COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2020/11/788)

30th December 2020

Notice under Section 6(2) of the Competition Act, 2002 jointly given by TPG Growth V SF Markets Pte. Limited and Korea Investment Corporation

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

<u>Order under Section 31(1) of the Competition Act, 2002</u>

1. On 18th November 2020, the Competition Commission of India ("**Commission**") received a Notice under Section 6(2) of the Competition Act, 2002 ("**Act**"), jointly given by TPG Growth V SF Markets Pte. Limited ("**TPG**") and Korea Investment Corporation ("**KIC**") for acquisition of certain equity shareholding in API Holdings Private Limited ("**API/Target**") [Hereinafter, TPG and KIC are collectively referred to as "**Acquirers**" and Acquirers and API are collectively referred to as "**Parties**"]. The Notice was filed pursuant to the execution of binding term sheet ("**BTS**") on 4th October 2020, *inter alios*, between TPG and API.

2. As per the Notice, TPG envisaged to acquire 7% (approximately) shareholding on a fully diluted basis of the Target, by way of a combination of both primary and secondary acquisitions.

3. TPG *vide* communication dated 8th December 2020 submitted "Intimation of change in transaction" under Regulation 16 of the Competition Commission of India (Procedure in Regard to the transaction of Business relating to Combinations) Regulations, 2011 ("**Combination Regulations**") as per which the Proposed Combination has been contemplated as an acquisition by TPG of 8% (approximately) equity shareholding (on a fully diluted basis) of API, by way of primary and secondary acquisitions. Further, it was submitted that TPG would now be jointly funded by TPG Global, LLC and its affiliates ("**TPG Global**") and KIC. KIC will be acquiring certain shareholding in TPG Growth V Accord II, Limited Partnership, which will be funding TPG. It is submitted that KIC will be merely an additional source of capital for TPG.

4. In terms of Regulation 14(3) of the Combination Regulations, the Commission *vide* communications dated 4th December 2020 and 23rd December 2020 sought certain information and clarifications from the Parties, *inter alia*, on overlaps and shareholding structure. The complete information was submitted on 24th December 2020.

5. TPG is a newly incorporated company in Singapore and is majority funded by the TPG Growth V Fund ("**Fund**") or its affiliates. The investment adviser to the Fund is TPG Growth V Management, LLC ("**Investment Adviser**"), which has engaged TPG Global to manage the day-to-day activities of the Fund and is responsible for the Fund's investment decisions. TPG Global is a private investment firm that manages a family of funds that invest in a variety of companies through acquisitions and corporate restructurings.

6. KIC is a corporation established in Republic of Korea on 1st July 2005. It manages assets entrusted to it by the Government of the Republic of Korea and Bank of Korea through investing in a variety of international assets. KIC is 100% owned by the Ministry of Economy and Finance of the Republic of Korea ("**Korean MOEF**"), and invests as an agent or an investment manager for the Korean MOEF.

7. The Acquirers do not have any investments/activities in India. However, TPG Global has investments in India, *inter alia*, in the pharmaceutical and healthcare sector in India.

8. API, incorporated in India, is the ultimate parent entity of API Group. Pursuant to the Scheme of Amalgamation[1], API (directly or through subsidiaries) carries out various business activities including: (a) wholesale ("**B2B**")[2] sale and distribution of drugs (including pharmaceutical products, medical devices and over-the-counter ("**OTC**") drugs); (b) provision of transportation and delivery services primarily focused on pharmaceutical sector; (c) owning technology and intellectual property for developing e-commerce platforms including marketplaces for facilitating the sale of pharmaceutical products, medical devices and OTC drugs; (d) provision of manpower supply, support, business function support for group companies of API; (e) provision of master data management services support; (f) developing ERP[3] and software solutions primarily for healthcare businesses and other customised application services for retail pharmacies; (g) operating and providing online application which provides a B2B order management system for retailers and distributors of pharmaceutical products, medical devices and OTC drugs; (h) developing a platform which connects registered medical practitioners ("**RMPs**") and patients whereby the patients could consult with RMPs through the platform by way of tele-consultation as well as

[1] A composite Scheme of Amalgamation ("**Scheme**") was filed by API and other entities such as 91Streets Media Technologies Private Limited and Ascent Health and Wellness Solutions Private Limited with the National Company Law Tribunal ("**NCLT**") on 16th September 2019. On implementation of the Scheme, all the shareholders of 91Streets, Ascent, etc., will become the shareholders of the merged entity, *i.e.* API. Subsequently, NCLT approved the Scheme on 8th June 2020. It is submitted that the Scheme was implemented and given effect on and from 27th August 2020.

[2] B2B: Business to Business

[3] ERP: Enterprise Resource Planning

physical consultation; and (i) manufacturing and marketing of pharmaceutical, ayurvedic and nutraceutical products, medical devices, hygiene products, life-saving medicines, herbal products, and food supplements.

9. It is submitted in the Notice that API (including subsidiaries and Medlife) does not have any retail business segment on account of the restrictions under the FDI Policy. API has licensed the operation of the platform PharmEasy (an online medical supply store and pharmacy website supplying medicines) to an unrelated and independent third-party and does not have control over the products offered on PharmEasy platform. Similarly, Medlife will cease to operate its B2C[4] business, and will license this business segment to an independent third party before the Proposed Combination is implemented.

10. Based on the submissions of the Parties, the Commission noted that there are no horizontal overlaps between the products and services offered by TPG Global and API.

11. However, based on the submission of the Parties, the Commission observed that there are certain vertical relationships, existing and potential, between the portfolio companies of TPG Global and API.

12. Further, the market share of each of the portfolio company of TPG Global and the Target is between [0-5%] in each of the segment/sub-segment in India and there are several players present. Accordingly, based on the market shares submitted, it appears that the Parties do not have any ability or incentive to foreclose competition.

13. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on the 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. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.

[4] B2C: Business to Consumer

Further, the Commission observed that non-compete clause is not ancillary to the combination.

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

15. The information provided by the Acquirers shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.

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