited, the holding company of Shriram Group's Financial Services businesses"; "Shriram Group was looking for a strategic leader, who shares similar values and potential to lead. We made three strategic investments in Shriram Group"; and "INR 4,583 crores has been invested in Shriram Group's Financial Services business of companies. This investment has enabled the Company to enter into a long-term association with Shriram Group and strengthen its presence in the Financial Services sector by diversifying into various areas";*

- d. Based on the above, it is observed that each of the three acquisitions by PEL in the Shriram group of companies were interconnected and were made strategically to enter into a partnership with and to acquire (joint) control over the financial services business of the Shriram group of companies. Further, the Acquirer has itself admitted that the SCL Transaction was a notifiable combination under the provisions of the Act as it resulted in an acquisition of "control" under the Act but that the Acquirer failed to give notice of the same to the Commission under sub-section (2) of Section 5 of the Act;
- e. Further, in relation to the Acquirer's arguments that the three acquisitions would not be considered to be inter-related transactions under EU rules of merger control, it is observed that under the European Commission's Consolidated Jurisdictional Notice "*If two or more transactions (each of them bringing about an acquisition of control) take place within a two-year period between the same persons or undertakings, they shall be qualified as a single concentration, irrespective of whether or not those transactions relate to parts of the same business or concern the same sector ... It is sufficient if the transactions, although not carried out between the same companies, are carried out between companies belonging to the same respective groups*". Accordingly, as per the European Commission's Consolidated Jurisdictional Notice, the three acquisitions by PEL of equity shares of companies belonging to the Shriram Group, carried out within a two year period, would be considered as inter-related transactions. Thus, the three acquisitions by PEL of equity shares of companies belonging to the Shriram Group are



**COMPETITION COMMISSION OF INDIA**

(Combination Registration No. C-2015/02/249)



*Fair Competition  
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considered to be inter-connected steps of a combination in terms of sub-regulation (4) of Regulation 9 of the Combination Regulations;

- f. The Acquirer has submitted each of the STFC and SCUF Transactions would be exempt from notification under the Explanation to Item 1, Schedule I to the Combination Regulations (inserted *vide* the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Amendment Regulations, 2016). The Explanation to Item 1, Schedule I to the Combination Regulations states “*The acquisition of less than ten per cent of the total shares or voting rights of an enterprise shall be treated as solely as an investment: Provided that in relation to the said acquisition,- (A) the Acquirer has ability to exercise only such rights that are exercisable by the ordinary shareholders of the enterprise whose shares or voting rights are being acquired to the extent of their respective shareholding; and (B) the Acquirer is not a member of the board of directors of the enterprise whose shares or voting rights are being acquired and does not have a right or intention to nominate a director on the board of directors of the enterprise whose shares or voting rights are being acquired and does not intend to participate in the affairs or management of the enterprise whose shares or voting rights are being acquired*” (emphasis added). In this regard, it is observed that the Annual Reports of the Acquirer state that the STFC and SCUF Transactions were strategic in nature, entered into by PEL, as a part of the combination, for the purposes of entering into a long-term partnership and association with the Shriram Group. Further, pursuant to three strategic investments in the Shriram Group, the Chairman of PEL, *viz.* Mr. Ajay Piramal, was appointed as Chairman of SCL, the holding company of the Shriram Group. In such cases, an investor/acquirer who anticipates seeking to influence management decisions is an “active” investor and such acquisitions will not be considered as “solely as an investment”. Accordingly, the Acquirer’s submission that the STFC and SCUF Transactions would be exempt from notification under the Explanation to Item 1, Schedule I to the Combination Regulations cannot be accepted. Thus, the three acquisitions by the Acquirer of equity shares of companies belonging to the Shriram Group are inter-connected steps of one combination in terms of sub-regulation (4) of Regulation 9 of the Combination Regulation and ought to have been notified to the Commission. Accordingly, the Acquirer’s reliance on the *GS Mace*



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2015/02/249)



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*Holdings / Max India* case wherein the combination was found to be exempt pursuant to a subsequent amendment to the Combination Regulations, is inapplicable to the facts of the present case and the Acquirer’s reliance on the case is misplaced; and

- g. It is noted that the last step of the combination, i.e., the SCUF Transaction, was entered into on 3<sup>rd</sup> June 2014, whereas the Commission’s inquiry under sub-section (1) of Section 20 of the Act was initiated on 20<sup>th</sup> October 2014. Accordingly, the Commission’s inquiry of the three inter-connected steps of the combination is well within one year from the date of on which the SCUF Transaction would be given effect.
8. In view of the foregoing, the Commission observed that the Acquirer failed to give notice of the combination within the prescribed timelines as per the Act and has also given effect to the combination, in contravention of the provisions of sub-section (2) of Section 6 and sub-section (2A) of Section 6 of the Act. Thus, the Acquirer is liable for penalty under Section 43A of the Act which reads as under:
- “If any person or enterprise who fails to give notice to the Commission under sub-section(2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent of the total turnover or the assets, whichever is higher, of such a combination.”*
9. As per the details provided by the Acquirer, the value of the worldwide assets and turnover of the combination, for the financial year ending 31<sup>st</sup> March 2014, are as follows:

<b>Enterprise</b>	<b>Assets (in USD Million)</b>	<b>Turnover (in USD Million)</b>
<b>PEL</b>	3,466.48	761.93
<b>STFC</b>	8,439.08	1,367.77
<b>SCL</b>	1,965.71	451.61
<b>SCUF</b>	2,672.28	528.82
<b>Total</b>	<b>16,543.6</b> <b>(INR 1,02,570 crore)</b>	<b>3,110.13</b> <b>(INR 19,282.81 crore)</b>

*Source:* Notice filed by the Acquirer



**COMPETITION COMMISSION OF INDIA**

(Combination Registration No. C-2015/02/249)



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10. Accordingly, in terms of Section 43A of the Act, the Commission can levy a maximum penalty of one per cent of the combined value of worldwide assets of the combination, i.e., approximately INR 1,025.7 crore. While determining the quantum of penalty, the Commission considered the following mitigating factors: (a) that there was no *mala fide* intention to evade compliance of the provisions of the Act; (b) that there have been no previous instances where the Commission has found the Acquirer to be in violation of the provisions of the Act or the Combination Regulations; and (c) that the Acquirer has continued to co-operate with the Commission pursuant to the Commission's inquiry under sub-section (1) of Section 20 of the Act. However, the Acquirer has consummated the combination which may be considered as an aggravating factor. In view of the foregoing, the Commission considered it appropriate to impose a penalty of INR 5 Crore (INR 5,00,00,000/- only) on the Acquirer, which is approximately 0.005% of the combined value of the worldwide assets of the combination.
11. The Acquirer is directed to pay the penalty within sixty (60) days from the date of receipt of this order.
12. The Secretary is directed to communicate to the Acquirer accordingly.