

## COMPETITION COMMISSION OF INDIA

29<sup>th</sup> November, 2012

Combination Registration No. C-2012/10/87

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

1. On 26<sup>th</sup> October, 2012, 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") relating to the proposed acquisition of the shares of Telewings Communication Services Private Limited (hereinafter referred to as "Telewings") by Lakshdeep Investments and Finance Private Limited (hereinafter referred to as "Lakshdeep") (hereinafter Lakshdeep and Telewings shall collectively be referred to as "parties to the combination"). The proposed combination relates to the acquisition of 51 per cent shares in Telewings by Lakshdeep from Telenor South Asia Investment Pte Limited (hereinafter referred to as "Telenor South Asia") and Telenor South East Asia Investment Pte Limited (hereinafter referred to as "Telenor South East Asia"). The notice was filed pursuant to the execution of a Share Subscription and Shareholders' Agreement between Telenor South Asia Investment Pte Limited, Lakshdeep and Telewings on 26<sup>th</sup> October, 2012 (hereinafter referred to as "SSHA").
2. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("Combination Regulations"), vide letter dated 1<sup>st</sup> November, 2012, the parties to the combination were required to remove defects and furnish certain information. The parties to the combination filed their reply on 2<sup>nd</sup> November, 2012. Since the reply dated 2<sup>nd</sup> November, 2012 still had defects and was incomplete, vide letter dated 6<sup>th</sup> November, 2012, the parties to the combination were required to remove the defects and furnish the required information. The parties to the combination filed their reply on 7<sup>th</sup> November, 2012. However, as the said reply was also found incomplete in certain aspects, vide a further letter dated 16<sup>th</sup> November, 2012, the parties to the combination were again required to furnish the required information. The parties to the combination filed their reply on 19<sup>th</sup> November, 2012.
3. Telewings is a private limited company incorporated under the Companies Act, 1956 and is stated to be a part of the Norway based Telenor Group of Companies (hereinafter referred to as "Telenor Group"). Telenor Group provides telecommunication, data and media services in Nordic, Central & Eastern European and Asian countries. The ultimate holding company of the Telenor Group is Telenor ASA, a listed company incorporated in Norway, in which the majority shareholding is held by the Government of Norway. The Telenor Group presently operates in the telecommunications sector in India through Unitech Wireless (Tamilnadu) Private Limited (hereinafter referred to as "Uninor"), wherein it is



stated to have 67.25 per cent of the shareholding. Currently, Uninor offers telecommunication services in nine telecom circles in India. However, the telecom licences pursuant to which Uninor offers telecommunication services have already been cancelled by the Hon'ble Supreme Court of India in its decision dated 2<sup>nd</sup> February, 2012 in *Centre for Public Interest Litigation & Ors. V. Union of India & Ors.*

4. Telewings is stated to be incorporated to engage in the business of providing telecommunication and related services and for such purpose, has participated in the 1800 MHz spectrum (2G) auction held by the Department of Telecommunications (DoT), Ministry of Communication and Information Technology, Government of India between 12<sup>th</sup> and 14<sup>th</sup> November, 2012 and has been declared successful in six telecommunication circles viz. Andra Pradesh, Bihar, Gujarat, Maharastra, Uttar Pradesh (East) and Uttar Pradesh (West).
5. Lakshdeep is a private limited company incorporated under the Companies Act, 1956. It has been stated in the notice that Lakshdeep is an investment company which has traded in transferable development rights, shares and securities and has also been involved in investing and financing activities and has thus earned dividend and interest income from its investments.
6. As per the details provided in the notice, Lakshdeep would initially acquire 51 per cent shares in Telewings and ultimately hold 26 per cent shares in Telewings. It has been stated in the notice that the said proposed investment is envisaged to take place in the following four steps:
  - (a) *Step I:* Telewings will participate in the 2G spectrum auction to be conducted by the DoT from 12<sup>th</sup> November 2012 with an intention to acquire the necessary spectrum for carrying on telecommunications operations in India. At this stage, no equity will be infused by Lakshdeep in Telewings.
  - (b) *Step II:* Upon Telewings being declared successful in the 2G spectrum auction, Lakshdeep will acquire 51 per cent shares in Telewings from Telenor South Asia and Telenor South East.
  - (c) *Step III:* Once Telewings acquires the 2G spectrum and requisite licenses necessary for carrying on the business operations in India, Telewings will acquire the business of Uninor on a going concern basis.
  - (d) *Step IV:* On receiving the approval from the Foreign Investment Promotion Board (hereinafter referred to as "FIPB"), Department of Economic Affairs, Ministry of finance, Government of India, the Telenor Group would increase its shareholding in Telewings to 74 per cent. Accordingly, the ultimate holding of Telenor South Asia



in Telewings would be 74 per cent whereas Lakshdeep will hold 26 per cent in Telewings.

7. It has been stated in the notice that the proposed investment has been planned in several tranches and accordingly the notice has been filed under sub-regulation (4) of Regulation 9 of the Combination Regulations. However, on a specific query as to the steps/transactions of the proposed investment for which the approval of the Commission is sought, it has been stated by the parties to the combination that the transaction for which the approval of the Commission has been sought is for Step II i.e. with respect to the acquisition of 51 per cent stake by Lakshdeep in Telewings. However, it has been stated by the parties that Step III and Step IV of the proposed investment, as stated above, are intra-group asset transfer and acquisition of the shares and as per Regulation 4 read with Item 8 of Schedule I to the Combination Regulations, notice under sub-section (2) of Section 6 for such intra-group acquisitions need not normally be filed with the Commission.
8. Having considered the submission of the parties to the combination on the application of Item 8 of Schedule I to the Combination Regulations, it is noted that considering that Lakshdeep would hold shares in Telewings to the extent of 51 per cent, the proposed transfer of business from Uninor to Telewings and the proposed increase in stake of Telenor Group in Telewings from 49 per cent to 74 per cent cannot be considered as intra-group asset transfer and acquisition of shares and therefore, Item 8 of Schedule I to the Combination Regulations is not applicable to *Step III* and *Step IV* as mentioned in para 6 above.
9. As per the information provided by the parties to the combination, Telewings is a newly incorporated entity and does not have any turnover. However, since the business/assets of Uninor are proposed to be transferred to Telewings, in terms of sub-regulation (9) of Regulation 5 of the Combination Regulations, the value of assets and turnover of Uninor is attributed to Telewings. Accordingly, the proposed acquisition of 51 per cent of the shares in Telewings by Lakshdeep is covered under Section 5 (a) of the Act.
10. It is observed that the businesses of Lakshdeep and Telewings are not similar or substitutable or identical to each other and also not related to each other at different level of production process. In view of the foregoing, the proposed acquisition of 51 per cent of the shares in Telewings by Lakshdeep on standalone basis is not likely to give rise to any adverse competition concern in India.
11. 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 acquisition of 51 per cent of the shares in Telewings by Lakshdeep after considering the relevant factors mentioned in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the proposed acquisition of 51 per cent of the shares in Telewings by Lakshdeep is not



likely to have any appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed acquisition of 51 per cent of the shares in Telewings by Lakshdeep under sub-section (1) of Section 31 of the Act.

12. This approval is without prejudice to any other legal/statutory obligations as applicable.
13. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
14. The Secretary is directed to communicate to the parties to the combination accordingly.

Certified True Copy



*Bhupendra Singh*  
06 December, 2012

**BHUPENDRA SINGH**  
Deputy Director (FA)  
Competition Commission of India  
Government of India  
New Delhi