



COMPETITION COMMISSION OF INDIA  
(Combination Registration No. C-2016/02/373)



Fair Competition  
For Greater Good

11.05.2016

**Notice u/s 6 (2) of the Competition Act, 2002 given by Clariant Chemicals (India) Limited**

**CORAM:**

Mr. Devender Kumar Sikri

Chairperson

Mr. S. L. Bunker

Member

Mr. Sudhir Mital

Member

Mr. U.C. Nahta

Member

Mr. M. S. Sahoo

Member

Mr. G. P. Mittal

Member

**Legal Representatives of the parties:** M/s Chandhiok & Associates

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

1. On 08.02.2016, 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 Clariant Chemicals (India) Limited (“**CCL**”/ “**Acquirer**”). The said notice



was given pursuant to the execution of a Sale and Purchase Agreement (“SPA”), between CCL and Lanxess India Private Limited (“**Lanxess India**”) on 31.03.2015. (Hereinafter CCL and Lanxess India are collectively referred to as the “**Parties**”).

2. As stated in the notice, the combination relates to the acquisition of carbon black pigment dispersion plant of Lanxess India located in Nagda, Madhya Pradesh (“**Target Business**”) by CCL as an on-going concern on a slump sale basis (“**Combination**”). As submitted by the Parties, the Combination has already been consummated pursuant to the SPA executed on 31.03.2015.
3. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 11.03.2016, the Acquirer was required to provide information/document(s) pertaining to market share and presence of competitors by 14.03.2016. The Acquirer filed part replies to the aforesaid letter on 23.03.2016 and 01.04.2016 and final reply on 11.04.2016 after seeking extension of time. The Acquirer also submitted certain additional information on 18.04.2016.
4. As per the notice, CCL is a public limited company incorporated in India and listed on the Bombay Stock Exchange and National Stock Exchange. CCL’s India business is stated to comprise of five business segments, viz., (i) Masterbatches which are a concentrated mixture of pigments and/or additives dispersed in a polymer medium; (ii) Pigments which are materials that display colour by reflecting or scattering light as the result of wavelength-selective absorption; (iii) Additives which are substances added for improving the quality and physical property to enhance the performance and add value to a product; (iv) Mining Services which provides explosive emulsions at the blasting site, improves the comminution and beneficiation of a wide range of ores, control dust at mine sites and improve the stability and quality of fertilizers; and (v) Functional Minerals which provide specialty products based on Bentonite (a clay generated frequently from the alteration of volcanic ash).



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5. Lanxess India, as stated in the notice is a private limited company incorporated in India, a wholly owned subsidiary of Lanxess Deutschland Gmbh and belongs to the Lanxess group. Lanxess India's business comprises of three business segments, viz., (i) Advanced Industrial Intermediates which combines operations in the field of basic and fine chemicals that service a wide array of end application segments; (ii) Performance Polymers including rubber products; and (iii) Performance Chemicals Segment which includes application oriented process and functional chemicals used in various industries.
6. It has been stated that the Target Business is engaged in pigment dispersion, which is a process intended to ensure uniform distribution of pigments. Pigments can be broadly classified *inter alia* into organic pigments and inorganic pigments. As stated in the notice, there is complete supply side substitutability between pigment dispersion for organic pigments and pigment dispersion for inorganic pigments. Thus, while the Target Business currently deals in carbon black pigment dispersion (which falls in the category of inorganic pigments), it can easily switch to pigment dispersion of other types of pigments. Based on the same, the Acquirer submitted that the narrowest possible relevant product market in the instant case is the market for pigment dispersion. As regards the relevant geographic market, the Acquirer submitted that considering the factors such as the operations of the Parties and regulatory framework, the narrowest relevant geographic market may be considered as India.
7. The Commission decided to leave the delineation of the relevant market open as it was observed that the Combination, for the reasons detailed in ensuing paragraphs, is not likely to cause an appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.
8. The Commission noted that while the Acquirer has a market share of around 20-25 percent in the market for pigment dispersion, Lanxess India had limited presence in this segment and the increment in the market share of the Acquirer resulting from the Combination is insignificant (between 0 to 5 percent). Further, post-combination, the Acquirer would continue to face competitive constraints on account of the presence of other significant competitors such as Ducol



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Organics & Colours Private Limited, Soujanya Color Private Limited, Asha Penn Color Private Limited etc.

9. As regards vertical relationships, the Parties submitted that there are no vertical relationships between them.
10. The Commission observed that Lanxess India has agreed not to compete with CCL in respect of the Target Business for a period of 60 months. As per the decisional practice of the Commission<sup>1</sup>, non-compete obligations, if deemed necessary to be incorporated, should be reasonable in terms of duration and scope. The Acquirer was accordingly required to provide justification regarding the non-compete obligations. In response, the Acquirer offered the modification under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations, vide their communication dated 23.03.2016 to limit the duration of non-compete obligations to three years. The Acquirer has also given an undertaking vide the aforesaid response that the Parties will enter into relevant documentation to effect the aforesaid amendment to the non-compete obligations and submit copies of such executed documents to the Commission.
11. The Commission hereby accepts the modification offered by the Acquirer under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations<sup>2</sup>. The Acquirer is directed to make necessary amendments in the documents so as to incorporate the modification and submit a copy of such amended documents within a period of three months from the date of this Order.

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<sup>1</sup> Combination Registration No. C-2012/09/79 Orchid Chemicals and Pharmaceuticals Ltd. and Hospira Healthcare India Pvt. Ltd

<sup>2</sup> As per sub-regulation (2) of Regulation 19 of the Combination Regulations,  
*“For the purpose of forming its prima facie opinion under sub-section (1) of section 29 of the Act, the Commission may, if considered necessary, require the parties to the combination to file additional information or accept modification, if offered by the parties to the combination before the Commission has formed prima facie opinion under sub- regulation (1), as deemed fit by it.*

*Provided that the time taken by the parties to the combination, in furnishing the additional information or for offering modification shall be excluded from the period provided in sub-regulation (1) of this regulation and sub-section (11) of section 31 of the Act.*

*Provided further that in such a case where the modification is offered by the parties to the combination before the Commission has formed the prima facie opinion under sub-regulation (1), the additional time, not exceeding fifteen days, needed for evaluation of the offered modification, shall be excluded from the period provided in sub-regulation (1) of this regulation and sub-section (11) of section 31 of the Act.”*



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12. 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 Combination on the basis of factors stated in sub-section (4) of section 20 of the Act and the modification relating to non-compete obligations offered by the Acquirer under the provisions of sub-regulation (2) of Regulation 19 of the Combination Regulations, the Commission is of the opinion that the Combination is not likely to have 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.
13. This order is issued without prejudice to any proceedings under Section 43A of the Act.
14. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
15. The Secretary is directed to communicate to the Acquirer accordingly.