COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/09/432)

Fair Competition
For Greater Good

02.11.2016

Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Ashok Leyland Limited and Nissan Motors 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 representatives:
1. Shardul Amarchand Mangaldas & Co. and Crawford Bayley & Co. for AL
2. J. Sagar and Associates for NML

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

1. On 12.09.2016, the Competition Commission of India ("**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") jointly filed by Ashok Leyland Limited ("**AL**") and Nissan Motors Limited ("**NML**"). AL and NML are collectively referred to as the **"Parties"**. The notice has been filed pursuant to execution

of: (i) Subscription Agreement ("**SA**") entered into between NML, AL and Powertrain JV[1]; and (ii) Share Sale and Purchase Agreement ("**SSPA**") entered into between AL, NML, Powertrain JV, Vehicle JV[2] and Technology JV[3], both agreements dated 07.09.2016.

2. The proposed combination is a two-step transaction wherein, first NML shall subscribe to the new shares of Powertrain JV through SA, and thereupon, AL shall acquire NML's shares through SSPA in each of the three JVs. This transaction would result in the exit of NML from 3 joint ventures ("**JVs**") namely, (a) Powertrain JV, (b) Vehicle JV and (c) Technology JV, currently existing between AL and NML, in such a manner that upon completion, the JVs will be wholly owned and solely controlled by AL.

3. *Vide* letter dated 29.09.2016, issued under the provisions of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations), Regulations, 2011 ("**Combination Regulations**"), the Parties, *inter alia,* were required to provide Annual Reports of Technology JV, Powertrain JV and Vehicle JV for FY 2015-16, information related to market and market shares of the Parties. The Parties submitted their partial response on 13.10.2016 and complete response on 21.10.2016, after seeking extension of time.

4. AL, having its registered office in Chennai, is stated to be engaged in the manufacture and sale of commercial vehicles, defence vehicles kits, engines and spare parts, financing and loans for vehicles, construction equipment, provision of IT support services, aircraft management, distribution of petroleum and petroleum products, manufacture of high pressure die-casting and telecom products.

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[1] For the manufacture of the LCV powertrains and parts, named as Nissan Ashok Leyland Powertrain Limited ("**Powertrain JV**") having the shareholding of AL and NML in the ratio of 49:51 respectively.

[2] For the manufacture of the LCV and the vehicle kits, named as Ashok Leyland Nissan Vehicles Limited ("**Vehicle JV**") having the shareholding of AL and NML in the ratio of 51:49 respectively.

[3] For the design and development of the LCVs, LCV's powertrains and their parts, named as Nissan Ashok Leyland Technologies Limited ("**Technology JV**")**,** having the shareholding of AL and NML in the ratio of 50:50 respectively.

5. NML is incorporated under the laws of Japan. Globally, NML is stated to be engaged in manufacture and sale of a range of automobiles such as pickup trucks, SUVs and Light Commercial Vehicles ("**LCVs**") under the Nissan and Infiniti brands. In India, NML is stated to be engaged into three main activities- a) manufacture and sale of LCVs in India with AL, b) manufacture and sale of passenger vehicles and automotive parts with Renault, and c) support services offered by NML, through its wholly-owned subsidiaries, to its joint ventures in India.

6. On the basis of submissions and subsequent responses of the Parties, it is noted that under the terms of the master co-operation agreement dated 29.10.2007, AL and NML established three joint ventures, stated to work together as a vertically integrated entity, to develop, manufacture and sell LCVs in India only. For this purpose, three separate joint venture Indian companies were formed: a) Technology JV, b) Powertrain JV, and c) Vehicle JV. While these JVs were subject to joint control of the Parties, it is noted from the submissions of the Parties that the manufacturing facilities of the Vehicle JV and the Powertrain JV were never set up.

7. The Commission noted that the LCVs segment in India is characterised by the presence of a number of players. Given the limited presence of the Parties in this segment in India, the Commission observed that the proposed combination is not likely to raise significant competition concern and accordingly decided that the exact delineation of the relevant market be left open.

8. With regard to the horizontal overlaps in the LCVs segment, the Commission noted that the Parties are stated to be engaged in automotive sector, which can be segmented into four segments: a) Two-wheelers; b) Three-wheelers; c) Passenger vehicles; and d) Commercial vehicles. Commercial vehicles are used for commercial purposes for transporting goods as well as passengers. As per Summary Report of Society of Indian Automobile Manufacturers ("**SIAM**") relied upon by the Parties, commercial vehicles are further divided into: (i) LCVs (below 7.5 tonnes Gross Vehicle Weight (GVW)); and (ii) Medium and Heavy Commercial Vehicles (MHCVs) (above 7.5 tonnes GVW). As per SIAM report, the LCVs segment amounts for 63.43 percent of the total commercial vehicles production. In the present case, the LCVs are sold by the Vehicle JV under the

brand names 'Dost', 'Partner', 'MiTR' 'STILE' and 'Evalia'. It is stated that the 'STILE' and 'Evalia' models have been discontinued since 2015. Further, among the existing three brands of the JVs, 'Dost' and 'Partner' fall under the category of goods carrier LCV while 'MiTR' is a passenger carrier LCV. The Commission observed that the proposed combination does not result in elimination of any incumbent from the market; it merely results in change of ownership and control of an existing player in the market. The Commission noted that the market share of the Vehicle JV in the LCV segment (passenger carrier as well as goods carrier) is in the range of [5-10] percent. Further, the Commission observed that both goods carrier LCV and passenger carrier LCV markets are characterised by presence of many well established players like Mahindra and Mahindra, Tata Motors, VECVs Eicher, Force etc. The Parties have also submitted that they are present in LCV segment through the JVs only. Taking into consideration the above factors, the Commission does not find any horizontal overlaps in the LCV segment to raise any significant detrimental effect on competition.

9. As regards vertical relationships emanating from the proposed combination, it has been submitted that the Parties have been providing certain services like contract manufacturing, designing etc. to the JVs on an arm's length basis. Further, it has been state that the Parties and the JVs have entered into a new commercial agreement for continuation of after-sale services to existing customers. The Commission observed that considering the nature of operations and existing relationships among the Parties, there is no likelihood of vertical foreclosure in the market.

10. Considering facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment 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 and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act.

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

12. The information provided by the Parties is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.

13. The Secretary is directed to communicate to the Parties accordingly.