



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2019/07/676)

1st October, 2019

Notice under Section 6 (2) of the Competition Act, 2002 jointly filed by TRIL Urban Transport Private Limited, Valkyrie Investment Pte Limited and Solis Capital (Singapore) Pte. Limited.

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. The Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”), jointly filed by TRIL Urban Transport Private Limited (“**TUTPL**”), Valkyrie Investment Pte Limited (“**Valkyrie**”) and Solis Capital (Singapore) Pte. Limited (“**Solis**”), on 31st July, 2019. (Hereinafter, TUTPL, Valkyrie and Solis are collectively referred to as “**Acquirers**”). The proposed combination pertains to acquisition of shares of GMR Airports Limited (“**GAL**” or “**Target**”) jointly by the Acquirers.



2. The notice has been filed pursuant to the execution of, each dated 4th July, 2019, the Share Subscription and Share Purchase Agreement (“**SSSPA**”) executed between the Acquirers, GMR Infrastructure Limited (“**GIL**”) and GMR Infra Services Limited (“**GMR Infra**”), and the Shareholders’ Agreement (“**SHA**”) between the Acquirers, GAL, GIL and GMR Infra. (Hereinafter, Acquirers and the Target are referred to as “**Parties**”).
3. The proposed combination relates to acquisition of equity stake in GAL by the Acquirers by way of share subscription and share purchase, wherein their collective shareholding in GAL as on the closing will be 44.44%, with TUTPL holding 19.75% stake, Valkyrie holding 14.81% stake and Solis holding 9.88%. Subsequently, pursuant to certain clauses in the SHA, each acquirer may further increase their equity stake in GAL, such that the Acquirers’ collective shareholding in GAL shall increase up to 55.2%, with the maximum aggregate shareholding of TUTPL would be 24.5%, Valkyrie would hold 18.4% and Solis’ shareholding would be 12.3% of the equity share capital of GAL. For the secondary sale, GIL and GMR Infra would be selling shares to the Acquirers. (“**Proposed Combination**”).
4. TUTPL is a wholly-owned subsidiary of Tata Realty and Infrastructure Limited, which in-turn is a wholly-owned subsidiary of Tata Sons Private Limited (“**Tata Sons**”). TUTPL is engaged in the development of urban transport and infrastructure facilities such as ropeways, metro rail transit system *etc.* Tata Sons is an investment holding company, which is registered as a core investment company with the Reserve Bank of India (“**RBI**”) and classified as a Systemically Important Non-Deposit Taking Core Investment Company (“**CIC-ND-SI**”). Tata Sons and its entities, are engaged in diverse sectors encompassing a broad spectrum of businesses. Tata Sons group has majority stake in two airlines, namely, AirAsia India (wherein 51% stake is held by Tata Sons group and the remaining 49% is held by AirAsia Berhad), and Vistara Airlines (Tata Sons group owns 51% stake in Vistara Airlines, the remaining 49% is owned by Singapore International Airlines).



5. Valkyrie, incorporated as a private limited company in Singapore, is a special purpose vehicle and is registered with the Securities and Exchange Board of India (“**SEBI**”) as a foreign venture capital investor (“**FVCI**”) under the SEBI (Foreign Venture Capital Investors) Regulations, 2000 (“**SEBI FVCI Regulations**”). It is part of a group of investment holding companies managed by GIC Special Investments Private Limited (“**GICSI**”), which in turn is owned by GIC (Ventures) Private Limited (“**GIC Ventures**”). Both GICSI and GIC Ventures are wholly-owned by the Minister for Finance, a body corporate established under section 2(1) of the Minister for Finance (Incorporation) Act, Chapter 183 of Singapore. Hereinafter, “**GIC Group**” would refer to a group of investment holding companies managed by GICSI.

6. Solis, registered as a FVCI with the SEBI under the SEBI FVCI Regulations, is an investment vehicle and is advised by SSG Capital Management (Singapore) Pte. Ltd. (“**SSG Capital**”), which is licensed by Monetary Authority of Singapore to undertake fund management activities. Both Solis and SSG Capital are part of the SSG group of companies (“**SSG Group**”). SSG Group is an alternative asset management firm founded in 2009 and focuses on investments in the Asia Pacific region. (Hereinafter, Tata Sons Group, GIC Group and SSG Group are collectively referred to as the “**Acquirers Group**”).

7. GAL is a public limited company and a subsidiary of GIL, that is ultimate parent entity of GAL (“**GMR Group**”). GAL is registered with the RBI as a CIC-ND-SI and is an investment holding company and through its subsidiaries, it is engaged in developing, managing and operating airports in India and around the world. GAL, through its subsidiaries, namely, Delhi International Airport Limited (“**DIAL**”) and GMR Hyderabad International Airport Limited (“**GHIAL**”), currently operates and manages two airports, i.e. Delhi airport and Hyderabad airport, respectively (“**Operational Airports**”). Apart from these Operational Airports, GAL is developing a greenfield airport in Goa and Bhogapuram (near Vishakhapatnam) in Andhra Pradesh, and will develop and operate Nagpur airport on Public Private Partnership basis. In addition to the above, in Philippines, GAL in partnership with Megawide Construction Company, operates and



manages the Mactan Cebu International Airport, and GMR-Megawide consortium has won the Clark International Airport's engineering procurement construction ("EPC") project. It is also developing a greenfield airport at Heraklion, Crete, Greece in partnership with GEK Terna.

8. The Proposed Combination was first notified to the Commission on 10th May, 2019 (bearing Combination Registration. No. C-2019/05/661). The Commission, in its meeting held on 17th June, 2019, noted that there were significant information gaps in the notice (Form I) filed by the Acquirers. Further, given that no other airport operates reasonably close to each of the concerned airport of the Target, each airport would constitute a distinct relevant market. Accordingly, the business activities of the Tata Sons group are in vertical relationship with the Target, which has 100% market share in the upstream business of development, operation and maintenance of airports. Therefore, the Commission decided to seek Form II in respect of the Proposed Combination and invalidated Form I filed by the Acquirers. The Commission directed the Acquirers to file a fresh notice for the Proposed Combination in Form II in terms of sub-regulations (5) of Regulation 5 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combination) Regulations, 2011 ("**Combination Regulations**").

Horizontal overlaps

9. The Commission, based on the submission of the Acquirers, noted that the Acquirers, either directly or indirectly, are not engaged in operation, development and maintenance of airports in India, whereas, GAL (*i.e.* the target), as an investment holding company, has investments principally in entities engaged in operation, development and maintenance of airports and associated business activities. Further, it has been submitted that none of the portfolio companies controlled by Solis and / or SSG Group and by Valkyrie and / or GIC group are engaged in the same business as the GMR group (as



aforementioned,). Therefore, there are no horizontal overlaps between the Acquirers Group and the GMR group.

Vertical Relationship

10. Details of various services that are required at an airport includes: (i) Airport infrastructure services and airside facility; (ii) Ground handling services and airside / landside terminal facilities along with infrastructure and utilities for the airport complex (mainly landside). The services therein can be categorized as cargo handling, ground handling, fuel services, maintenance and repair operations (“MRO”); (iii) Other commercial services and landside non-airport activities includes duty-free services, advertising services, food and beverages services, duty paid retail services, flight catering services, land and space services including provision of airline office space and lounge space, car parking, real estate, and other commercial services such as facilities of radio taxi, banks/ATMs, forex, etc.

11. Whereas, Tata Sons group is engaged in the business of providing airline services through Vistara and AirAsia, and other associated businesses, the entities of GAL are engaged in operation, development and maintenance of airports, and associated business activities. The Commission also noted that as per the concession agreement entered into by, *inter alia*, GAL for the two Operational Airports and other target airports, the concessionaire (*i.e.* airport operator) can provide certain aeronautical, non-aeronautical and other miscellaneous services at its airport. At present, the Target, through its entities, is present in the provision of upstream business segment of development, operation and maintenance of the airport, which is in vertical relationship with services provided by the entities of Tata Sons group, namely, provision of scheduled air transport service, non-scheduled air transport service, food and beverage services, retail services, in-flight catering services, ground handling services, cargo services and MRO services.



12. From the agreements executed between the Parties, the Commission also observed that Tata Sons group have, *inter alia*, acquired certain reserved matters and board seat in the entities of GAL which are currently operating airport or would be running the airports.
13. Accordingly, the Commission assessed vertical overlaps between Tata Sons group and GMR group with respect to the services that are currently offered by Tata Sons group at, *inter alia*, the Operational Airports or may be offered in other target airports. The Commission observed that this vertical relationships between Tata Sons group and the GMR group, may lead to a scenario of conflict of interest, as with vertically integration, there may be an incentive on the part of the Parties to foreclose downstream players, *i.e.*, the competing airlines, among other service providers.
14. In this context, the Commission, based on the submissions, also noted that none of the portfolio investee companies controlled by Solis and / or SSG Group and by Valkyrie and / or GIC group are engaged vertically to the business as the entities of GAL. Therefore, there are no existing vertical overlaps between Valkyrie / GIC group, Solis / SSG group and the GMR group.

Delineation of the Relevant Market

15. The Commission notes that 'Relevant market' consists of 'relevant product market' and/or 'relevant geographic market'. The relevant product market as defined under Section 2 (t) of the Act means "a market comprising of all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use." The relevant geographic market, on the other hand, defines the contours with regard to geography within which the conditions of competition for supply of goods or provision of services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas.



16. The determining factor for defining relevant product market is demand side interchangeability / substitutability of the product, from the point of view of factors such as basic characteristics, their prices and intended end-use. In the present case, for analysing GMR group and the Acquirers' position, the upstream market *i.e.* 'market for provision of access to airport facilities / premises' attains relevance.
17. The geographic market, in the present case, appears to be as narrow as each of the target airport. As for providing any services, at these target airports, the service provider needs to have access to the facilities / premises at the concerned target airport. In such a scenario, the airport itself becomes the relevant geographic market, being the place where the competition dynamics are homogenous and distinct from those prevailing outside such airport(s). Provision of services at one airport cannot be substituted with other airport. Hence, the relevant geographic market would be each target airport.
18. Thus, the relevant market would be 'market for provision of access to airport facilities / premises at each of the target airport'. The Commission, based on its observations in the preceding paragraphs, further, notes that the relevant market - 'market for provision of access to airport facilities / premises at each of the target airport' is the upstream business segment.
19. As regards the downstream market, the Commission is of the view that the market needs to be delineated keeping in view various aeronautical, non-aeronautical and other services that are provided at the target airports. As per the Concessionaire Agreements, the GMR group has the exclusive right to develop, design, finance, construct, commission, maintain, operate and manage each of the target airports. While doing so, it necessarily interacts / deals with, *inter alia*, airlines and various third-party service providers who are willing to provide services or avail services at / of the airport. The services that are offered at the airport can be broadly clubbed under aeronautical services, non-aeronautical services and other miscellaneous services. The Commission, without going into substitutability of each of the services, is of the opinion that the downstream market



for the purposes of the assessment would be ‘market for provision of air transport activities and other specific services at each of the target airports’.

20. Accordingly, for carrying out analysis under the provisions of the Act, the relevant markets are delineated as under:

- i. Upstream Market: ‘Market for provision of access to airport facilities/premises at each of the target airport’.
- ii. Downstream Market: ‘Market for provision of air transport activities and other specific services at each of the target airports’.

Regulatory Landscape in the Civil Aviation Industry in India

21. On the aspect of prevailing regulatory structure for the civil aviation industry in India, the Acquirers had submitted that Ministry of Civil Aviation (“**MoCA**”), is responsible for, *inter alia*, formulating national policies and programs that help develop and regulate the Indian civil aviation sector. Directorate General of Civil Aviation (“**DGCA**”) regulates the air transport services to / from / within / over India by Indian and foreign operators, registration of civil aircraft, formulation of air safety and airworthiness standards for civil aircraft registered in India and grant of certificates of airworthiness to such aircraft. Further, Airport Authority of India (“**AAI**”) is a nodal organisation entrusted with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure, both on the ground and in the country’s air space. The statutory functions of the Airports Economic Regulatory Authority (“**AERA**”) as enshrined in the Airports Economic Regulatory Authority of India Act, 2008 are to determine, *inter alia*, the tariff for the aeronautical services, the amount of the Development Fees in respect of major airports, the amount of the Passengers Service Fee levied under Rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934. It also monitors the set performance



standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf.

22. One of the key function of an airport operator, *inter alia*, is allocation of slots for the airlines. It has been submitted by the Acquirers that the allocation of slots at airports in India is governed by the MoCA, through its Guidelines for Slot Allocation (last revised in May 2013) (“**MoCA Guidelines**”). As per the submissions, the MoCA Guidelines are based on international best practices pertaining to slot allocation in the IATA Slot Allocation Guidelines at Chapter 8 (“**SAG**”) of the Worldwide Slot Guidelines.
23. The Acquirers have averred that due to the abovesaid regulatory framework in the civil aviation sector in India, the vertical integration arising out of the Proposed Combination between the Tata Sons group and the Target entities is not likely to raise any competition concern, as the said regulatory setup would foster competition and protect the consumer’s interest.
24. The Commission while assessing the Proposed Combination also considered submissions of the Acquirers dated 2nd August, 2019 and 4th September, 2019.
25. In this context, the Commission noted from concession agreements / Request for Quotations (“**RFQs**”), issued for various airports by different government / statutory authorities, that the permissible ownership of airlines and their group entities in airport operator has varied from 10% to 26% from time to time. It has also been observed in the above concession agreements / RFQs for different airports, there are provisions restricting airlines, *inter alia*, from nominating director on the Board of Directors of the concessionaire (*i.e.* airport operator) or appointing any key managerial persons on the concessionaire.
26. The Commission, further, observes that there exists a policy framework / regulatory structure for various services including allocation of slots provided by the concessionaire (*i.e.* airport operator) at the airports, and the process of allocation of slots is a consultative



process that involves several stakeholders including the DGCA. The Commission observes that to effectuate the process of slot allocation in an efficient manner, there is a slot coordination committee, which is headed by DGCA with members from AAI, air traffic control (“ATC”), all airports (both private and AAI airports) and all domestic Indian airlines. The role of the committee is to oversee that the allocation of slots happens in a fair and transparent manner. The process of slot allocation is initiated by the airport / slot coordinator sending Slot Holding List (“SHL”) to the respective airlines. The airport / slot coordinator is an official of the concessionaire (*i.e.* the airport operator). Further, allocation of international slots are done as per the IATA Guidelines.

27. Further, in case any disputes arise amongst the parties over the allocation of slots, there exists a separate “Dispute Resolution Committee” which comprises of the following: Joint Secretary, Ministry of Civil Aviation, DGCA, Member (Air Navigation Services), AAI, Concerned Airport Operator and Defence Authorities (in case of Defence enclaves).
28. Based on above, the Commission notes that the slot coordinator has a major role to play in slot allocation as the airport coordinator examines all requests received from airlines as per availability of resources in terms of runway / parking stands and terminal facilities.
29. In this context, the Commission also noted that in several countries there are restrictions placed on holdings by airlines (directly or indirectly) in an airport operating company in order to avoid possible conflict of interest situation and thereby preventing likely foreclosure of the downstream players *i.e.* competing airlines and other service providers. Furthermore, the international literature in this regard suggests that presence of airlines in airport operating companies may have distortionary effects on competition among the airlines as such vertically integrated entity may influence and / or discriminate in favour of its entities for various services (aeronautical, non-aeronautical and other miscellaneous services).

Communications under Regulations 5 and 19(2) and Regulation 19(3) of the Combination Regulations



30. To ascertain its above findings and averments of the Acquirers, the Commission, under Regulation 19(3) of Combination Regulations, requested certain clarification / information from the MoCA and the AAI, *vide* its letter dated 26th August, 2019. Response to the said communication was received from the AAI, *vide* its letter dated 20th September, 2019.

31. In its communication the AAI stated, *inter alia*, as follows:

“The basic concept of having such restrictions are to ensure a level playing field for all the airlines. It is also to ensure that no airline gets a preferential treatment in the allotment of:

(1) Preferential Slot

(2) city side counters in the Terminal building, Check-in counters including Common Use Terminal Equipment (“CUTE”) and Common Use Self Service (“CUSS”) counters, preferential boarding gates and attached security hold area, preferential allotment of conveyor belts for incoming passenger baggage.

(3) Back offices and all other related areas for functioning of airlines.”

32. Further, the Commission, *vide* letter issued under Regulations 5 and 19(2) of the Combination Regulations, sought certain additional information from the Acquirers, on 13th September, 2019. The Acquirers filed partial response to the said Commission’s communication on 23rd September, 2019. Subsequently, *vide* its letter dated 1st October, 2019, the Acquirers gave voluntary modification under Regulation 19(2) of the Combination Regulations (“**Voluntary Modification**”), to alleviate any potential conflict of interest arising out of Tata Sons group acquiring stake in the Target. In the Voluntary Modification, it has been submitted, as follows:

“The Acquirer shall cause to procure that there is no conflict of interest between the role of the Acquirer as a majority stakeholder in the Conflicted Entities and the Target or the



Airport Concession Entities. The desired effect of this commitment would be ensured by the commitment below:

- 1. The Acquirer shall not appoint:
 - a. a director on the Board of Directors of the Airport Concession Entities operating or would be operating in India; and*
 - b. Key Managerial Persons in the Airport Concession Entities operating or would be operating in India.**
- 2. The director nominated by the Acquirer on the board of the Target shall recuse himself if any discussion or voting takes place on any matter pertaining to the allocation of slots to any airline entity.*
- 3. The Target shall cause and procure that no commercially sensitive information relating to slot allocation should be directly / indirectly disclosed to the nominee director of the Acquirer on the board of the Target which indirectly or directly results in the Acquirer obtaining an undue commercial advantage.*
- 4. The Parties shall put in place adequate monitoring mechanisms and shall ensure that the Airport Concession Entities follow the principles of competition law including competition neutrality, level playing and field and fairness.*
- 5. The Parties commit that they shall cause to procure that there will be no directors by the Parties on the board of the Target who is also a director in any Conflicted Entity.*



(For the purposes of this Voluntary Modification, the capitalized terms shall have the meanings as set out in Appendix 1 to this Order.)

Decision of the Commission

33. The Commission notes that once the contract for development, operation and maintenance of an airport is awarded, the awardee inevitably becomes a monopolist, with regard to developing, controlling, operating and maintaining the airport as it can operate independent of the market forces. Such position is attributable to the concession agreement whereby the Government of India grants the awardee exclusive right and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the airport for a period encompassing a few decades. This implies control over the terms of providing access to the facilities / premises at each of the target airports to various third-party service providers who wish to provide their services at such airport(s). Thus, GMR group is having authority in the 'market for provision of access to airport facilities / premises at each of the target airport'. Further, with the acquisition of stake by Tata Sons group in GAL, and its presence in the airlines business and other associated businesses / services provided at the airport, Tata Sons group would have presence in both the upstream and the downstream markets, as defined above.
34. Accordingly, owing to the above stated vertical relationship, the Commission observes that such relationships between Tata Sons group and the GMR group, may lead to a scenario of conflict of interest and with this integration, there is an incentive to foreclose downstream players, *i.e.*, the competing airlines, among other service providers.
35. The Commission noted that the above Voluntary Modification would address apprehension that vertical integration between Tata Sons group and the GMR group may foreclose downstream competitors, *inter alia*, airline companies. Reason for having such restrictions are to ensure a level playing field for all the airlines. It is also to ensure that no airline gets a preferential treatment in the allotment of slot(s). Further, the Voluntary



Modification that, *'Airport Concession Entities follow the principles of competition law including competition neutrality, level playing and field and fairness'*, should ensure that based on the principle of competition neutrality, no preferential treatment shall be meted out to any airline company and / or other service providers, required for functioning of airlines.

36. The Commission, further, notes that the basic rationale for having such restrictions in place are to ensure a level playing field for various service providers at the airports, and for protection and promotion of competition at various levels in the airports. The Commission believes that the Parties shall comply with the principles of competition neutrality and level playing field, wherever, the situation / condition of conflict of interest arises.
37. The Commission, while accepting the undertaking submitted by the Acquirers, directed the Parties to submit compliance report, along with an affidavit, within sixty (60) days from the date of receipt of this order. Further, the Commission directs that the Voluntary Modification offered by the Parties under Regulation 19(2) of the Combination Regulations, shall be prominently displayed on the respective websites of the parties, along with a link to the order of the Commission.
38. 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 factors stated in sub-section (4) of Section 20 of the Act and Voluntary Modification given by the Acquirers under Regulation 19(2) of the Combination Regulations, 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 same under sub-section (1) of Section 31 of the Act.
39. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.



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40. The information provided by the Acquirers shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
41. The Secretary is directed to communicate to the Acquirers accordingly.



Appendix I

For the purposes of this Voluntary Modification, the capitalized terms shall have the meanings set out against hereunder:

- a) Acquirer: TUTPL and Tata Sons Group (as defined in the merger notification) are collectively referred to as Acquirer.
- b) Airport Concession Entity(ies): As defined in Share Subscription and Share Purchase Agreement, and Shareholders' Agreement, both executed between the Parties on 4 July 2019.
- c) Conflicted Entity(ies): Any entity that is operating a schedule airline in India or outside India.
- d) Parties: Acquirer and the Target.
- e) Target: GMR Airports Limited.
- f) Key Managerial Persons: As defined in Concession Agreement for GMR Goa International Airport Limited.