COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2019/03/648)

15th April, 2019

Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Reliance Industries Limited and JMFARC – March 2018 – Trust.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U. C. Nahta
Member

Mrs. Sangeeta Verma
Member

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

1. On 11th March, 2019, the Competition Commission of India (**'Commission'**) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 **('Act')** jointly given by Reliance Industries Limited **('RIL')** and JM Financial Asset Reconstruction Company Limited **('JMFARC')** – March 2018 - Trust **('ARC Trust')**, a trust set up and managed by JMFARC. (Hereinafter, RIL and ARC Trust are together referred to as **'Acquirers'**).

2. The proposed combination relates to the acquisition of up to 75% of the total issued and paid up equity share capital of Alok Industries Limited (**'AIL'** / **'Target'**) by RIL and ARC Trust **('Proposed Combination')** which is presently undergoing insolvency resolution proceedings under the Insolvency and Bankruptcy Code, 2016 (**'IBC'**). (Hereinafter, Acquirers and AIL are collectively referred to as the **'Parties'**).

3. Initially the Acquirers filed the notice in Form I on 30th January, 2019. It was noted by the Commission that there were significant overlaps (horizontal as well as vertical) between certain operations and products of the Parties. Accordingly, the Commission directed the Acquirers to file the notice in Form II and the same was filed on 11th March, 2019.

4. Pursuant to the Proposed Combination:

   a. The ARC Trust will acquire and hold up to 49% of the total issued and paid-up equity share capital of AIL.

   b. RIL would acquire up to 26% of the total issued and paid-up equity share capital of AIL, pursuant to implementation of various steps as part of the Resolution Plan dated 12th April, 2018 **('RP')**, including by way of subscription to equity shares and optionally convertible preference shares.

5. In terms of 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 Acquirers were required to provide certain information and the same was filed on 28th March, 2019.

6. **RIL:** It a listed company incorporated under the Companies Act, 1956 and, *inter-alia*, engaged in the business of exploration and production of oil and gas, manufacturing petroleum products, polyester products, plastics, chemicals, textiles, fabrics, *etc.*

7. **ARC Trust:** It is a trust set up and managed by JMFARC for the purposes of the Proposed Combination and does not carry out any commercial activities. It would hold up to 49% of the total issued and paid-up equity share capital of AIL.

8. **JMFARC:** It is an asset reconstruction company registered under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act,

2002 **('SARFAESI Act')** and is the third highest capitalized asset reconstruction company in India. It is a part of the JMFL group of companies **('JMFL Group')**.

9. **AIL:** AIL is involved in the manufacture of textiles and polyester and is one of the twelve companies identified by the Reserve Bank of India for initiating bankruptcy proceedings by lenders.

10. With regards to the Proposed Combination, it has been submitted that the Acquirers were and are likely to remain the only bidders for AIL and the sole alternative for successful completion of the Proposed Combination through liquidation, which could entail AIL's business units exiting the market altogether. It is also submitted by the Acquirers that:

(i) In the absence of merger, AIL will exit the market in near future because of its financial difficulties;

(ii) There is no feasible alternative transaction or reorganisation which can be less anti-competitive than the proposed merger, as the Acquirers are the only bidder; and

(iii) In the absence of merger, AIL- a failing firm, would inevitably exit the market.

A. <u>Horizontal Overlaps</u>

11. It is noted from the information provided in the notice that in the following products the Parties exhibit overlap:

a. The market for production and supply of polyesters in India, which can split into:
   - Production and supply of Polyester Stable Fibre (**'PSF'**)
   - Production and supply of Polyester Filament Yarn (**'PFY'**), which can be further split into:
     - Polyester Draw Textured Yarn (**'DTY'**),
     - Fully Drawn Yarn (**'FDY'**), and
     - Partially Oriented Yarn (**'POY'**).

b. The market for production and supply of fabrics in India, which can be further split into several segments such as 'men's fabric', 'women's fabric' *etc.* However, it is submitted that the Parties exhibit overlap in men's fabric only, specifically in men's suiting, shirting and trousers.

c. The market for production and supply of 'Ready-Made-Garments' **('RMG')** in India, which can be further split into several segments such as 'men's RMG', 'women's RMG' *etc*. However, it is submitted that the Parties exhibit overlap in Men's RMG only, specifically in shirts, t-shirts and trousers.

d. The market for production and supply of 'Home Textiles' in India, specifically in bed linen and terry towels.

B. Vertical Overlaps

12. From the information provided in the notice, it is observed that in the following products the Parties exhibit vertical overlap:

a. Purified Terephthalic Acid **('PTA')**, which is upstream to the downstream market of polyester (RIL supplies PTA to AIL);
b. Mono-ethylene Glycol **('MEG')**, which is upstream to the downstream market of polyester (RIL supplies MEG to AIL);
c. Diethylene Glycol **('DEG')**, which is upstream to the downstream market for polyesters (RIL supplies MEG to AIL);
d. Caustic Soda, which is upstream (auxiliary chemical) to the downstream market for fabrics (RIL supplies Caustic Soda to AIL);
e. DTY, which is upstream to the downstream market for fabrics (AIL supplies DTY to AIL).

C. Relevant Market

13. It has been stated that the Parties compete mainly in the production and supply of polyesters, specifically PSF and PFY, which are polyester-based end-products. Parties have submitted that the Commission may consider the relevant product market as the market for "production and supply of polyesters". Alternatively, it is

suggested that the Commission may also consider the narrower segments polyester *viz.* (i) production and supply of PSF and (ii) production and supply of PFY as the relevant product markets.

14. It is noted that technical characteristics and intended use for each of these products may differ from each other in sub segments within the PFY *i.e.* DTY, FDY and POY. Therefore, the Commission is of the view that each of these product segments may constitute separate relevant product market. In relation to relevant geographic market, it has been submitted that products of Parties are sold throughout India and conditions of demand and supply are homogenous across the country. Therefore, relevant geographic market may be considered as the entire territory of India.

15. However, the exact definition of relevant market may be left open as the Proposed Combination does not give rise to competition concern irrespective of the manner in which the market is defined.

D. <u>Competition Assessment</u>

i. Horizontal Overlaps*:*

16. The combined market share of the Parties in the overall market for polyester in India was less than 30% in terms of both installed capacity and sale, with an increment of less than 5%. In PSF segment, the combined share of the Parties was less than 40% in terms of both installed capacity and sale, with an increment of less than 5%. In DTY segment, the combined share of the Parties was less than 20% in terms of both installed capacity and sale, with an increment of less than 10%. In FDY segment, the combined share of the Parties was less than 30% in terms of both installed capacity and sale, with an increment of less than 10%. In POY segment, the combined share of the Parties was less than 15% in terms of both installed capacity and sale, with an increment of less than 5%. Apart from above, other players who will exert competitive constraints on the Parties in the above segments are Indo Rama Synthetics, JBF Industries, Bhilosa Industries, Dhunseri Petrochem and Wellknown Polyesters.

17. It is noted that the Parties (directly or through their affiliates) compete in the production and supply of fabrics for men's clothing, production and supply of men's RMG and production and supply of home textiles. It is observed that on an overall basis and in all the narrow overlapping segments (fabric for men's shirting, suiting and trouser and RMG for men's shirts, trousers and t-shirts and home textiles for terry towels and bed linens), the individual as well as combined share of the Parties is insignificant and there are numbers of other players also operating. Therefore, the Commission is of the opinion that there is no need to arrive at a precise definition of the relevant market and further competition assessment.

ii. Vertical Overlaps*:*

18. As already stated, RIL manufactures PTA, MEG and DEG, which are primarily used as raw materials for the production of polyester products such as PSF, PFY, PET-resin, *etc*. Further, RIL also manufactures Caustic Soda that is used for the processing of textiles. Accordingly, following vertically related markets are identified for competition analysis:

i. Upstream segment of PTA and downstream market of polyester
ii. Upstream segment of MEG and downstream market of polyester
iii. Upstream segment of DEG and downstream market of polyester
iv. Upstream segment of Caustic Soda and downstream market for fabrics
v. Upstream segment of DTY and downstream market for fabrics

19. In the upstream segments of PTA, MEG and DEG, it is submitted by the Acquirers that although the RIL's market share in the three segments is in the range of 60-75% in terms of sales, AIL purchases a very insignificant quantity from RIL when compared to other entities procuring the above raw materials from RIL. In view of the same, RIL may not have incentive to foreclose the markets. In the upstream segment of caustic soda, RIL commands a market share of 0 to 5% in terms of sales

and AIL procures very negligible quantity of RIL's total sales. In view of the above, RIL may not have any ability or incentive to foreclose the market(s).

20. In the upstream segment of DTY, as already mentioned in preceding paragraph (16), the combined share of the Parties was less than 20% in terms of both installed capacity and sale, with an increment of less than 10%. Further, in downstream market for fabrics, the individual as well as combined share of Parties is insignificant and the Parties do not seem to be in a position or having the ability or incentive to foreclose the market. Thus, the Proposed Combination is not likely to foreclose the market for other competitors.

21. Considering the 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.

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

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

24. The Secretary is directed to communicate to the Acquirers accordingly.