



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2018/09/601)

Dated: 29th October, 2018

**Notice under Section 6 (2) of the Competition Act, 2002 given by
Northern TK Venture Pte. Ltd.**

CORAM:

Mr. Sudhir Mital
Chairperson

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Legal Representative of the parties: Khaitan & Co.

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

1. On 13th September, 2018, the Competition Commission of India (**Commission**) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**), given by Northern TK Venture Pte. Ltd. (**Northern/Acquirer**). The Notice has been filed pursuant to a Share Subscription Agreement (**SSA**) executed on 13th July, 2018 between Northern and Fortis Healthcare Limited (**FHL/Target**). (Hereinafter, Northern and FHL are collectively referred to as 'Parties')
2. The Proposed Combination envisages the following steps:



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- 2.1. *Fortis Acquisition:* Acquisition of stake in FHL by IHH Healthcare Berhad (**IHH**), a company incorporated in Malaysia, through its subsidiary, Northern, by subscription of shares of FHL representing 31.10% of expanded voting share capital by way of preferential allotment. On the completion of the Acquisition, it is stated that the Acquirer also intends to appoint directors on the Board of FHL.
 - 2.2. *Open Offer I:* In accordance with the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Code**), the Acquirer has made an open offer to public shareholders to acquire up to 26% of the equity share capital. In case of full acceptance of the offer, the Acquirer's shareholding would reach up to 57.10% of the equity share capital of FHL.
 - 2.3. *Open Offer II:* FHL, through its wholly-owned subsidiary named Fortis Hospitals Limited (**FHSL**), indirectly holds 62.9% of the equity capital of Fortis Malar Hospitals Limited (**FMHL**), a listed company. Since the earlier steps will result in an indirect change in the control of FMHL, the Acquirer has made an open offer to acquire up to 26% of its equity share capital. In case of full acceptance of the offer, the Acquirer's shareholding would reach up to 88.90% of the equity share capital of FMHL.
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 16th October, 2018, certain information and clarifications, *inter alia*, about the overlapping services were sought from the Acquirer. The response to this was filed by the Acquirer on 22nd October, 2018, after seeking an extension of time.



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4. Acquirer, a private limited company, is a wholly owned subsidiary of Parkway Pantai Limited and an indirect wholly-owned subsidiary of IHH. Acquirer is stated to be an investment holding company and does not conduct any business in relation to hospitals anywhere in the world. Parkway Pantai Limited, a company incorporated in Singapore, develops, owns, and operates hospitals, medical centres, and clinics. It, *inter alia*, offers medical and surgical advisory, management and medical consultancy, and molecular diagnostic and medical laboratory services. It has operations in several countries. It has been stated that Acquirer and Parkway Pantai Limited belong to IHH group.
5. IHH is an international provider of integrated healthcare services operating in Malaysia, Singapore, Turkey and India and is listed on the Bursa Malaysia Securities Berhad and the Singapore Exchange Securities Trading Limited. It provides full spectrum of healthcare services from primary to quaternary healthcare services.
6. In India, IHH operates in 5 cities namely, Bangalore, Chennai, Mumbai, Hyderabad and Kolkata, with 7 multi-specialty tertiary hospitals and 2 feeder centres with approximately 1800 operational beds and state-of the-art facilities under brand names 'Gleneagles', 'Global' and 'Continental'. It also offers PET-CT services in India through a joint venture (JV).
7. Apart from above, IHH has a 50:50 JV with Apollo Hospitals Enterprise Limited (**Apollo**) for the operation of the Apollo Gleneagles Hospital in Kolkata. IHH also owns a 50% stake in Khubchandani Hospitals Private Limited for the construction of a greenfield hospital in Mumbai.
8. Target, a public company listed at National Stock Exchange and Bombay Stock Exchange, directly and through its subsidiaries owns, manages, and operates a network of multi-specialty hospitals and super specialty hospitals, and diagnostic



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centres in India and some other countries. In India, it has presence in 18 cities¹ where it owns or operates 35 healthcare facilities under the brands 'Fortis' and 'Fortis La Femme'. Its healthcare verticals comprise day care specialty, diagnostics, and tertiary and quaternary care facilities. It, *inter alia*, offers services in the areas of cardiac care, orthopaedics, and neurosciences. Further, FHL conducts its diagnostic business under the brand name 'SRL'². SRL has a network comprising of 368 laboratories across India.

9. FMHL, is a company listed at BSE. FMHL, an indirect subsidiary of FHL, is a multi-specialty tertiary hospital located in Chennai and provides, operates and manages healthcare services. It, *inter alia*, offers medical care in the areas of cardiology and cardiac surgery, neuro-surgery and nephrology.

10. Relevant Product Market:

- 10.1. It is stated in the Notice that the hospital industry is largely driven by private sector players, who command about 70% market share in terms of number of hospitals. The top five private hospitals and the number of facilities owned and operated by them are Apollo (48), FHL (35), Narayana Health (25), Max Healthcare (14) and Manipal Hospitals (11). It has been stated that based on the facilities offered and level of complexity of treatment, the hospitals are commonly classified as primary, secondary, tertiary and quaternary. Further, according to the Acquirer, the hospitals owned/operated by the Parties have been identified in the industry as 'private tertiary hospitals' which provide primary, secondary, tertiary and quaternary services.

¹Ludhiana, Amritsar, Mohali, Dehradun, New Delhi, Gurugram, Faridabad, Noida, Jaipur, Udaipur, Kangra, Bengaluru, Chennai, Kolkata, Raigarh (Chattisgarh), Ranchi, Mumbai, and Kalyan.

²It is a subsidiary of FHL, and FHL holds 57.68% in SRL while approximately 30 % of SRL's shares are held by private equity investors.



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- 10.2. 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 Parties in their market delineation as according to the Parties the profile of patients in terms of income levels availing services from the two categories differs a lot.
- 10.3. 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 while primary and quaternary treatments are relatively well defined, the treatments offered at the secondary and tertiary level often cannot be strictly compartmentalised.
- 10.4. At a broad hospital level, the Parties have 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 organ and tissue transplants 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 hospitals, total number of relevant operational beds and number of procedures (volumes) for secondary, tertiary and quaternary procedures separately.



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10.5. 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.

11. Relevant Geographic Market:

11.1. The Parties have stated that the delineation of the geographic market for assessment should be city-wide, on a conservative basis. The Parties provide overlapping services through their tertiary hospitals which overlap in 4 cities in India, namely, Bengaluru, Chennai, Kolkata and Mumbai.

11.2. The Parties have submitted that the geographic dimension of the services requiring complicated procedures (such as quaternary procedures) is nation-wide, if not wider. However, based on the discussions with healthcare professional and information available in the public domain, the Commission observed that the market 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.

12. **Vertical Overlaps:** IHH group operates private tertiary hospitals and it is stated that its in-house diagnostic centres are entirely captive in nature and IHH group / Acquirer is not present in the retail diagnostics market in India. The Target also operates private tertiary hospitals and has retail diagnostic centres through its subsidiary SRL. It provides retail diagnostic services through a network of collection points. In this regard, it has been stated that SRL's revenue attributable



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to patients who are treated at IHH owned and/or operated hospitals is very insignificant. It is observed that, the Acquirer's diagnostic services are captive in nature and are substantially focused on providing services to its own hospital patients and post the Proposed Combination, at best, SRL may provide diagnostic services to the Acquirer for its in-house diagnostic facility. Apart from the above, most of the tertiary hospitals have in-house diagnostic capabilities. Further, there are large organized players offering diagnostic services as well as large number of unorganized and fragmented players in the retail diagnostic market.

13. **Competition Assessment:** As per the information provided by the Parties, 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.
14. It is stated in the notice that the parties' services overlap in four cities namely Chennai, Kolkata, Mumbai 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 four overlapping cities was not at a level so as to raise any competitive concerns.
15. At a narrower level, the Parties exhibit overlaps in various specialities / procedures at the tertiary level such as urology, neurology admissions, onco-surgeries, chemo cycles, cardiology, joint replacement etc. It is stated that while most of these specialities/procedures are essentially 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



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hospitals, standalone hospitals and trusts/autonomous hospitals as well as secondary – small hospitals and nursing homes). The combined market shares of the Parties post the Proposed Combination across specialities is not significant in any of the overlapping cities. It was stated by the Parties in the notice that the combined entity will face significant competitive pressure from other competing players such as Apollo Hospitals, Narayana Health, Manipal Hospitals etc. in the four overlapping cities.

16. In relation to the overlaps identified at the quaternary level of care such as organ transplants (heart, lung, liver, kidney) and tissue transplants (bone marrow and cornea), 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.
17. The combined market shares of the Parties is on a higher side for certain procedures such as transplants of heart, liver and lung. However, as already stated such segments of the transplant procedure(s) are currently at a very nascent stage and are growing rapidly.
18. As mentioned in earlier paragraph, it is stated in the notice that Apollo Gleneagles Hospital in Kolkata is a 50:50 joint venture (**JV**) between IHH's subsidiary Gleneagles Development Pte. Ltd. (**GDPL**) and Apollo. At present, the Acquirer (along with its group entities), JV partner i.e. Apollo and the Target are competitors in the overall field of healthcare and are present throughout India and in many of the overlapping cities. In order to alleviate any potential concern that the said JV may provide a common platform for coordinated behaviour, the



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Acquirer has submitted certain voluntary commitments which are as stated below:

- I. The Acquirer will cause to procure that the JV (to the extent of its control over the JV) and the Combined Entity shall operate as separate, independent and competitive businesses. The desired effect of this commitment would be ensured by the commitments below (II to V).
- II. The Acquirer commits that it will cause to procure that there will be no common Directors appointed by IHH / Gleneagles on the Board of the JV and the Combined Entity.
- III. At the time of Completion (as defined under the SSA), the Acquirer will procure or cause to procure the Directors appointed by IHH / Gleneagles in the JV on one hand, and the Directors appointed by the IHH / Acquirer in the Combined Entity on the other hand to execute undertakings stating that no commercially sensitive information relating to pricing data and day to day operations (which is not available in public domain) (“Sensitive Information”) of one entity would be directly disclosed to any Director(s) on the Board of the other entity, or disclosed to any third party which indirectly results in relay of Sensitive Information from one entity to the other entity.
- IV. In addition, the Acquirer will implement or cause to implement a “rule of information control” at the time of Completion. The outline of the rule of information control is as follows:
 - a. Prohibition against receiving Information from JV / Combined Entity - IHH / Gleneagles nominated / appointed Directors / officers / employees in the JV on one hand, and IHH / Acquirer nominated / appointed Directors / officers / employees in the Combined Entity



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- on the other hand, will not receive Sensitive Information from each other;
- b. Prohibition of provision of information to a third party – A IHH / Gleneagles nominated / appointed Director / officer / employee in the JV on one hand, and an IHH / Acquirer nominated / appointed Director / officer / employee in the Combined Entity on the other hand, will not disclose Sensitive Information obtained while in a previous association with the other entity to any third party (including to the other entity) regardless of whether the Sensitive Information was obtained before or after the person became a director/officer or employee of the relevant entity;
- c. Prohibition of exchanging information internally within JV/Combined Entity – A IHH / Gleneagles nominated/appointed Director/officer/employee in the JV on one hand, and an IHH / Acquirer nominated/appointed Director/officer/employee in the Combined Entity on the other hand, will not exchange with his/her respective entity the Sensitive Information of the other entity he/she has, regardless of whether the Sensitive Information was obtained before or after the person became a director/officer or employee of the entity; and
- d. Disciplinary action and punishment: A violation of any of the above rules will constitute a ground for disciplinary action and punishment. Such disciplinary action could include, for instance, removal from service, denial of promotion, and demotion to a lower rank.
- V. The Acquirer will submit an annual certificate of compliance with the Voluntary Commitment to the Commission, supported by affidavits from



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an authorized Director of the Acquirer and the IHH / Gleneagles nominated Directors on the JV within 60 business days of the yearly anniversary of the date of receipt of the order of the Commission under Section 31(1) of the Competition Act.

19. 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 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.
20. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
21. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
22. The Secretary is directed to communicate to the Acquirer accordingly.