

COMPETITION COMMISSION OF INDIA

28th December, 2011

Combination Registration No.: C-2011/12/12

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

1. On 9th December, 2011, the Competition Commission of India (hereinafter referred to as the "**Commission**") received a notice of the proposed combination between Tata Chemicals Limited (hereinafter referred to as "**TCL**") and Wyoming 1 (Mauritius) Private Limited (hereinafter referred to as "**Wyoming 1**") under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the "**Act**").
2. The notice was filed pursuant to the approval of the proposed combination by the Board of Directors of TCL and Wyoming 1 on 11th November, 2011.
3. The proposed combination relates to the amalgamation of Wyoming 1 into TCL pursuant to the scheme of amalgamation under the provisions of Sections 391 to 394 of the Companies Act, 1956 and the applicable laws in Mauritius.
4. The proposed transaction is a combination under Section 5(c) of the Act.
5. The parties to the proposed combination have made certain preliminary submissions as to whether the proposed transaction would require notification to the Commission under the Act. It has been submitted by the parties that the proposed combination would not require filing of notice with the Commission as, (a) the definition of enterprise does not appear to require notification of transactions between a parent company and its subsidiaries because a parent and its subsidiaries are effectively a single economic enterprise for the purpose of the Act, (b) since the proposed combination is entirely an outbound stream of acquisition by TCL, the proposed combination would fall squarely within the intent of the exemption provided under Item 10 of Schedule I to the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (hereinafter referred to as "**Combination Regulations**"), and (c) if the proposed transaction had taken place pursuant to an acquisition of assets of Wyoming 1 by TCL, the same



would fall under the exemption provided under Item 8 to the Combination Regulations.

6. The preliminary submissions of the parties to the combination, as stated earlier, are considered as follows:

- (a) Section 2(h) of the Act defines enterprise as “...a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries...” In terms of the definition, only a person or a department of the government could be an enterprise. The term ‘person’ has been defined under Section 2(l) of the Act to include a company which in-turn does not include a subsidiary, as the subsidiary has a separate and distinct legal personality and is a company by itself. The word subsidiaries in Section 2(h) of the Act has been used with respect to one of the modes by which an enterprise engages in the activities mentioned therein and the same does not emphasise consideration of subsidiaries as a part of its holding company or enterprise. A subsidiary, being a separate entity and a legal person, would constitute a separate and different enterprise if it meets the requirements of Section 2(h).
- (b) As regards the applicability of Item 10 to Schedule I of the Combination Regulations, it is observed that the said provision relates to combinations taking place entirely outside India with insignificant local nexus and effect on markets in India. Since the parties to the proposed combination meet the threshold relating to assets/turnover in India as mentioned in Section 5(c) of the Act and one of the parties to the proposed combination is in India, Item 10 to Schedule I of the Combination Regulations would not be applicable in the instant case.
- (c) On the applicability of Item 8 to Schedule I, it is observed that the said provision relates to acquisition of control or shares or voting rights or assets by one person or enterprise of another person or enterprise within the same group. The proposed combination falls within Section 5(c) of the Act and is pursuant to a scheme of amalgamation and not by way of acquisition. Therefore, the



question of application of Item 8 to Schedule I of the Combination Regulations would not arise in the instant case.

7. In view of the foregoing, the parties are required to give notice of the proposed combination under sub-section (2) of Section 6 of the Act.
8. TCL is an Indian company listed on BSE Limited and National Stock Exchange of India Limited. TCL carries on business in four segments namely in-organic chemicals comprising of soda ash, salt, marine chemicals, caustic soda, cement and bulk chemicals; fertilizers comprising fertilizers and other traded products; other agri-inputs and; others – comprising of water purifier and pulses.
9. Wyoming 1 is a private company limited by shares incorporated under the provisions of the Mauritius Companies Act. Wyoming 1 is a wholly owned subsidiary of TCL, incorporated solely for holding off-shore business interest of TCL. It has been stated that Wyoming 1 does not have any assets or turnover in India. Further, Wyoming 1 is not engaged in the production, supply, distribution storage, sale or trade of any kind of goods or services. Further, there is no horizontal overlap or vertical relationship between the parties to the combination.
10. TCL and Wyoming 1 are not engaged in the production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar services. The business activities of TCL and Wyoming 1 are also not related at different stages or levels of the production chain in different markets. It is also noted that the ultimate control over the activities carried by TCL and Wyoming 1 before and after the proposed combination remains with the management of TCL. Therefore, the proposed combination does not give rise to any adverse competition concern.
11. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.



12. This approval is without prejudice to any other legal/statutory obligations as applicable.
13. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
14. The Secretary is directed to communicate to the parties to the proposed combination accordingly.



Certified True Copy

[Handwritten Signature]
30/12/11
ANIL K. VASHISHT
Office Manager
Competition Commission of India
New Delhi