



सत्यमेव जयते



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2018/07/590)

**11<sup>th</sup> October, 2018**

**Notice under Section 6(2) of the Competition Act, 2002 filed by  
BCPE Max Dutch Bidco B.V.**

**CORAM:**

Mr. Sudhir Mital  
Chairperson

Mr. Augustine Peter  
Member

Mr. U.C. Nahta  
Member

**Legal Representative:** Shardul Amarchand Mangaldas & Co.

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

1. On 25<sup>th</sup> July, 2018, the Competition Commission of India (**Commission**) received a notice filed by BCPE Max Dutch Bidco B.V. (**BCPE /Acquirer**) under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**). The Proposed Combination envisages acquisition of 100 percent equity share capital and sole control of DSM Sinochem Pharmaceuticals Pte. Ltd. (**DSM Singapore/Target 1**) and Gist-Brocades International B.V. (**Gist/Target 2**) from DSM Sinochem Pharmaceuticals Limited (**DSM HK/Seller**) by BCPE (Hereinafter, BCPE, DSM Singapore and Gist are collectively referred to as '**Parties**').
2. The notice was filed in pursuance of Share Purchase Agreement (**SPA**) executed *inter alia* between BCPE, DSM HK, Koninklijke DSM N.V. (**Koninklijke**) and Greatpart Pharmaceutical Company Limited (**Greatpart**) (Hereinafter, Koninklijke and Greatpart have been collectively referred to as '**Seller Shareholders**').



3. 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 8<sup>th</sup> August, 2018, certain information and clarifications were sought from the Acquirer. The response was filed by the Acquirer on 19<sup>th</sup> September, 2018 after seeking extension of time.
4. BCPE, a company incorporated in Netherlands, is stated to be indirectly controlled by Bain Capital Europe Fund IV, L.P. which is ultimately managed by Bain Capital Investors, LLC (**Bain Capital**). As per the information provided, BCPE presently is not undertaking any business activity in India. Bain Capital is a private equity investment firm that invests, through its family of funds, in companies across many industries, and has financial investment in the pharmaceuticals and healthcare sector in India.
5. DSM Singapore, a private limited company incorporated in Singapore, is a wholly owned subsidiary of DSM HK. DSM Singapore is, *inter alia*, engaged in providing management, corporate, administration financial and other services to its group companies. Presently, DSM Singapore does not have any investment (directly or indirectly) in any entity that has business presence in India.
6. Gist, a private limited company incorporated in Netherlands, is also a wholly owned subsidiary of DSM HK. It is not directly engaged in any business activity in India. Gist, through its wholly owned subsidiary, DSM Sinochem Pharmaceuticals India Private Limited (**DSM India**), is *inter alia* engaged in the manufacture and supply of Active Pharmaceutical Ingredients (**APIs**) used in the manufacture of Finished Dosage Products (**FDPs**). DSM India also has a 50:50 joint venture (**JV**) in India with Hindustan Antibiotics Limited, namely Hindustan MAX GB Limited India. However, it is submitted by the Parties that this JV is inactive since 2002-03 and hence is not relevant for the purpose of competition assessment.



7. DSM HK is stated to be a 50:50 JV between the Seller Shareholders. Koninklijke, the parent company of the DSM Group (which includes subsidiaries of Gist and DSM Singapore), is based in Netherlands. Greatpart is ultimately held by Sinochem Group Co. Ltd. which is headquartered in Beijing, China. As per the information given, both the Seller Shareholders are independent of each other and do not form part of the same group.
8. Max JVCo (BC) B.V. (**JVCo**) is a private limited company incorporated in Netherlands and is an indirect parent of BCPE. After the completion of the Proposed Combination, it is stated that the Seller Shareholders will have less than one percent shareholding in the JVCo without any control or governance rights.
9. Bain Capital is stated to have 13 percent minority shareholding in Emcure Pharmaceuticals Private Limited (**Emcure**), which is engaged in the business of manufacture/sale of FDPs in India and also manufactures active pharmaceutical ingredients APIs for captive consumption. Emcure also has a subsidiary in India, which purchased negligible quantities of an API from DSM India. It is stated by the Parties that Bain Capital does not have any direct or indirect shareholding and/or control, (including Emcure) which are engaged in activities of similar/ identical/ substitutable products or provisions of similar / identical / substitutable services in which targets are involved in India. It is, thus, observed that there is no horizontal overlap between the Parties in India.
10. Further, as stated above, Emcure (including its subsidiaries) is primarily active in FDPs whereas, DSM India is active in manufacture and sale of APIs, which are the primary inputs in the manufacture of FDPs. Thus, the Commission has analysed the possibility of any vertical foreclosure resulting from the Proposed Combination. In this regard, it is noted that that there are four APIs of DSM India which have potential usage for Emcure's FDPs business. Of these four APIs, DSM India commands significant market share in the range of [40-45] percent in one API namely Amoxicillin Trihydrate (AT). This API may be used as an input for manufacturing two FDPs sold by Emcure in India.



It is noted that post combination, while the Parties may have the ability to foreclose the upstream market *i.e.* the market for sale of Amoxicillin Trihydrate API due to significant market share; however, they may not have the incentive to do so due to insignificant market shares in each of the downstream market *i.e.* market(s) for sale of two FDPs based on Amoxicillin Trihydrate API. Accordingly, the Proposed Combination is not likely to result in input foreclosure for other competitors in the downstream market.

11. 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 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. This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.
12. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
13. The information provided by the Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
14. The Secretary is directed to communicate to the Acquirer accordingly.