



23.01.2019

Notice u/s 6 (2) of the Competition Act, 2002 jointly given by Hindustan Unilever Limited and GlaxoSmithKline Consumer Healthcare Limited

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U. C. Nahta
Member

Ms. Sangeeta Verma
Member

Legal Representatives of the parties: M/s Cyril Amarchand Mangaldas for Hindustan Unilever Limited; and M/s AZB & Partners for GlaxoSmithKline Consumer Healthcare Limited

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

1. On 19.12.2018, the Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”) jointly given by Hindustan Unilever Limited (“**HUL**”) and GlaxoSmithKline Consumer Healthcare Limited (“**GSKCH**”) (collectively “**Parties**”).
2. The notice was filed with the Commission pursuant to: (a) resolutions passed by the board of directors of HUL and GSKCH each on 03.12.2018; and (b) execution of Merger Co-operation Agreement among *inter alia*, HUL, Unilever Plc, GSKCH, GlaxoSmithKline Pte. Limited, Horlicks Limited and GlaxoSmithKline Plc on 03.12.2018 (“**Merger Agreement**”).



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3. Pursuant to the Merger Agreement, GSKCH and HUL propose to undertake the amalgamation of GSKCH into HUL, by way of a scheme of amalgamation under Section 230-232 of the Companies Act, 2013 (“**Proposed Combination**”). Further on completion of the Proposed Combination, HUL also proposes to enter into a non-exclusive consignment selling agency arrangement with the entities of the GlaxoSmithKline group to promote, market, distribute and sell certain over-the-counter medicinal (“**OTC**”) products and oral healthcare (“**OH**”) products in India, Bhutan and Nepal for a period of 5 years (“**CSA Products**”).
4. During the course of review of the Proposed Combination by the Commission, the Parties submitted certain information(s)/clarification(s) *vide* submissions dated 14.01.2019 and 17.01.2019, *inter alia*, relating to overlaps and market shares.
5. HUL, a public limited company incorporated in India, is listed on BSE Ltd (“**BSE**”) and National Stock Exchange of India Ltd. (“**NSE**”). It is a part of the Unilever group which has a global presence in home care, beauty and personal care and foods and refreshments product segments. In India, HUL is primarily involved in the business of manufacture and sale of: (a) home care products; (b) personal care products; (c) food products; and (d) refreshments. The home care business includes fabric wash and household care products; personal care includes personal wash, skin care, hair care, oral care, deodorants, colour cosmetics *etc.*; food products include branded staples (atta, salt, bread), breakfast mixes, noodles, soup, jam and ketchup; and refreshments include tea, coffee, and frozen desserts *etc.* HUL has over 40 brands spanning over 20 distinct categories and includes Lux, Surf Excel, Fair & Lovely, Lakme, Knorr, Kwality Wall’s, Brooke Bond, BRU among others.
6. GSKCH, a public limited company incorporated in India, is listed on BSE and NSE. It is a part of the GlaxoSmithKline Group, which has global presence in prescription medicines, vaccines, consumer healthcare products *etc.* In India, GSKCH is *inter alia*, engaged in the manufacture and sale of: (i) malt based and protein based health food drinks; (ii) food products such as instant noodles, rolled oats and biscuits; and (iii) nutritional drinks (ready to drink). The brand names used by GSKCH in India include Horlicks, Boost, Viva, Maltoval and Foodles. GSKCH is also the consignment selling agent for other entities of the GlaxoSmithKline group



providing distribution services for certain OTC products and OH products which are manufactured by other entities of the GlaxoSmithKline group.

7. Considering their product portfolios, the Parties identified product overlaps/potential overlaps in two broad categories *viz.*, (i) instant noodles (overlaps emanating from noodle based products sold by GSKCH under ‘Foodles’ brand and by HUL under ‘Knorr’ brand); and (ii) breakfast cereals (potential overlaps emanating from oats sold by GSKCH and breakfast mixes comprising Aval Millet Pongal, Masala Millet Upma and Classic Millet Khichdi sold by HUL). The Commission noted the submissions of the Parties and decided to leave the delineation of the relevant market open as it was observed that the Proposed Combination, for the reasons detailed in ensuing paragraph(s), is not likely to cause an appreciable adverse effect on competition in any of the plausible alternative relevant markets.
8. As regards the instant noodles, the Commission observed that the Parties do not have any significant presence in the product segment which seems to be characterized by presence of players such as Nestle (Maggi brand), ITC (Sunfeast Yippee brand), Nissin (Top Ramen brand), Capital Foods (Ching’s Secret brand). As regards the breakfast cereals, the Commission observed that the breakfast mixes have been launched by HUL in July 2018 and have a negligible presence in the market. The Commission observed that owing to the negligible presence of HUL in this segment and because of the nature/characteristics of products produced by GSKCH (rolled oats) and HUL (breakfast mixes), the Proposed Combination is not likely to change the competition dynamics in any relevant market.
9. The Commission further considered the proposed non-exclusive consignment selling agency arrangement between HUL and entities of the GlaxoSmithKline group and noted the submissions of the Parties that there are no overlaps between the CSA Products and those distributed and sold by HUL. In relation to GSKCH’s product ‘Sensodyne’, the Parties submitted that it is targeted only for those consumers that have sensitive teeth and gums whereas products of HUL (Close Up, Pepsodent and Lever Ayush) are general category toothpastes marketed for protecting teeth against cavities, fresh breath and healthy gums. Accordingly, the Parties submitted that there is no overlap in the market for toothpastes in India. The Commission noted the submissions of the Parties and further noted the presence of HUL and GSKCH in the overall category of OH in India



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and observed that in the broader OH market in India, the combined market share of the Parties is less than 20 percent with increment of [0-5 percent] and that the Parties would continue to be constrained by other players such as Colgate, Patanjali, Dabur *etc.* Considering the fact of the proposed arrangements being non-exclusive and further considering the extent of overlaps between the CSA Products and those distributed and sold by HUL, the Commission is of the opinion that the proposed arrangement is not likely to cause an appreciable adverse effect on competition in any market in India.

10. Considering the facts on record and the details provided in the notice given under Section 6(2) of the Act and assessment of the Proposed Combination on the basis of 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 in any of the relevant market(s) and therefore, the Commission hereby approves the same under Section 31(1) of the Act.
11. This order shall stand revoked if, at any time, the information provided by the Parties are found to be incorrect.
12. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
13. The Secretary is directed to communicate to the Parties accordingly.