



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2019/02/640)

22nd March, 2019

**Notice under Section 6 (2) of the Competition Act, 2002 given by
Deli CMF Pte. Limited**

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U. C. Nahta
Member

Ms. Sangeeta Verma
Member

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

1. On 1st February, 2019, the Competition Commission of India (**Commission**) received a notice under Section 6(2) of the Competition Act, 2002 (**Act**), given by Deli CMF Pte. Limited (**Deli/Acquirer**).
2. The notice has been given pursuant to the execution of the Share Subscription Agreement (**SSA**) between Delhivery Private Limited (**Delhivery/Target**), Acquirer and others on 20th December, 2018. On the same date, the Acquirer, Target and certain others have also entered into a Shareholders Agreement (**SHA**).
3. On 20th February, 2019, the Acquirer also intimated certain information under Regulation 16 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011. This is related to the discussion of the Target for acquisition of certain business assets. The



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Commission observed that the change intimated is not likely to alter the competition assessment and accordingly, took the same on record.

4. The proposed combination is notified in relation to subscription by the Acquirer of preference shares in the Target (**Proposed Combination**). The Acquirer is an existing shareholder of the Target and currently holds 4.76% of the share capital, on a fully diluted basis. Post the Proposed Combination, the shareholding of Acquirer in Target will be 4.51%, on fully diluted basis (Deli and Delhivery are collectively referred to as the **Parties**).
5. It is noted that the Proposed Combination has been contemplated along with acquisitions of shares in the Target by SVF Doorbell (Cayman) Limited (Comb. Reg. No. C-2019/01/633) and CA Swift Investments (Comb. Reg. No. C-2019/02/634). All these acquisitions are proposed under a common and same agreement *i.e.* SSA.
6. The Acquirer, incorporated in Singapore, is a wholly owned subsidiary of China Momentum Fund, L.P. [**CMF**]. Acquirer has been incorporated solely for the purpose of making investments in the Target. CMF, established in accordance with the laws of Cayman Islands, is a private equity fund. Fosun China Momentum Fund GP, Ltd. [**General Partner/FCM**], a wholly owned subsidiary of Fosun International Ltd. [**Fosun International**], is the general partner of CMF.
7. In the notice, it has been submitted that the Proposed Combination is not notifiable in terms of the Section 5 of the Act, as it does not meet the financial thresholds prescribed thereunder. It has been further submitted that the Acquirer is filing the notice by way of abundant caution only. However, as per the submissions of the Acquirer, the management, control and operation of CMF including the authority to determine its policy, investment and other activities, are vested exclusively with FCM, which is a subsidiary of Fosun International Ltd. (**FIL**). Thus, FCM has the ability to control the affairs of CMF. Accordingly, the assets and liabilities of FIL are also required to be considered for the purpose of financial thresholds prescribed



under Section 5 of the Act. Taking into account said financials of FIL, the proposed acquisition by the Acquirer qualifies as a combination under Section 5 of the Act.

8. The Target, incorporated in India, is engaged in provision of third party logistics (3PL) services in India. As part of its logistics business, the Target provides services such as transportation, warehousing, etc. The Target, through Delhivery USA LLC, its wholly-owned subsidiary, also provides last mile logistics solutions / deliveries of cross border shipments from India to the United States through United States Postal Service.
9. It has been submitted that the Parties to the Proposed Combination do not produce/provide similar or identical or substitutable products or services either directly or indirectly. It has been further submitted that the Parties to the Proposed Combination are not engaged in any activity relating to production, supply, distribution, storage, sale and service or trade in products or provision of services, which is at different stages or level of the production chain. However, one of the companies beneficially owned by FIL is seen to have investments in an entity that is engaged in leasing of trucks in Karnataka, Tamil Nadu and Mumbai. This is suggestive of a limited vertical overlap between the activities of the Parties and they are not engaged in similar line of business.
10. Further, despite additional investment by the Acquirer, its shareholding in the Target, in percentage terms, would reduce after the Proposed Combination on account of the acquisitions by SVF Doorbell (Cayman) Limited and CA Swift Investments. Given these factors, the Commission is of the view that the Proposed Combination is not likely to raise competition concerns.
11. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and an 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. Therefore, the Commission approves the Proposed Combination under sub-section (1) of Section 31 of the Act.

12. The Commission, further notes that the duration and scope of non-compete covenants, as entered amongst Parties are not ancillary to the Proposed Combination.
13. This order shall stand revoked if, at any time, information provided by the Acquirer is found to be incorrect.
14. The information provided by the Acquirer is confidential at this stage, in terms of and subject to provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the Acquirer accordingly.