सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/05/175)

30.07.2014

Notice u/s 6 (2) of the Competition Act, 2002 ("Act") given by SCM Soilfert Limited

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

1. On 22nd May 2014, the Competition Commission of India ("**Commission**") received a notice under sub-section (2) of Section 6 of the Act, given by SCM Soilfert Limited ("**SCM**") pursuant to a public announcement ("**PA**") dated 23rd April 2014, issued in terms of the relevant provisions of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 ("**Takeover Regulations"**) by SCM, as acquirer, and Deepak Fertilizers and Petrochemicals Corporation Limited ("**DFPCL**") acting as person acting in concert. Hereinafter SCM and DFPCL are collectively referred to as the "**Acquirers**".

2. As per information provided in the notice, the proposed combination relates to acquisition of shares of Mangalore Chemicals and Fertilizers Limited ("**MCFL**") by SCM through:

   (i) Acquisition of 0.8 percent (approx.) of the equity share capital of MFCL through open market transactions ("**Market Purchase**").

   (ii) Acquisition of upto 26 percent of the equity share capital of MCFL through open offer as per the relevant provisions of the Takeover Regulations, the PA for which was issued on 23rd April 2014 ("**Open Offer**").

   The acquisition of shares through Market Purchase and Open Offer together constitute the "**Proposed Combination**".

   Hereinafter, the Acquirers and MCFL are collectively referred to as the "**Parties**".

3. DFPCL is a listed company incorporated in India under the Companies Act, 1956. It is, *inter alia*, engaged in the production of industrial chemicals and fertilisers. SCM is a

subsidiary of DFPCL and is currently not engaged in the manufacture of any products. As stated in the notice, it has recently started trading primarily in specialty fertilisers.

4. MCFL is also a listed company incorporated in India under the Companies Act, 1956. MCFL is, *inter alia*, engaged in the production of fertilisers, plant protection chemicals and industrial chemicals.

5. The Proposed Combination falls under Section 5(a) of the Act.

6. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"), vide letter dated 30th May 2014, the Acquirers were required to remove certain defects and provide information/document(s). The Acquirers filed their reply on 10th June 2014. Further, in terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 16th June 2014, the Acquirers were asked to furnish additional information. The Acquirers filed their reply on 1st July 2014, after seeking extension. Vide letter dated 3rd July 2014, the Acquirers were again required to remove defects and provide additional information. The Acquirers filed their response on 11th July 2014. As response dated 11th July filed by the Acquirers had defects, vide letter dated 14th July 2014, the Acquirers were required to remove defects and provide complete information. The Acquirers filed their response on 18th July 2014, after seeking extension. In terms of sub-regulation (2) of Regulations 19 and sub-regulation (4) of Regulation 5 of the Combination Regulations, vide letter dated 24th July 2014, the Acquirers were again required to provide certain additional information to which the response was filed on 28th July 2014.

7. On the basis of the information provided by the Acquirers, it is observed that in the chemicals segment, the product portfolios of MCFL and DFPCL are different as the chemical products of MCFL are not substitutable with those of DFPCL and vice versa. The overlap between the Parties is restricted to fertiliser segment. However, within the fertiliser segment, DFPCL does not manufacture urea, whereas MCFL's share in the market for urea is stated to be minimal. MCFL manufactures plant protection chemicals whereas DFPCL does not. In view of the foregoing, the assessment of the

Proposed Combination is restricted to the overlapping products in the fertiliser segment.

8. As stated in the notice, in the fertiliser segment, DFPCL manufactures Nitro Phosphate Fertilizer and Bentonite Sulphur and is involved in trading of a number of fertilisers like DAP, MOP, Ammonium Sulphate, SSP, Potassium Nitrate, Sulphate of Potash, Zinc Sulphate Mono-hydrate, Calcium Nitrate, MAP, MKP, Magnesium Sulphate and Water Soluble NPKs. As per MCFL's Annual Report for the year 2012-13, MCFL manufactures urea, DAP and complex fertilizers. Further, MCFL is also involved in the trading of fertilisers like MOP, SSP, Potassium Nitrate, Potassium Sulphate, Zinc Sulphate, Calcium Nitrate, MAP, MKP, Magnesium Sulphate, Water soluble NPKs and Bentonite Sulphate. It is also noted that as per the Annual Report 2012-13 of the Department of Fertilisers, India is fully dependent on imports in Potassic sector and to the extent of 90% in Phosphatic sector in the form of either finished products or their raw material(s).

9. The fertiliser sector in India has traditionally been a regulated industry due to its importance to India's large agricultural sector. The Fertiliser (Control) Order, 1985 issued by the Government of India, sets out the regulatory framework for the manufacture, import, sale, pricing, and quality control of fertilisers in India. The mandate of the Department of Fertilisers ("**DoF**"), Ministry of Chemicals & Fertilisers, Government of India, is to ensure adequate and timely availability of fertilisers at affordable prices for maximizing agricultural production in the country. The main activities of the DoF in relation to the fertiliser industry pertain to sectoral planning, development and regulation of the industry, as well as monitoring of pricing and distribution of the output.

10. As per the Annual Report for the year 2012-13 published by the DoF, imports play a major role in the fertiliser market in India, especially in the Potassic and Phosphatic sector in the form of either finished products or their raw material(s). Indian importers can import all the subsidized P&K fertilisers including complex fertilisers under the Open General Licence ("**OGL**"). Further, subsidy is provided to non-urea fertilisers on the basis of their nutrient content under the Nutrient Based Subsidy scheme (NBS). Although the manufacturers and traders of fertilisers, excluding urea, are free to sell

their fertilisers anywhere in India, however, the DoF regulates the movement of these fertilisers to bridge the supplies in underserved areas.

11. The fertiliser sector can be broadly delineated on the basis of nutrients (e.g. Nitrogen, Phosphorus, Potassium, Sulphur, Calcium, Magnesium, Zinc, etc.) or specific products (e.g. Urea, DAP, MOP, SSP, etc.). The nutrients can be further divided into primary nutrients (e.g. Nitrogen, Phosphorus), secondary nutrients (e.g. Sulphur) and micronutrients (e.g. Calcium, Magnesium). Generally, plants require primary nutrients the most, followed by secondary nutrients and micronutrients. Among fertilisers, urea is considered to be the most used fertiliser in India.

12. On the basis of the information furnished in the notice, it is observed that apart from a few fertilisers which are manufactured by the Parties, they are largely involved in the trading of fertilisers. Further, it is also noted that with respect to almost all their overlapping fertiliser products, the Parties' presence is through trading only. Most of these overlapping products also fall under the OGL, and therefore, any person with requisite approvals can import them into India. Further, it is observed that MCFL is primarily active in Karnataka, followed by Tamil Nadu, Andhra Pradesh and Maharashtra, whereas DFPCL is mainly active in Maharashtra and Gujarat. Further, the composite market share of the Parties in both primary nutrients (i.e., Nitrogen, Phosphorus and Potassium) and the overlapping bulk fertilisers (i.e. urea, DAP, MOP and NPK) is less than five percent and therefore minimal. In view of the foregoing and also considering that most of the other overlapping fertiliser products are also under the OGL and there is presence of other competitors like Coromondal International Ltd., DCM Shriram Consolidated Ltd., Nagarjuna Fertilisers Limited, Zuari Agro Chemicals Ltd., Chambal Fertilisers and Chemicals Limited, etc., in the market; the Proposed Combination is not likely to adversely affect competition in India.

13. 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 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 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. This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.

14. This approval is without prejudice to any other legal/statutory obligations as applicable.

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

16. The Secretary is directed to communicate to the Acquirers accordingly.

(Ashok Chawla)
Chairperson

(M. L. Tayal)
Member

(S.L. Bunker)
Member

(Sudhir Mital)
Member

(Augustine Peter)
Member