



09.05.2018

Notice u/s 6 (2) of the Competition Act, 2002 given by
Beige Limited and Link Investment Trust

CORAM:

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Legal Representatives of the parties: M/s Shardul Amarchand Mangaldas & Co

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

1. On 17.04.2018, the Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”) filed by Beige Limited (“**Beige**”) and Link Investment Trust (“**Link**”) (Hereinafter Biege and Link are together referred to as the “**Acquirers**”) relating to the acquisition of about 10 percent of the equity share capital (on a fully diluted basis) of Mankind Pharma Limited (“**Mankind**”) by the Acquirers (“**Proposed Combination**”). The Acquirers also submitted certain additional information on 24.04.2018, 27.04.2018, 01.05.2018 and 04.05.2018.
2. Beige is an investment company registered in Mauritius owned by Maize Investments Limited (“**Maize**”) and indirectly controlled by ChrysCapital VII, LLC. The ChrysCapital



funds are incorporated in Mauritius and are focused on making investments in sectors such as business services, consumer goods & services, financial services, healthcare and pharmaceuticals.

3. Link, a private trust registered in India and is engaged in making investments.
4. Mankind, a public limited company incorporated in India, is engaged in the business of manufacturing and trading of pharmaceutical and healthcare products.
5. The Proposed Combination will be effected pursuant to a Share Purchase Agreement (“SPA”) dated 30.03.2018 executed by Mankind, Sellers (as defined in the SPA), Beige and Link. In addition, the Acquirers, Mankind, the Promoters of Mankind and the existing investors of Mankind (Cairnhill CIPEF Limited and Cairnhill CPGE Limited) have entered into an Amended and Re-stated Shareholder's Agreement (“New SHA”) dated 06.04.2018.
6. Mankind is also proposing to acquire control over certain entities *viz.*, Penta Latex LLP; J.K. Printpack; N.S. Industries; A.S. Packers; and Pharma Force Labs (“Identified Entities”). However, all the products manufactured by the Identified Entities are essentially used for captive consumption by Mankind and thus these entities are not involved in any market facing activities. Also, there are several co-investors that propose to co-invest in Maize. As submitted, all the co-investors will only be passive financial investors with no control rights or board seats in relation to Maize/Beige.
7. There are no direct overlaps between the activities of the Acquirers and Mankind. However, the Acquirers have direct/indirect shareholdings in enterprises that are engaged in pharmaceuticals and healthcare sector in India. Chryscapital holds less than 10 percent of the share capital in each of Curatio Healthcare Private Limited (“Curatio”), Torrent Pharmaceuticals Limited (“Torrent”), Intas Pharmaceuticals Limited (“Intas”) and Ipca Laboratories Limited (“Ipca”) and less than 20 percent of the share capital of GVK Biosciences Private Limited (“GVK”). Link holds less than 10 percent of the share capital in each of Curatio and Intas. Considering the extent of shareholding and rights available to



Chryscapital/Link, only Curatio and GVK are considered relevant for identification of horizontal overlaps/vertical relationships for assessment of the Proposed Combination.

8. The Commission, in earlier cases, has defined the relevant product market at the molecule level *i.e.*, considering medicines/formulations based on the same active pharmaceutical ingredient as constituting separate relevant product market. Further, the relevant geographic market has been considered to be the territory of India. The same approach has been followed for examination of the Proposed Combination. It is observed that there are horizontal overlaps between the products of Curatio and Mankind in various molecules. The relevant market of formulations based on each of these molecules was examined for the purpose of competition analysis of the Proposed Combination. The activities of Mankind and Curatio overlap in 7 formulations *viz.*, (i) Biotin and Comb; (ii) Ketoconazole; (iii) Emollients – Protectives; (iv) Aminexil + Minoxidil; (v) Anti acne soaps; (vi) Other dermatological preparations; and (vii) Lidocaine + Prilocaine.

Biotin and Comb (A11J3)

9. In this relevant market, the market shares of Curatio is [0-5] percent and Mankind is [15- 20] percent. The combined market share of the Parties is [20-25] per cent. The combined market shares and incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Abbott Healthcare and Ipca which have a market share of [15-20] percent each, Hegde and Hegde, Intas, Zydus Cadila and Cipla, all of which have a market share of [5-10] percent each. In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Ketoconazole (D01A6)

10. In this relevant market, Curatio and Mankind each have a market share of [0-5] percent. The combined market share of the Parties is [0-5] per cent. The combined market shares and



incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Hegde and Hegde [50-55] percent, Med Manor Organics [20-25] percent *etc.* In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Emollients-Protectives (D02A1)

11. In this relevant market, Curatio and Mankind each have a market share of [0- 5] per cent. The combined market share of the Parties is [5-10] per cent. The combined market shares and incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Hegde and Hegde which has a market share of [10-15] percent, Himalaya Drug Company, Galderma India Private Limited, Dr. Reddys Laboratories and Sun Pharma Laboratories Limited, all of which have a market share of [5-10] percent each. In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Aminexil + Minoxidil (D02E2)

12. In this relevant market, Curatio and Mankind each have a market share of [5-10] percent. The combined market share of the Parties is [10-15] per cent. The combined market shares and incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Glenmark [50-55] percent, Wockhardt [10-15] percent *etc.* In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Anti-acne Soaps (D10AY)

13. In this relevant market, Curatio and Mankind each have a market share of [0-5] percent. The combined market share of the Parties is [0-5] per cent. The combined market shares and



incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Hegde and Hegde [30-35] percent, Mark Lab [15-20] percent *etc.* In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Other Dermatological Preparations (D11A9)

14. In this relevant market, the market shares of Curatio is [5-10] percent and Mankind is [0-5] percent. The combined market share of the Parties is [5-10] per cent. The combined market shares and incremental market share is insignificant to cause any change in competition dynamics. Further, the market is characterized by presence of significant players, *i.e.*, Himalaya Drug Company [10-15] percent, Johnson & Johnson [5-10] percent *etc.* In view of the above, the Proposed Combination is not likely to have an appreciable adverse effect on competition in this relevant market.

Lidocaine + Prilocaine (N01B3)

15. In this relevant market, the market shares of Curatio is [25-30] percent and Mankind is [30-35] percent. The combined market share of the Parties is [60-65] per cent. The combined market shares and incremental market share is significant. The market is characterized by presence of Neon [25-30] percent, Torrent [5-10] percent and Cadila [0-5] percent. The Commission observed that Mankind's product captured by IMS data is "*Manforce/Manforce Stay Long Gel*" and Curatio's product captured by IMS Data is "*Toplap Gel*". The Commission observed that while the products of Mankind and Curatio in this sub-segment contain Lidocaine + Prilocaine, these are different from each other from consumer and marketing perspective. While Curatio's Toplap Gel is a local anaesthetic drug used for infiltration anaesthesia in dentistry or on the skin to reduce pain or discomfort caused by skin irritations such as sunburn; insect bites; minor cuts; scratches *etc.*, Mankind's "*Manforce Stay Long Gel*" is essentially used to enhance sexual wellness and sexual performance. It is primarily used for preventing premature ejaculation. Further, while Toplap Gel is usually a



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prescription product, Manforce Stay Long Gel is available for an over the counter (“OTC”) purchase. In this regard, the Commission also noted the IMS Health Prescription’s Data for Toplap Gel as per which it has been prescribed for conditions primarily relating to dermatology or cardiology. Thus, considering the differences in indications for use and prescription/OTC aspect, the two products do not seem to be closely competing with each other.

16. Further, there are no significant vertical relationships between the Acquirers (and their portfolio companies) and Mankind.
17. Based on the aforesaid, the Proposed Combination is not likely to cause any significant change in competition dynamics in any market that could be delineated for the purpose of assessment of the Proposed Combination.
18. Considering the facts on record and the details provided in the notice given under Section 6(2) of the Act and assessment of the Proposed Combination on the basis of factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under Section 31(1) of the Act.
19. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
20. The information provided by the Acquirers is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
21. The Secretary is directed to communicate to the Acquirers accordingly.