

COMPETITION COMMISSION OF INDIA

12th April, 2012

Combination Registration No.: C-2012/02/40

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

1. On 28th February, 2012, the Competition Commission of India (hereinafter referred to as "Commission") received a notice from Tetra Laval B.V. (hereinafter referred to as "Tetra Laval") under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as "Act").
2. Tetra Laval, along with the notice, also filed an application requesting the Commission for condoning the delay in filing the notice as the same was given beyond the time limit mentioned in sub-section (2) of Section 6 of the Act. The Commission in its meeting held on 6th March, 2012, considered the said application and decided to admit the notice with effect from 6th March, 2012.
3. The said notice relates to acquisition of shares by Tetra Laval in Alfa Laval AB (hereinafter referred to as "Alfa Laval") through a series of share purchases on the Stockholm Stock Exchange between the period 22nd August, 2011 to 13th December, 2011, whereby the shareholding of Tetra Laval in Alfa Laval increased from 18.83 per cent to 26.1 per cent, which also resulted in an increase of the indirect shareholding to approximately 23.16 per cent in Alfa Laval (India) Limited (hereinafter referred to as "Alfa Laval India"), the Indian subsidiary of Alfa Laval Corporate AB, which in turn is a wholly owned subsidiary of Alfa Laval.
4. It is observed that the said belated notice was given to the Commission by Tetra Laval after the completion of acquisition of shares in Alfa Laval. In this regard, it is also observed that 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, 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". Therefore, the notice for the said acquisition of shares by Tetra Laval ought to have been given to the Commission prior to the commencement of acquisition of shares in Alfa Laval within the period as mentioned under sub-section (2) of Section 6 of the Act. Further, the acquisition of shares in Alfa Laval by Tetra Laval should have been initiated only after receiving the approval from the Commission under sub-section (1) of Section 31 of the Act.

5. In view of the aforesaid, the Commission takes serious note of the fact that in the instant case, the notice was not only given belatedly but was also given after the combination had already taken effect, which is in contravention of the relevant provisions of the Act. Further, the Commission strongly emphasises 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.
6. Notwithstanding the above, in the instant case, the Commission decides not to initiate proceedings for imposition of penalty under Section 43A of the Act as this is the first year of implementation of the provisions relating to combinations in the Act.
7. Tetra Laval is a private limited company which is a part of the Tetra Laval group of companies active worldwide in the business of processing, packaging and distribution systems for food and carton packaging material; equipment & systems for milk production and animal husbandry; and packaging equipment and systems for plastic bottles. Its focus is to supply liquid food processing & packaging equipment and material and to offer solutions in the area of liquid food and to a very limited extent to the non-liquid food, cosmetic and pharmaceutical industry. In India, Tetra Laval is active in these businesses through its subsidiaries.
8. Alfa Laval is a listed public limited company active worldwide in the business of food production through the supply of components used for heat transfer, separation and fluid handling. Alfa Laval's products are used in the manufacture of food, chemicals, pharmaceuticals, starch, sugar and ethanol, nuclear power, engineering, mining industry and refinery sector. Alfa Laval has a production base on all three technologies in India,



namely heat transfer, separation and fluid handling. In India, Alfa Laval is active in these businesses through its only subsidiary, Alfa Laval India.

9. Tetra Laval is focused on the liquid food industry, whereas most of Alfa Laval's activity covers sectors such as non-liquid food, chemical, pharmaceutical, starch, sugar, ethanol, nuclear power, engineering, mining industry. However, both Tetra Laval and Alfa Laval deal in heat transfer equipment, separation equipment and flow equipment in India. Alfa Laval is engaged in both manufacture and sale of heat transfer equipment, separation equipment and flow equipment in India. Even though Tetra Laval is not engaged in manufacture of any heat transfer equipment, separation equipment and flow equipment in India, it supplies these equipments to its customers, some of which are purchased from Alfa Laval. In the businesses of heat transfer equipment, separation equipment and flow equipment in India, in which both Tetra Laval and Alfa Laval are engaged, there are several other players also.
10. As regards any activity relating to the production, supply, distribution, storage, sale and service or trade in products or provision of services which are at different stages or levels of the production chain in which the other party is involved in India, Tetra Laval either integrates the components purchased from Alfa Laval into its products or resells them as such to its customers. However, the purchase of heat transfer equipment, separation equipment and flow equipment made by Tetra Laval from Alfa Laval constitutes only a small fraction of the demand for heat transfer equipment, separation equipment and flow equipment in India.
11. Further, it is also observed that the increase in shareholding by Tetra Laval in Alfa Laval to 26.1 per cent, which has resulted in an increase of its indirect shareholding in Alfa Laval India to approximately 23.16 per cent, is in the nature of a non-controlling minority shareholding.
12. In view of the foregoing and considering the facts on record and the details provided by the acquirer and the assessment of the combination, the Commission is of the opinion that the combination is not likely to have an appreciable adverse effect on competition in India. The Commission approves the combination under sub-section (1) of Section 31 of the Act.



13. This approval is without prejudice to any other legal or statutory obligations as applicable.

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

15. The Secretary is directed to communicate to Tetra Laval accordingly.



Certified True Copy

[Handwritten signature]
23/4/12

ANIL K. VASHISHT
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Competition Commission of India
New Delhi