

COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2017/02/478)

16th March, 2017

Notice under Section 6 (2) of the Competition Act, 2002 jointly filed by Chalet Hotels Private Limited, Magna Warehousing & Distribution Private Limited and Genext Hardware & Parks Private Limited.

CORAM:

Mr.Devender Kumar Sikri
Chairperson

Mr. S.L.Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. G.P. Mittal
Member

Legal Representative: Wadia Ghandy & Co. Mumbai

Order

1. On 03rd February 2017, the Competition Commission of India (“**Commission**”) received a notice jointly given by Chalet Hotels Limited (“**Chalet**”), Magna Warehousing & Distribution Private Limited (“**Magna**”) and Genext Hardware & Parks Private Limited (“**Genext**”) (“**Acquirer**”/“**Chalet**”) under sub-section (2) of Section 6 of the Competition

Act, 2002 (“**Act**”). (Hereinafter Chalet, Magna and Genext are collectively referred as “**Parties**”)

2. The notice relates to: (i) merger of Magna (a wholly owned subsidiary of Chalet) into Chalet (“**Transaction 1**”); and (ii) demerger of the entire business and activities of Genext pertaining to its hotel business and retail business to Chalet (“**Transaction 2**”). (Hereinafter both transactions are collectively called as the “**Proposed Combination**”)
3. The Proposed Combination has been filed under sub-section (2) of Section 6 read with Section 5(a)(i)(A) of the Act.
4. The Parties have stated that Transaction 1, being a merger between a company and its wholly owned subsidiary, falls within the ambit of the provisions of Item 9 of Schedule I to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) read with Regulation 4 of the Combination Regulations and would not require filing of a notice under the Act. However, since Transaction 1 is inter-connected with Transaction 2, the same has been included as a part of the filing, in the light of the specific provisions of Regulation 9(4) of the Combination Regulations.
5. Further, it has also been stated by the Parties that Transaction 2 involves enterprises in which more than 50% of the shares and voting rights are held by enterprises within the same “*group*” as defined under the provisions of the Act. Therefore, Transaction 2 ought to have fallen within the ambit of the provisions of Item 9 of Schedule I to the Combination Regulations. The Parties, however, have stated that since the provisions of the said item specifically only relate to a combination in the nature of a “*merger or amalgamation*” and not to demergers, on a strict legal interpretation, Transaction 2 does not fall within the ambit of the provisions of Item 9 of Schedule I to the Combination Regulations and accordingly, the same is a notifiable combination under Section 6(2) of the Act.
6. With regard to Transaction 1, the Commission observes that it falls under “need not normally be filed” category.

7. With respect to the submission by the Parties that Transaction 2 is in the nature of a demerger and not an acquisition, the Commission notes that in the past, combinations of similar nature have been treated as acquisition under Section 5(a) of the Act. Accordingly, based on the information provided in the notice, the Commission decides that Transaction 2 is an acquisition.
8. The Commission further notes that since the turnover of Genext (Target in Transaction 2) is below Rs. 1000 crore, Transaction 2 is covered under the *de minimus* exemption notification. Accordingly, Transaction 2 is not notifiable to the Commission.
9. In view of the fact that Transaction 1 falls in “need not normally be filed” category and Transaction 2 is exempt, the Commission notes that the Proposed Combination falls in the “need not normally be filed” category provided in the Schedule I to the Combination Regulations.
10. The Commission also notes that the information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
11. The Secretary is directed to communicate the decision of the Commission to the Acquirer, accordingly.