



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/09/309)

20th October 2015

Notice under sub-section (2) of Section 6 of the Competition Act, 2002 filed by Westminster Bidco S.a.r.l.

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Mr. G. P. Mittal
Member

Legal Representative of the parties: AZB & Partners

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

1. On 14th September 2015, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) filed by Westminster Bidco S.a.r.l. (“**Acquirer**” or “**Westminster**”), pursuant to the execution of Investment and Share Purchase Agreement between SoftwareONE Holding AG (“**Target**” or “**SWO**”), founders of the target, namely, Mr. Daniel von Stockar, Mr. Patrick Winter, B. Curti Holding AG and Mr. René Gilli (“**Founders**”) and Westminster on 13th August 2015 (“**ISPA**”).



2. As submitted by the Acquirer, the proposed combination pertains to acquisition of approximately 25% of the equity share capital of SWO by Westminster by subscribing to new shares, to be issued by the Target and purchase of existing shares by Westminster from the Founders. Further, based on the submission of the Acquirer, it is noted that Westminster is acquiring joint control of the Target on account of affirmative voting rights (“AVRs”) acquired by it over certain commercial decisions of SWO including, appointment of management, appointment and removal of the chief executive officer, the proposed annual budget and SWO’s long term business plan.
3. As stated by the Acquirer, Westminster, incorporated in Luxembourg, is a newly incorporated special purpose vehicle and is entirely and indirectly held by investment funds advised by KKR & Co. L.P., (“KKR” or “Acquirer Group”). Further, as stated by the Acquirer, KKR is a limited partnership registered under the laws of the State of Delaware, USA. It is a global asset management firm. KKR’s affiliated private equity funds invest in portfolio companies in various sectors.
4. As submitted by the Acquirer, there are certain portfolio companies that are controlled by KKR, these includes, (i) Northgate Information Solutions (“Northgate”), which, *inter alia*, provides specialist software, outsourcing and information technology services to the local government, education and public safety sectors; (ii) First Data Corporation (“First Data”) which, *inter alia*, provides electronic commerce and mobile payment solutions to businesses worldwide (including India). KKR also has a non-controlling investment in SunGuard Data Systems, Inc. (“SunGuard”) which has operations in the IT services domain in India. Northgate, FirstData and SunGuard are collectively referred to as “Portfolio Companies”.
5. As stated by the Acquirer, SWO, having its registered office in Switzerland, is the ultimate parent entity of the SoftwareONE group. SWO is a software licensing company that helps customers to optimise the technical setup of their software architecture and their software sourcing (process and commercial terms). SWO manages all aspects of its customers’ software portfolio, with the objective of reducing complexity, costs and risks.



6. The Target has one subsidiary in India, SoftwareONE India Pvt. Ltd. (“**SoftwareONE India**”). SoftwareONE India provides services similar to those provided by SWO globally. IT services provided by SoftwareONE includes, *inter alia*, licensing of infrastructure software necessary to operate and control computer hardware, and IT support for hardware and business services, including advisory, implementation, IT outsourcing and BPO consulting and development and integration services.
7. With respect to the horizontal overlaps, as aforementioned, the Acquirer is a newly incorporated entity and has no commercial operations in India whereas the Target provides IT services in India. Accordingly, at present, there is no direct horizontal overlap between the Acquirer and the Target. However, KKR, through its Portfolio Companies, and the Target, through its subsidiary and associates, are *inter alia* engaged in providing IT services in India. Further, given that KKR has controlling stake in FirstData and Northgate, respectively, there is an indirect horizontal overlap between the Acquirer and the Target. In this regard, it has been provided that the market share of each of the entities, namely, SWO, Northgate and FirstData in the business of IT Services in India is insignificant. Further, the competitors of the parties include Tata Consultancy Services, IBM, Wipro Limited, Deloitte Consulting India Private Limited etc. which would provide competitive constraint to the parties to the combination.
8. With respect to the vertical relationship between the parties, it has been submitted that the parties to the combination are not engaged in any activity relating to the production, supply, distribution, storage, sale and service or trade in products or provision of services which is at different stages or levels of the production chain. Further, based on the submission it is observed that there are no vertical relationships between SWO and any of the Portfolio Companies of KKR which have commercial operations in India.
9. Considering facts on record, the details provided in the notice and assessment of the proposed combination on the basis of factors stated 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,



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the Commission approves the proposed combination under sub-section (1) of Section 31 of the Act.

10. This Order shall stand revoked if, at any time, information provided by the Acquirer is found to be incorrect.
11. The Secretary is directed to communicate to the Acquirer accordingly.