

COMPETITION COMMISSION OF INDIA

19th September, 2012

Combination Registration No.: C-2012/08/73

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

1. On August 9, 2012, the Competition Commission of India (hereinafter referred to as the "**Commission**") received a notice under sub section (2) Section 6 of the Competition Act, 2002 (hereinafter referred to as the "**Act**"), of the proposed combination, from Mitsui & Co. Limited (hereinafter referred to as "**Mitsui**"). The notice was filed pursuant to a Share Purchase Agreement ("hereinafter referred to as "**SPA**") executed on 31st July, 2012 between Mitsui and Arch Pharmed Labs Limited (hereinafter referred to as "**Arch**"), amongst others, for acquisition of 26.71 per cent equity share capital of Arch by Mitsui. As on the date of the SPA, Mitsui is already holding 5.25 per cent equity share capital of Arch. As a result of the proposed combination, the shareholding of Mitsui will increase to 31.96 per cent from the present 5.25 per cent, of the equity share capital of Arch.
2. In terms of Regulation 14 of The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as "**Combination Regulations**"), on 17th August, 2012, Mitsui and Arch were required to provide certain information and document(s), which were furnished by them on 24th August, 2012. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, on 3rd September, 2012, Mitsui and Arch were required to provide additional information, which was furnished by them on 10th September, 2012. The parties also furnished additional submissions vide their letter dated 12th September, 2012.



3. Arch is an Indian biopharmaceutical company incorporated in terms of the Companies Act, 1956 and is engaged in the business of manufacture and sale of active pharmaceutical ingredients (APIs), intermediates, contract manufacturing and contract research services to innovator(s) and generic pharmaceutical companies in the Indian and global markets. Further, vide letter dated 24th August, 2012, the parties have submitted that Avon Organics Limited, which is a listed subsidiary of Arch in India, is also active in the manufacturing of APIs and intermediates and in the provision of contract manufacturing services. It has been stated by the parties that Mitsui (including its group companies), however, does not have any trading or other relationship with Avon Organics Limited, either in India or globally.
4. Mitsui is a company incorporated under the laws of Japan and is engaged in the business of sale, import, export, offshore trading and manufacture of various products in sectors ranging from iron and steel, metal resources, machine and project, chemical, energy, food and retail, consumer service and information technology, information communication and technology, financial services, pharmaceutical business etc. It has been stated in the notice that Mitsui, through one of its subsidiaries MicroBiopharm, also a Japanese company, is engaged in the pharmaceutical business including manufacture, contract manufacturing and sales of APIs globally. Further, the intermediates produced by MicroBiopharm are meant for captive consumption only and may, to a limited extent, be produced for certain compounds on a customer-wise basis and at the specific request of a particular company. It has been stated in the notice that Mitsui had recently entered into the business of contract research and therefore currently it does not have any sales from the said business. The parties have also submitted that MicroBiopharm is not present in India, that Mitsui does not engage in production, distribution or trading of APIs, intermediates, provision of contract manufacturing and research services in India.
5. As stated in the notice, APIs are the principal ingredients used in making finished drug dosages in the form of capsules, tablets, liquid or other forms of drug dosage. It is a substance or mixture of substances intended to be used in the manufacture of a drug (medicinal) product and in the course of production of a drug, it becomes an active ingredient of the drug product. An intermediate is a substance which is produced during the synthesis which undergoes a molecular

change or purification before it becomes an API. Contract manufacturing service is manufacturing of pharmaceutical product(s) under contract on behalf of pharmaceutical companies which may or may not include final packaging. Further, contract research services include any drug discovery support, clinical testing, new product development, pre-clinical trial management, incubation of natural products, extraction of active ingredients from natural products and supply of library of such extracted material to pharmaceutical companies etc.

6. The proposed combination falls under Section 5(a) of the Act.
7. As stated in the notice, Mitsui sells two products to Arch, one of which is used as a raw material in contract manufacturing by Arch and the other is used by Arch as a utility material in running a production line. Further, Mitsui, through one of its Indian subsidiaries i.e. Mitsui & Co. India Private Limited, buys some materials from Arch and trades it to Mitsui in Japan for resale to other companies in Japan and elsewhere. In this regard, it is observed from the documents on record that the said vertical relation between Mitsui and Arch is not of any significance.
8. It is observed from the information provided in the notice and other documents on record that while Arch is engaged in the business of manufacturing and sale of APIs, intermediates, contract manufacturing and contract research services in India and globally, Mitsui, through its subsidiary MicroBiopharm is engaged in the business of manufacturing and sale of APIs, contract manufacturing and contract research services globally but not in India. Further, Mitsui does not have any direct or indirect control in any other enterprise in India which is engaged in the business similar to that of Arch in India. It has also been submitted in the notice that, across the globe in the businesses of manufacturing and sale of APIs, intermediates, contract manufacturing and contract research services there are many other players much larger in size and scope of operations when compared to Mitsui and Arch.
9. In view of the foregoing, it is noted that Mitsui and Arch are not engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services in India. Their engagement at different stages or levels of the production chain in India, as mentioned above, is also not of any significant nature. The proposed



acquisition of further 26.71 per cent of the equity share capital of Arch by Mitsui is therefore, not likely to create any adverse competition concern.

10. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.
11. This approval is without prejudice to any other legal/statutory obligations as applicable.
12. This order shall stand revoked if, at any time, the information provided by Mitsui and Arch is found to be incorrect.
13. The Secretary is directed to communicate to Mitsui accordingly.



Certified True Copy

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21/9/12
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