



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2019/01/633)

21.02.2019

Notice under Section 6 (2) of the Competition Act, 2002 filed by SVF Doorbell (Cayman) Limited.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U.C. Nahta
Member

Ms. Sangeeta Verma
Member

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

1. On 16.01.2019, the Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”), filed by SVF Doorbell (Cayman) Limited (**SVFD/Acquirer**). As per the information given in the notice, the proposed combination relates to the acquisition, by SVFD, of approximately up to 37.87% of shareholding of the total share capital in Delhivery Private Limited (**DPL**) on a fully diluted basis (**Proposed Combination**). The Proposed Combination involves two steps: (a) subscription, by SVFD, to compulsorily convertible preference shares amounting to 22.44% of the total share capital of DPL in terms of a Share Subscription Agreement dated 20.12.2018 (**SSA**) (**Step 1**); and (b) on completion of Step 1, a potential subsequent acquisition of additional equity securities, by SVFD, from the existing security holders of DPL



(**Selling Shareholders**) at a price and on such terms to be agreed between SVFD and the Selling Shareholders (**Step 2**).

2. For the purpose of the Proposed Combination, the following documents have been executed:
 - a. Memorandum of Understanding dated 15.10.2018 executed between a Softbank Group entity and DPL (**MoU**); and
 - b. Share Subscription Agreement (**SSA**) and Shareholders Agreement (**SHA**) both dated 20.12.2018 executed *inter alia* between DPL and SVFD.
3. It is noted that the Proposed Combination has been contemplated along with acquisitions of shares in DPL by CA Swift Investments (Comb. Case No. C-2019/01/634) and Deli CMF Pte. Limited (Comb. Case No. C-2019/02/640). All these acquisitions are proposed under a common and same agreement *i.e.* SSA.
4. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**) Combination Regulations, *vide* letter dated 30.01.2019 certain information was sought and response to the same was received on 01.02.2019.
5. Subsequently, the Acquirer, *vide* its letter dated 20.02.2019, submitted an intimation of change under Regulation 16 of the Combination Regulations. *Vide* the said letter, it was informed that DPL is proposing to enter into an Asset Transfer Agreement with Aramex India Private Limited (**Aramex**) which is involved in the business of post and warehousing/ storage in India (and thus active in the market for provision of logistics services in India). It has also been submitted that by way of the said arrangement, DPL is proposing to (a) acquire certain assets and employees of Aramex; (b) acquire Aramex's pre-identified existing customer contracts on a best effort basis; and (c) enter into an exclusive commercial partnership with Aramex for



providing services, pick-up and deliveries relating to international shipments originated by Aramex (with DPL only being the pick up or delivery partner in India). Based on the information provided by the Acquirer, it is observed that the said arrangement with Aramax is not likely to change the competition assessment as the increment in market share of DPL would be miniscule. Therefore, the Commission took the submission on record.

6. With respect to Step – 2 of the Proposed Combination, it is noted that Section 6(2) of the Act states that parties to a combination shall give notice to the Commission, disclosing details of the proposed combination, within 30 days of execution of any agreement or *other document* for acquisition. In furtherance of Section 6(2) of the Act, Regulation 5(8) Combination Regulations states that “*other document*” as per Section 6(2) of the Act shall mean *any binding document, by whatever name called, conveying an agreement or decision to acquire control, shares, voting rights or assets*. In view of the foregoing, the Commission noted that the parties to the combination have executed the SSA only in relation to Step 1 of the Proposed Combination. However, no agreement or any other binding document has been signed between the relevant parties in relation to Step 2 of the Proposed Combination, other than the MoU.
7. The Commission, therefore noted that although interconnected, the relevant parties are yet to finalize the terms of the said transaction and given the facts and circumstances of the case, the Commission directed SVFD to re-file a fresh combination notice with respect to Step-2 of the Proposed Combination upon execution of an agreement/binding document, subject to applicable laws.
8. SVFD is stated to be company established to hold the proposed investment in DPL on behalf of SoftBank Vision Fund L.P. (SVF), a venture capital investment, focused on making long-term financial investments in companies. Both these entities are stated to be part of the SoftBank Group (SB Group).



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9. DPL is stated to be engaged in the provision of third-party logistics (**3PL**) services in India. As part of its logistics services, DPL provides transportation, warehousing, freight services, *etc.* DPL through Delhivery USA LLC, its wholly owned subsidiary, also provides last mile logistics solution/deliveries of cross border shipments from India to the United States of America through United States Postal Service.
10. DPL's logistics services are provided to third party enterprises or persons who operate across different business models and are present across the value chain. As per the information given in the notice, DPL has a minimal market share of [0-5]% in the overall logistics market and a share of [0-5]% for provision of 3PL services.
11. It has been stated in the notice that SVFD is a holding company and is not engaged in the provision of any services or sale of goods. Further, SVF is also not engaged in the provision of any service or sale of goods, but rather is a financial investor, which makes long-term investments in companies in order to produce financial returns for its investors. Moreover, it is stated that none of the subsidiaries, affiliates and portfolio companies of the SB Group in India, including any entities in which the SB Group has non-controlling investments or special rights have actual or potential overlaps with DPL.
12. Further, with respect to potential vertical overlaps, it is submitted that certain SB Indian Portfolio Companies are involved in the provision of B2C, B2B sales, supply of landline phones and IT peripherals in India or provision of vehicles on contractual basis in India, which may use logistics services, including 3PL services to deliver their products. However, considering the minimal presence of DPL in logistics market as well as in market for 3PL services, Step-1 of the Proposed Combination is not likely to result in foreclosure. It is further observed that there are several new players that have entered the market for logistics services, such as, E-Kart, Xpressbees, Gati, *etc.*



13. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act 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 Step-1 of the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.
14. The Commission also observes that the non-compete covenant, to the extent it relates to the duration and scope, is beyond what is necessary for the implementation of the Step 1 of the Proposed Combination and therefore, is not ancillary to the Step 1 of the Proposed Combination in terms of “*Guidance on Non-Compete Restrictions*” as available on the website of the Commission.
15. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
16. The information provided by the Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
17. The Secretary is directed to communicate to the Acquirer accordingly.