



22.12.2015

Notice u/s 6 (2) of the Competition Act, 2002 given by BNP Paribas S.A.

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 Representatives of the parties: M/s Cyril Amarchand Mangaldas

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

1. On 15.12.2015, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) filed by BNP Paribas S.A. (“**BNPP**” or “**Acquirer**”). The said notice was given to the Commission pursuant to execution of Securities Purchase Agreement on 30.07.2015 (“**SPA**”) between BNPP, Sharekhan Limited (“**SKL**”), Human Value Developers



Private Limited (“**HVDPL**”) and the Sellers¹ (hereinafter BNPP, SKL, and HVDPL are collectively referred to as the “**Parties**”).

2. The proposed combination comprises of a series of inter-linked steps which will cumulatively result in BNPP, acquiring, directly or indirectly, 100 per cent of the issued, subscribed and paid up equity shares of SKL, 100 per cent of the compulsorily convertible preference shares (“**CCPS**”) and 100 per cent of the compulsorily convertible debentures (“**CCD**”) in SKL (“**SKL Acquisition**”). As on 30.07.2015, HVDPL holds certain stake in SKL and therefore, for the purposes of the acquisition of aforesaid stake in SKL, BNPP proposes to acquire 100 per cent of the issued, subscribed and paid up equity shares of HVDPL and 100 per cent of the CCPS in HVDPL thereby, indirectly acquire HVDPL’s stake in SKL (“**HVDPL Acquisition**”). Further, BNPP also proposed to acquire all the equity shares held in SKL by the Sellers and Individual Shareholders (as defined in the SPA). The SKL Acquisition and HVDPL Acquisition are together referred to as the Proposed Combination.
3. The Commission noted that BNPP had earlier filed a notice on 31.08.2015 with regard to the Proposed Combination. The same was considered by the Commission in its ordinary meeting held on 04.11.2015 wherein it was noted that the contents of the notice filed by BNPP were verified by the Chief Executive Officer and Country Head, BNP Paribas India on the basis of authority conferred by the Chief Operating Officer, BNPP. The Acquirer had submitted a legal opinion from a French legal counsel regarding legal capacity of the Chief Operating Officer being equivalent to a Directeur General (or the Managing Director) under the French Commercial Code. The Commission had noted that as per the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”) and the Competition Commission of India (General) Regulations, 2009 (“**General Regulations**”), a notice can be signed by any person duly authorised by the board of directors of the company for the said purpose or by the Managing Director of the company. The Commission had further noted that there is no provision in the extant regulations where a Managing Director may further authorise any

¹ Sellers have been defined in the SPA to include various shareholders of HVDPL and SKL.



person/officer of the company for filing notice before the Commission. In view of the foregoing, the Commission was of the opinion that the notice filed by the Acquirer is not in conformity with the provisions of the Combination Regulations and General Regulations and therefore, not valid in terms of Regulation 9(1) of the Combination Regulations and Regulation 11(1) of the General Regulations. The Commission had, accordingly, directed that the Acquirer be required to file a fresh notice for the Proposed Combination, within a period of thirty days from the date of receipt of the direction in this regard. In view of the foregoing, a fresh notice under sub-section (2) of Section 6 of the Act was filed by BNPP on 15.12.2015, pursuant to the said direction of the Commission.

4. BNPP is one of Europe's leading providers of banking and financial services. The BNPP group is composed of inter-alia, the businesses relating to retail banking and specialised financial services, personal finance, insurance, asset management, real estate, and private banking. In India, BNPP offers a wide range of financial and advisory services through its various subsidiaries and joint venture entities.
5. SKL is a company incorporated under the Companies Act, 1956. It is registered with SEBI as a portfolio manager and as a depository participant with National Securities Depository Limited ("NSDL") and Central Depository Services (India) Limited ("CDSL"). SKL and its subsidiaries engage in the businesses relating to inter-alia, brokerage services, portfolio management services ("PMS"), depository services, distribution of shares through IPOs, mutual funds and life insurance, proprietary trading, lending and education and investment advisory.
6. HVDPL is an investment holding company holding certain stake in SKL. As stated by the Acquirer, HVDPL does not engage in any other business.
7. The Commission noted that at the broader level, the Proposed Combination relates to the financial services sector. As per the information given in the notice, there are horizontal overlaps in the operations of the Parties in India in various segments of financial services, such as, (i) brokerage services; (ii) depository services; (iii) PMS; (iv) distribution of mutual



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funds; (v) capital market lending/securities based lending; and (vi) distribution of shares through IPOs. The Commission further noted that the various segments of financial services may be further classified in various sub-segments. The Commission noted that (a) brokerage services can be further classified into sub-segments such as cash/equity, stock derivatives, commodities and currency; (b) PMS can be further classified into discretionary, non-discretionary and advisory services; (c) the activities relating to distribution of mutual funds can be classified on the basis of nature of scheme such as debt, equity, balanced schemes etc.; and (d) the activities relating to capital market lending/securities market lending can be further classified into promoter based lending and loan against shares/margin funding.

8. Accordingly, for the purposes of competition assessment, the Commission also considered each of the sub-segments of the aforesaid segments of financial services and observed that given the low market shares, insignificant change in market concentration and presence of other competitors, the Proposed Combination does not seem likely to cause an AAEC in any of the segments or sub-segments of financial services.
9. As regards the vertical relationship, the Commission noted that the Proposed Combination is likely to result in vertical integration of the Acquirer in certain areas, such as, (i) mutual funds and mutual funds distribution; (ii) life insurance and life insurance distribution; and (iii) IPOs for fund raising and distribution of IPOs. However, in this regard, the Commission noted that given the nature of the activities and the state of operations of the Parties, the Proposed Combination is not likely to raise any concerns of vertical foreclosure.
10. Considering the facts on record and the 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 the proposed combination is not likely to have an appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.



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

12. The Secretary is directed to communicate to the Acquirer accordingly.