



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2019/01/635)

**Dated: 6<sup>th</sup> March, 2019**

**Notice under Section 6 (2) of the Competition Act, 2002 given by Mitsui & Co., Ltd.**

**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 18<sup>th</sup> January, 2019, the Competition Commission of India (**Commission**) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**), given by Mitsui & Co., Ltd. (**Mitsui/Acquirer**). The Notice has been filed pursuant to a Share Purchase Agreement (**SPA**) dated 28<sup>th</sup> November, 2018 between the Acquirer and Pulau Memutik Ventures SDN BHD (**PMV/Seller**), a wholly owned subsidiary of Khazanah Nasional Berhad (**KNB**).
2. The Proposed Combination envisages acquisition of additional equity of approximately 16% of IHH Healthcare Berhad (**IHH/Target**) by Mitsui from the Seller. As a result of the Proposed Combination, Mitsui would hold approximately 32.9% equity shareholding in IHH. Subsequently, it is envisaged that Mitsui will transfer its entire shareholding in IHH to MBK Healthcare Management Pte. Ltd. (**MHM**), which is a wholly owned subsidiary of Mitsui.



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3. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011 (**Combination Regulations**), *vide* letter dated 12<sup>th</sup> February, 2019, certain information and clarifications, *inter alia*, about the overlapping services and rights to be acquired as a result of Proposed Combination were sought from the Acquirer. The response to this was filed by the Acquirer on 15<sup>th</sup> February, 2019.
4. Acquirer is a public company incorporated in Japan and listed on the Tokyo Stock Exchange. It is a trading house engaged worldwide in a number of commodity trade and other businesses, including the sale, distribution, purchase, marketing and supply of products relating to areas such as: iron and steel; non-ferrous metals; machinery; electronics; chemicals; energy-related commodities; logistics; healthcare and is also engaged in investing in infrastructure projects.
5. In India, Acquirer, through its subsidiaries, is mainly engaged in the field of (i) import and export related business, (ii) manufacturing and sales of various products and (iii) pursuing opportunities for investment in infrastructure including logistics infrastructure in India.
6. As the largest shareholder in IHH, Mitsui may increase its say in the nomination of members of the Board of Directors. The leading shareholder tends to have significant say in the nomination of the Chairperson of the Board of Directors and members of advisory committees, and in the appointment of the CEO and CFO in Malaysia (while this is not mandated by law). In addition, Mitsui may, as the largest shareholder, increase its influence on the nine-member IHH board, which currently includes just one director seconded from Mitsui.
7. Further, it has been stated in the Notice that Mitsui holds a minority, non-controlling equity shareholding of 26.09% in International Columbia US LLC (**Columbia**), an international healthcare group, having investments in the healthcare sector in India.



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8. Columbia's Indian subsidiary, Columbia Asia Hospitals Private Limited (CAHPL), owns and operates hospitals in India under the brand name of 'Columbia Asia'. Currently, it operates twelve facilities in India across eight cities<sup>1</sup>.
9. IHH is a Malaysian-Singaporean healthcare group listed on the Main Markets of Bursa Malaysia and the Singapore Stock Exchange, providing healthcare services in markets in Asia, Central and Eastern Europe and the Middle East. It is stated in the Notice that KNB, through its wholly owned subsidiary PMV, currently holds ~42% of the equity shareholding in IHH.
10. In India, IHH is engaged in the healthcare sector and operates the 'Gleneagles' chain of hospitals through subsidiaries. IHH also uses the brand names 'Pantai', 'Parkway', 'Global' and 'Continental'. It operates seven multi-specialty tertiary hospitals in five cities<sup>2</sup>. IHH also owns a 50% stake in Khubchandani Hospitals Private Limited for the construction of a greenfield hospital in Mumbai and has a 50/50 joint venture with Apollo Hospitals Enterprise Limited to operate Apollo Gleneagles Hospital in Kolkata and Apollo Gleneagles PET-CT Centre in Hyderabad.
11. In October 2018, the Commission approved the proposed combination by IHH of Fortis Healthcare Limited (**Fortis**) and its subsidiaries. Post the completion of the combination, IHH will hold controlling shares of around 60% in Fortis. Fortis is a public company listed at National Stock Exchange and Bombay Stock Exchange, and owns, manages, and operates a network of multi-specialty hospitals and super specialty hospitals, and diagnostic centres in India and some

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<sup>1</sup> Ahmedabad, Bangalore, Mysore, Kolkata, Gurgaon, Ghaziabad, Patiala and Pune

<sup>2</sup> Bangalore, Chennai, Mumbai, Hyderabad and Kolkata



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other countries. In India, it has presence in 18 cities<sup>3</sup> where it owns or operates 35 healthcare facilities under the brands 'Fortis' and 'Fortis La Femme'.

12. It is, however, stated that the Proposed Combination will not provide Mitsui with any shares, voting rights, assets, or control of Fortis. Mitsui will also not gain any information rights, veto rights, or the ability to appoint any directors in Fortis.

13. **Relevant Product Market:**

13.1. The hospital industry is largely driven by private sector players, who command about 70% market share in terms of number of hospitals. As per the publically available information the top five private hospitals and the number of facilities owned/operated by them are Apollo (70), IHH (including Fortis Healthcare) (42), Narayana Health (30), Max Healthcare (14) and Manipal Hospitals (11). Based on the facilities offered and level of complexity of treatment, the hospitals are commonly classified as primary, secondary, tertiary and quaternary. Further, the hospitals owned/operated by the Parties are primarily 'private tertiary hospitals' which provide range of services across the spectrum (primary, secondary, tertiary and quaternary services).

13.2. While several notable government hospitals, with the necessary infrastructure to provide the more complex healthcare services, may be considered as substitutes for private hospitals, those have not been considered by the Acquirer in their market delineation as according to the Acquirer the profile of patients in terms of income levels availing services from the two categories differs a lot.

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<sup>3</sup>Ludhiana, Amritsar, Mohali, Dehradun, New Delhi, Gurugram, Faridabad, Noida, Jaipur, Udaipur, Kangra, Bengaluru, Chennai, Kolkata, Raigarh (Chattisgarh), Ranchi, Mumbai, and Kalyan.



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- 13.3. The Parties exhibit a horizontal overlap in each of the four broad segments of care namely primary, secondary, tertiary and quaternary. It is stated that the above mentioned terminologies are used only by convention and there is no defined level of care at any of these four degrees of care. It is further stated that as such, there are no clearly delineated parameters differentiating some medical treatments from others. It is also stated in the notice that hospitals cannot be strictly classified as only secondary or only tertiary hospitals but rather operate along a continuum of care. Even within hospitals, patients or procedures are not typically classified into secondary or tertiary care procedures.
- 13.4. At a broad hospital level, the Acquirer has stated that the operational beds may be used as a metric to assess the market power because it depicts the overall infrastructure of the players in the market. However, for the tertiary level of care, it is the procedures or specialities offered by the hospital which attracts the patients and hence, the volume of procedures carried out may also be a good metric and therefore may also be used to assess the markets for competition purposes. Further, the parties have identified transplants (both organ and tissue) as procedures at the quaternary level of care and each of these procedures can be assessed separately as segments. In view of the above, the Commission has carried out the assessment in terms of total number of relevant operational beds and number of procedures (volumes) for secondary, tertiary and quaternary procedures separately.
- 13.5. Furthermore, the Commission decided to leave the exact delineation of relevant product market open as it was observed that the Proposed Combination is not likely to cause appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.



**14. Relevant Geographic Market:**

14.1. The Parties have stated that the delineation of the geographic market for assessment should be city-wide. The Parties provide overlapping services through their tertiary hospitals which overlap in three cities in India, namely, Delhi (including NCR), Bengaluru and Kolkata.

14.2. The Parties have submitted that the geographic dimension of the services requiring complicated procedures (such as quaternary procedures) is nation-wide. However, based on the recent discussions, in another combination matter, with healthcare professional and information available in the public domain, the Commission observed that the markets for most of the complex procedures such as transplants of heart, liver, lungs etc. are at a very nascent stage in India and considering their nature, such procedure(s) at this stage may not give rise to competition concerns. Therefore, the Commission is of the opinion that at this stage, the delineation of the relevant geographic market may be left open.

15. **Vertical Overlaps:** It is stated that Parties do not have any vertical relationships. However, the Acquirer has a minority stake of 20% in Keimed Private Limited (**Keimed**), a company engaged in the business of wholesale distribution of pharmaceutical products, healthcare and wellness products, medical consumables and surgical/hospital consumables across India. It is stated in the notice that Keimed has insignificant presence to cause foreclosure of competition in markets.

16. The Acquirer also holds 20% stake in Otsuka Pharmaceutical India Private Limited (**OPI**), engaged in the business of manufacturing pharmaceutical products. It is stated in the notice that OPI's presence is also not that, which will



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cause foreclosure of competition in any of the segments in pharmaceutical products.

17. Given the insignificant presence of Keimed and OPI, it was noted that the competitive landscape will not change due to the Proposed Combination as the Parties will neither have the ability nor the incentive to foreclose competition in any market.
18. It is stated that except for in-house diagnostic centres and pharmacies, Columbia does not operate any standalone, retail diagnostic centres or pharmacies etc. and thus, there is no overlap with Fortis's retail diagnostics offering under the SRL brand.
19. **Competition Assessment:** As per the information provided by the Acquirer, the segments of primary care service providers and to a large extent secondary care service providers are highly fragmented with very low individual market share for each primary care and secondary care service provider.
20. It is stated in the notice that the parties' services overlap in three cities namely Delhi (including NCR), Kolkata and Bengaluru and each of these cities appear to be well supplied with multiple large tertiary hospitals. As already mentioned in the preceding paragraphs, at a broader level, the parties have considered relevant private operational beds as a metrics reflecting the current state of available supply of healthcare infrastructure. Based on the details of operational beds provided by the parties, the combined market shares of the Parties in the three overlapping cities was not at a level so as to raise any competitive concerns.
21. At a narrower level, the Parties exhibit overlaps in various specialities / procedures at the tertiary level such as urology surgeries, neurology surgeries, onco-surgeries, chemo cycles, cardiology, joint replacement and ortho surgeries etc. It is stated that while most of these specialities/procedures are essentially



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tertiary, some of them may also be carried out by secondary level hospitals. Market shares for each of these overlapping specialities in each city has been assessed based on the total number of procedures carried out by all relevant hospitals (i.e. tertiary corporate hospitals, standalone hospitals and trusts/autonomous hospitals as well as secondary – small hospitals and nursing homes). It has been noted that either the combined market shares of the Parties or increment in market share, as a result of the Proposed Combination, across specialities is not significant in any of the overlapping cities. It has been stated in the notice that the combined entity will face significant competitive pressure from other competing players such as Apollo Hospitals, Narayana Health, Manipal Hospitals, Medanta, Max Hospitals etc. in the three overlapping cities.

22. In relation to the overlaps identified at the quaternary level of care such as organ transplants (heart, liver, kidney) and tissue transplants (bone marrow), it is stated that these surgeries are highly specialized, life-threatening procedures which require a multi-disciplinary approach for treatment. From a patient's perspective, the choice of a hospital is based on perceived expertise of the doctor and likelihood of success of the procedure – both these factors are essentially driven by the primary doctor involved in the procedure. Only a few doctor teams have been able to build a large experience profile over the last decade. It is also stated that patients are often willing to travel large distances across the country to get themselves treated by a "specific" doctor team.
23. Although the combined market shares of the Parties is on a higher side for certain procedures such as transplants of heart and liver, the increment due to the Proposed Combination is very negligible or nil. However, as already stated such segments of the transplant procedure(s) are currently at a very nascent stage and are growing rapidly.
24. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combination





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on the basis of the factors stated in sub-section (4) of Section 20 of the Act and the voluntary commitments offered by the Acquirer, the Commission is of the opinion that the proposed combination is not likely to have any 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.

25. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
26. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
27. The Secretary is directed to communicate to the Acquirer accordingly.