



**COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2021/08/863)**

25th October 2021

Notice under Section 6 (2) of the Competition Act, 2002 given by Phoenix Parentco, Inc.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. On 16th August 2021, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), given by Phoenix Parentco, Inc. (**Phoenix**). The Notice was given pursuant to execution of the Interim Investors Agreement *inter alia* between Phoenix, EQT Investors and GS Investors on 2nd July 2021; and Agreement and Plan of Merger *inter alia* between Phoenix, Phoenix Merger Sub Limited and Parexel Investment Holdings, L.P on 2nd July 2021.
2. The Commission *vide* its letters dated 26th August 2021 and 23rd September 2021, issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011, required the notifying party to remove defects in the Notice and furnish certain information relevant for the purpose of assessment of the Proposed Combination. Notifying party submitted its response *vide* submissions dated 10th September 2021 and 5th October 2021.
3. The proposed combination envisages acquisition of 100% of the equity shareholding of Parexel International Corporation (**Parexel/Target**) by Phoenix. Phoenix is a special purpose vehicle, incorporated under the laws of State of Delaware, USA. It is jointly controlled by EQT Fund Management S.à r.l. (EFMS)¹ and the Goldman Sachs². EFMS

¹ Acting as fund manager for and on behalf of the entities forming the investment fund EQT IX

² Through funds managed by Goldman Sachs & Co. LLC, a wholly-owned subsidiary of The Goldman Sachs Group, Inc.



and Goldman Sachs Group, Inc. (**Goldman Sachs**) being the parent entities of the Phoenix, will acquire joint control over Parexel.

4. Parexel is headquartered in Durham, USA. It provides biopharmaceutical outsourcing services to biopharmaceutical companies globally. It is claimed to provide a full suite of services related to Phase I – IV clinical research, regulatory and access consulting as well as strategic advisory services making it an end-to-end clinical development partner for pharmaceutical enterprises and biotech companies. Services of Parexel can take a molecule from discovery through clinical trials to a regulatory approved treatment ready for commercialization on a global level. Its activities in India are largely consistent with its global business. Biopharmaceutical outsourcing services provided by the Target in India can broadly be classified into the following categories:

- *Clinical research organization (CRO) services*: It refer to product development services used by healthcare companies to outsource the clinical development process and other processes from first-in-man clinical trials to post-launch monitoring and range from drug discovery tasks – including organic synthesis, analytical chemistry, biochemistry, molecular modelling, and medicinal chemistry – to clinical research trials. CRO Services comprise services for the design, initiation, and management of clinical trial programs including study design, site selection, patient selection and recruitment, clinical monitoring and medical monitoring.
- *Real World Evidence services*: It refers to observational studies based on data on actual patient experiences and actual use of a product in "real life" clinical practice. Such studies help healthcare companies analyse many different aspects of their businesses, including the commercial aspects of treatments, the medical aspects of treatments, the scope for R&D and investment priorities; and
- *Healthcare consulting services*: It refer to the provision of analytical and advisory services to healthcare companies that are intended to improve product development activities and technological capabilities, reduce operating costs, and strengthen the companies' commercial strategies and business model.

Notifiability of the Transaction

5. Notifying party has submitted that in India, the Target is mostly engaged in intra-group activities, where almost all of its turnover is generated through sale of its services and products to its overseas group entities. Each of (i) the revenue on account of rendering services to third party customers, and (ii) the revenue on account of supply of



services/product to overseas group entities is less than 1000 crores. Only if both these revenue numbers are considered then the *De-Minimis* exemption³ threshold is breached.

6. Notifying party has further submitted that when assessing the applicability of the *De-Minimis* exemption, intra-group turnover should not be included. If intra-group turnover were to be included, then, also including the revenue derived by the overseas parent entities from third parties in India would result in double counting. Notifying party has also submitted that the Commission consider these submissions, before reviewing the Notice; and permit it to withdraw the Notice, in case the Commission is of the considered opinion that the *De-Minimis* exemption should be available to it, either on the basis of exclusion of the intra-group turnover altogether or the exclusion of the turnover to the extent the same is relatable to the sales made to third parties in India.
7. From the above submission of the notifying party the issue that arise for consideration is whether either (i) turnover originating from outside India and terminating in India (**Import Turnover in India**); or (ii) intra-group turnover originating from India and terminating outside India (**Intra-Group Export Turnover**) should be excluded for the purpose of testing of *De-Minimis* exemption threshold.
8. The methodology suggested by the notifying party with regard to the Import Turnover in India is not appropriate as this turnover any how relates to rendering of services to customers in India. These transactions essentially represent the value of business relatable to India. Accordingly, the computation of turnover for the purpose of *De-Minimis* exemption would warrant inclusion of such revenue.
9. With regard to Intra-Group Export Turnover, the Commission observed that the purpose of exclusion of intra-group turnover is to avoid double counting. The approach suggested by the notifying party goes to the extent of avoiding even single counting of the turnover of the Target relatable to India. When overseas group entity makes further supply of these services (supplied to it under intra-group export) outside India, the turnover relating to such subsequent sale is not counted as turnover in India. If one were to also exclude Intra-Group Export Turnover, then the economic value addition generated from India goes unaccounted. Intra-group turnover cannot be excluded mechanically. Location of the parties to the intragroup sales and the scope of acquisition needs to be appropriately factored in the determination of turnover for the purpose of Section 5 as well as *De-Minimis* exemption. For instance:

³ Provided under notification no. S.O. 988(E) issued by the Ministry of Corporate Affairs, Government of India on 27th March 2017



Parties Test:

- a) In a transaction, where 'X' is acquiring the ultimate parent entity of a group viz. 'A', the same would lead to indirect acquisition of all group entities of A. In this case, the value of all intra-group sales can be excluded for the purpose of Section 5 as well as *De-Minimis* exemption, to avoid double counting. For instance, A holds 100% stake in B. If A is acquired by X (leading to indirect acquisition of B), the value of intra-group sales between A and B shall be excluded to avoid double counting.
- b) No intra-group sales should be excluded, if only one of the group entities of A viz. 'M' is acquired by X (without any direct or indirect acquisition of other group entities of A). This is because, the issue of double counting does not arise and the standalone financials of the target (*i.e.* M) alone is to be considered.
- c) If two or more companies within a group is acquired, then, only the value of sales between them alone can be excluded for the purpose of Section 5 and *De-Minimis* exemption. For instance, if 'P' and 'Q' of A group is acquired, then, only the value of sales between Q and P shall be excluded and the turnover of Q and/or P with A or any of its other group entities are not to be excluded.

Location Test:

- d) For computation of worldwide turnover location test may not be relevant. However, for determination of turnover in India, the relationship between the revenue and India is a relevant factor in exclusion of intra group sales. The exclusions mentioned in (a) and (c) above may be warranted when the intra-group sales are of: (i) domestic nature (*i.e.* sales originating and terminating in India); and/or (ii) the supply is from or to India and further sales (by the buyer in the intra-group sale) is within India. In simple terms, if the revenue of further sales outside the group is relatable to India, thereby being already accounted for, then exclusion of all earlier intra-group sales is warranted to avoid double counting.
10. From the break-up of turnover of Target relating to India for FY 2020-21, it is observed that non intra group turnover is *****; and intra-group turnover (excluding the turnover which was recorded as non-intra group turnover in India upon subsequent sale) is *****. Total of the both types of turnover exceed INR 1000 crore. Thus, it breaches the threshold of INR 1000 crore, prescribed under *De-Minimis* exemption. Accordingly, the transaction is not eligible for *De-Minimis* exemption, based on turnover.



Overlaps

11. It has been submitted that one of the portfolio entities of Goldman Sachs, is engaged in providing CRO services in India. Thus, activities of Goldman Sachs and the Target and its affiliate(s) exhibit horizontal overlap. The precise delineation of the relevant market is left open, as it is observed that the Proposed Combination is not likely to cause an appreciable adverse effect on competition in any of the plausible relevant markets in India. Combined market shares of the said portfolio entity of Goldman Sachs, Target and its affiliate(s); and incremental market share are not significant. Further, this activity is also characterised by presence of other players.
12. Considering the facts on record including details provided in the Notice given under Section 6(2) of the Act and assessment of the Proposed Combination based on the 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.
13. This order may be revoked if, at any time, the information provided by the notifying party is found to be incorrect.
14. The information provided by the notifying party is confidential at this stage in terms of and subject to the provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the notifying party accordingly.