

## COMPETITION COMMISSION OF INDIA

4<sup>th</sup> April, 2013

Combination Registration No. C-2013/03/114

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

1. On 15<sup>th</sup> March, 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 Berkshire Hathaway Inc. (hereinafter referred to as the “**Berkshire**”) and 3G Special Situations Fund III L.P. (hereinafter referred to as the “**3G Fund III**”) (hereinafter Berkshire and 3G Fund III shall collectively be referred to as the “**Acquirers**”).
2. As per the details provided in the notice, the proposed combination comprises a series of inter-dependent, inter-related steps ultimately resulting in an indirect acquisition of joint control over H. J. Heinz Company (hereinafter referred to as “**Heinz**”) by the Acquirers. The notice was filed pursuant to the execution of an Agreement and Plan of Merger on 13<sup>th</sup> February, 2013, as amended by the Amendment Agreement and the letter of amendment, both dated 04<sup>th</sup> March, 2013.
3. In terms of Regulation 14 of Combinations, vide letter dated 21<sup>st</sup> March, 2013, the Acquirers were required to remove certain defects and furnish information by 28<sup>th</sup> March, 2013 regarding the notice. The Acquirers filed their response on 22<sup>nd</sup> March, 2013.
4. Berkshire is a USA based listed company, controlling subsidiaries that invest in a number of diverse business activities including insurance and reinsurance, utilities and energy, finance, manufacturing, services and retailing. As per the details provided in the notice, Berkshire has indirect shareholding in thirteen companies that have presence in India which are engaged in diverse business activities including insurance, gear drives, lubricants, electric wires and cables, garments and publishing.
5. 3G Fund III, a partnership organized under the laws of the Cayman Islands, is an investment fund managed by 3G Capital Partners Ltd. (“**3G Capital**”). 3G Capital is a USA based global investment firm, whose stated strategy is to invest in opportunities that take position for profitable and long-term growth with emphasis on maximizing the potential of brands and business. It has been stated by the Acquirers that 3G Capital and 3G Fund III have no investments in India.
6. Heinz is a USA based listed company, engaged in the business of marketing and producing healthy, convenient and affordable foods with specialization in ketchup, condiments, sauces, meals, frozen food, soups, snacks, nutrition and other products across the world. It has been stated in the notice that Heinz acts through its subsidiary Heinz

India Private Limited (“**Heinz India**”) in India which predominantly focuses on manufacture and sale of ketchup, chilli sauce, health and energy drink powder, prickly heat powder and edible oil. These products are sold under different trade names including Complian, Heinz, Glucon-D, Nycil and Sampriti.

7. As per the information given in the notice and other documents on record, it is observed that neither of the Acquirers have any presence in the food sector in India. Accordingly, the products/services of the Acquirers and Heinz do not exhibit any horizontal overlap in India. The products/services of the Acquirers and Heinz also do not have any vertical relationship in India. Therefore, the proposed combination is not likely to give rise to any adverse competition concern in India.
8. 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 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 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.
9. This approval is without prejudice to any other legal/statutory obligations as applicable.
10. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
11. The Secretary is directed to communicate to the Acquirers accordingly.