



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2017/06/519)

18th September, 2017

CORAM:

Mr.Devender Kumar Sikri

Chairperson

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Mr. G. P. Mittal

Member

Legal Representative: Shardul Amarchand Mangaldas & Co.

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

1. On 28th June, 2017, the Competition Commission of India (“**Commission**”) received a notice filed by FMC Corporation (“**FMC**” / “**Acquirer**”) pursuant to an asset purchase and sale agreement dated 31st March, 2017 (“**Agreement**”).



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2. The proposed combination is a result of the commitments given jointly by the Dow Chemical Company (“**Dow**”) and E.I. du Pont de Nemours and Company (“**DuPont**”) to the European Commission (“**EC**”) as part of the merger control proceedings relating to the merger between Dow and DuPont. The EC approved the combination between the Dow and DuPont on 27th March 2017, subject to *inter-alia*, divestment of certain crop protection businesses (“**Divestment business**”). [hereinafter, FMC and DuPont are collectively referred to as “**Parties**”]
3. Proposed combination relates to acquisition of (a) DuPont’s Divestment business by FMC and (b) FMC’s Health and Nutrition (“**H&N**”) business by DuPont. The Divestment business broadly comprises of assets relating to: (i) Herbicides (ii) Insecticides (iii) Facilities concerned and (iv) Crop protection R&D activities.
4. According to the Acquirer, a part of consideration for the Divestment business is attributed to the FMC’s sale of H&N business to DuPont, including research and development activities related thereto but excluding FMC's Omega-3 business.
5. The proposed combination has been filed under sub-section (2) of Section 6 read with sub-section (a) of Section 5 of the Competition Act,2002 (“**Act**”).
6. The proposed combination was first notified on 1st May 2017 (Comb. Regn. No. C-2017/05/504). It was observed that the proposed combination involves two inter-related transactions namely, acquisition of: (i) certain crop protection businesses of DuPont by FMC (“**Part I**”); and (ii) FMC’s Health & Nutrition business (**H & N Business**) by DuPont. (“**Part II**”). With regard to Part II, it was submitted that given the miniscule size of the Health & Nutrition business of FMC in India, Part II would not require a notice in view of the Government of India notification dated 27th March, 2017. The Commission decided that the two transaction were inter-connected in terms of Regulation 9 (4) of the CCI (Procedure in regard to the transaction of Business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”). Since complete information was not furnished in the notice, the Commission invalidated the same and the Acquirer was required to file afresh notice with requisite details.



7. In terms of Regulation 14 of the Combination Regulations, vide letter dated 14th July, 2017, certain information and clarifications including those relating to pipeline products and substitutability of products in H&N business was sought from the Parties to which the Acquirer replied on 18th July, 2017. Further, on 1st August, 2017, certain clarifications relating to *inter-alia*, overlaps in insecticides were sought. Response to same was provided on 04th August, 2017. Besides, Acquirer also submitted information, material for competition assessment, from time to time.
8. In order to assist the Commission, views of expert, engaged under the relevant provisions of the Act and regulations framed thereunder, were also sought. Further, considering global nature of the proposed combination, the Commission engaged in cooperation with other jurisdictions as well.

PARTIES TO THE COMBINATION

FMC

9. FMC, a company listed on the New York Stock Exchange, is stated to be operating in various business segments, namely, agricultural solutions; health and nutrition; and minerals. Under the agricultural solutions segment, FMC develops, markets and sells agrochemicals such as insecticides, herbicides and fungicides. The H&N segment is stated to focus on food, pharmaceutical ingredients, nutraceuticals, etc. In the minerals segment, FMC manufactures a wide range of inorganic materials. FMC's H&N business consists of three broad product areas – Nutritional Ingredients, Health Excipients and Functional Health Ingredients.

10. In India, FMC operates through following entities;

- (a) FMC India Pvt. Ltd. (“FMC India”); and
- (b) Cheminova India Pvt. Ltd.

DUPONT

11. DuPont, a company incorporated in USA and listed on the New York Stock Exchange, has global operations in three segments viz; (i) agriculture and nutrition; (ii) speciality chemicals; and (iii) advanced materials and industrials products. It is also active in building materials, crop



protection, electronics and communications, industrial biosciences, nutrition and health, packaging and industrial polymers, performance polymers, agricultural products, protection technologies and sustainable solutions.

12. In India, DuPont operates *inter-alia*, through following entities:

- (a) E. I. DuPont Services Center India Pvt. Ltd.
- (b) E.I. Du Pont India Pvt. Ltd.
- (c) MECS India Pvt. Ltd.
- (d) PHI Seeds Pvt. Ltd.

13. DuPont's H&N business manufactures and supplies products specifically designed *inter-alia*, to improve texture, shelf-life of food and beverage products, pharmaceuticals, and dietary supplements which includes soy proteins, fibres, cellulose derivatives and cultures.

COMPETITION ASSESSMENT

14. As per the Act, likelihood of a combination resulting in an AAEC is undertaken in context of a relevant market. In terms of Section 2(r) of the Act, relevant market is defined as;

"The market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets."

15. The Commission observed that proposed combination involves overlap in products relating to broader segment of agrochemicals and H&N business in India. Within the agrochemical segment, overlap is in insecticides and herbicides. Further, with regard to the H&N business, Parties' products overlap in the broader category of hydrocolloids.

16. In the above said broader segment of agrochemicals i.e. insecticides and herbicides, products of the Parties overlap in a number of further sub-segments. In this regard, the Commission



observed that the Parties have a portfolio of insecticides and herbicides effective on multiple pests / weeds, infesting on many common crops (e.g. cereals, fruits, vegetables, etc.).

17. With regard to impact of the proposed combination in the broader segment of hydrocolloids, the Commission observed that Parties' products overlap in one of the sub-segment i.e. carrageenan, in India.
18. The competition assessment of the proposed combination has been carried out by delineating relevant market(s) in terms of relevant product market(s) and relevant geographic market(s) keeping in view the afore- mentioned overlaps.

RELEVANT MARKET

19. As per Section 2(t) of the Act, the relevant product market is defined as:

“a market comprising all those products or services which are regarded as a interchangeable or substitutable by the consumer, by reason of characteristic of the products or services, their prices and intended use”.

20. The Commission defined the relevant product market(s) on the basis of overlap(s) as identified in preceding paragraphs.

20.1 Relevant Products Market (s) in agrochemicals

- 20.1.1 The Commission observed that agrochemicals are used in agriculture to enhance crop yield and quality by protecting the crops against certain forms of damages caused by weeds, insects or fungi. In this regard, the Commission observed that these products are applied based on the type of crop and target pest i.e. insect or weed. Accordingly, crop protection products are sub-divided based on their effectiveness on distinct types of target pests infesting a crop. On the basis of the type of insects that are targeted, insecticides are classified as those targeting chewing, sucking, rasping and broad-spectrum insecticides.



20.1.2 The Commission further observed that separate relevant product market exists for every specific combination of crop (e.g. brinjal, sugarcane etc.) and class of insect (i.e. chewing/ sucking/ rasping). Moreover, herbicides may also be differentiated from other crop protection products by virtue of their common function of controlling weeds i.e. these products can be categorised based on factors, including (a) the type of crops that they protect and (b) the type of weeds that they attack. Further, the Commission also observed that herbicides can be classified into selective and non-selective categories and those effective against broadleaf weeds and grasses.

20.1.3 For analysis of substitutability between the Parties' products in insecticides/ herbicides, the Commission observed that the application method to the crop (e.g. as a foliar or soil) and nature i.e. whether patented and off-patent, may also be relevant. The Commission also noted that the broader markets for insecticides and herbicides can also be analyzed on the basis of active ingredient, formulation and mode of action.

20.2 Relevant Product Market in H & N Business

20.2.1 As already stated, there is overlap in only one segment i.e. carrageenan, a narrow category of the overall specialty hydrocolloids segments. Carrageenan, a natural hydrocolloid extracted from red seaweed, is used in the food industry for its stabilizing properties. In this regard, Parties stated that various products such as Alginates, Pectin and Purified CMC, are distinct because of a number of factors including (i) their different applications, (ii) the difference in their manufacturing process and location, and (iii) price variation. Accordingly, they are part of the hydrocolloid family but have different focuses and are different products.

20.2.2 Considering relatively small presence of the Parties and presence of other competitors in this segment, the exact definition of relevant product market has been left open as the proposed combination does not give rise to competition concern, irrespective of the manner in which the market is defined.

21 RELEVANT GEOGRAPHIC MARKET



21.1 As per Section 2(s) of the Act, relevant geographic market is defined as;

“a market comprising the area in which the conditions of competition for supply of goods or provision of service or demand of goods or series are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring market”.

21.2 The Commission observed that the relevant geographic market for the above mentioned relevant product markets is the territory of India.

22 ASSESSMENT OF AAEC CONCERNS

22.1 INSECTICIDES & HERBICIDES

22.1.1 The Commission carried out competition assessment of each of the overlapping relevant market(s) and observed that considering factors such as high combined market shares and / or substantial increment as a result of the proposed combination and / or presence of competitors, the proposed combination may enhance combined entity’s market power in the following relevant markets as described in para 22.1.2 to 22.1.6, within broader segment of insecticides and herbicides:

- a. Insecticides that target chewing pests for groundnut*
- b. Insecticides that target chewing pests for soybean*
- c. Insecticides that target chewing pests for rice*
- d. Insecticides that target chewing pests for vegetables (others)*
- e. Herbicides for Broadleaf weeds in Wheat*

22.1.2 *Insecticides that target chewing pests for Groundnut:* The Commission observed that the combined market share of the Parties would be 40-45 per cent with an increment of 5-10 per cent. Further, the pre-merger HHI at 1800-1900 would increase to 2100-2200 post combination with an increment of 200-300. Apart from above, other competitors in the relevant market are distantly placed e.g. DowDuPont (15-20 per cent), Gharda (5-10 per cent), and Chemtura (0-5 per cent).



- 22.1.3 *Insecticides that target chewing pests for Soybean*: The Commission observed that the combined market share of the Parties would be 60-65 per cent with an increment of 5-10 per cent. Further, the pre-merger HHI at 3900-4000 would increase to 4400-4500 implying an increment of 500-600. Apart from above, other competitors in the relevant market are distantly placed e.g. Indofil (15-20 per cent), Syngenta/Adama (5-10 per cent), Excel (0-5 per cent) and Gharda (0-5 per cent).
- 22.1.4 *Insecticides that target chewing pests for rice*: The Commission observed that the combined market share of the Parties would be 30-35 per cent with an increment of 0-5 per cent. Further, the proposed combination would result in an increment of 200-300 in HHI. Apart from above, other competitors in the relevant market are distantly placed e.g. Bayer Crop Sciences (10-15 per cent) and Takeda (10-15 percent).
- 22.1.5 *Insecticides that target chewing pests for vegetables (others)*: The Commission observed that the combined market share of the Parties would be 30-35 per cent with an increment of 0-5 per cent. Further, the proposed combination would result in an increment of 200-300 in HHI. Apart from above, other competitors in the relevant market are distantly placed e.g. Syngenta/Adama (10-15 per cent), Bayer Crop Science (10-15 per cent), Nihon- Nohyaku (5-10 per cent) and Rallis (5-10 per cent).
- 22.1.6 *Herbicides for Broadleaf weeds in Wheat*: The Commission observed that the combined market share of the Parties would be 45-50 per cent with an increment of 5-10 per cent. Further, the pre-merger HHI at 1900-2000 would increase to 2600-2700 implying an increment of 700-800. Apart from above, other competitors in the relevant market are distantly placed e.g. UPL (10-15 per cent), Atul (5-10 per cent), Adama (0-5 per cent), Nagarjuna (0-5 per cent) and Rallis (0-5 per cent)
- 22.1.7 In relation to the vertical arrangements, the Commission observed that there are certain vertical relationships between FMC and the DuPont in relation to supply of certain Active Ingredients ('AIs'). The Commission observed that the proposed combination does not result in any substantial change in market dynamics in respect of those AIs.



23. **HEALTH AND NUTRITION BUSINESS – the market for Carrageenan**

23.1 The Commission observed that the market for Carrageenan in India is import based and sale of Carrageenan by DuPont in India is insignificant. Apart from a number of China based suppliers, there are other competitors such as Beilian, Ceamsa and CP Kelco exporting Carrageenan to India.

23.2 Considering facts on record and the 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, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in the market for Carrageenan in India.

24. **VOLUNTARY MODIFICATION TO ADDRESS THE AAEC CONCERN**

24.1 In order to address the competition concerns emanating from the proposed combination in the aforementioned relevant markets relating to agrochemicals, the Acquirer vide its submission dated 16th August, 2017 (“**Voluntary Remedy Proposal**” / “**VRP**”) under Regulation 19 (2) of Combination Regulations, submitted certain modification in respect of the proposed combination. Thereafter, in order to fully address competition concerns, the Acquirer amended VRP vide its letter (s) / email (s) dated 7th September, 2017 and 11th September, 2017. Furthermore, the Acquirer made certain submissions relating to implementation of VRP on 12th September, 2017 and 14th September, 2017.

24.2 Under the VRP, the Acquirer offered divestiture of certain agrochemicals bearing label claim for the relevant markets as mentioned in paragraphs 22.1.2 to 22.1.6.

24.3 The details of the final VRP submitted by the Acquirer and accepted by the Commission are as under:

25. **Indian Divestment Business**

- i. Divestment of following formulated product (s):



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- (a) Carbofuran 3G sold under the brand name 'Furadan', bearing label claim for chewing pests on groundnut, soybean, rice, vegetables (Others).
 - (b) Thiacloprid 21.7 SC sold under the brand name 'Splendour', bearing label claim for chewing pests on soybean.
 - (c) [Metsulfuron Methyl 20 WP] sold under the brand name 'Metcil' and [Metsulfuron Methyl 10% + Carfentrazone ethyl 40% DF] sold under the brand name 'Affinity Force' - both bear label claim for broadleaf weed in wheat.
- ii. As per VRP, divestment of above-stated formulated products include followings:
- a. royalty-free, exclusive, irrevocable (perpetual) licences including in each case the right to sub-license to FMC relevant active ingredient in India and product registration data for the associated formulated product in India;
 - b. transfer the product registrations of the above stated products in India;
 - c. transfer contracts with third party suppliers for the manufacture and sale of above stated products;
 - d. transfer the Indian customer list and other records relating to above stated products;
 - e. transfer the intangible assets, such as registered intellectual property, including know-how, brand names and trademarks, primarily used by FMC in relation to above stated products.
 - f. inventory for sale in India, including in-progress mixtures and formulations, packaging, supplies and material to the extent such exist;
 - g. at the option of the Purchaser, enter into a transitional service agreement with the purchaser as may be required by the Approved Purchaser in order to ensure the continued supply of the Divestment Product(s) in the relevant markets. for all services that FMC currently supplies to support above stated products;
 - h. at the option of the approved Purchaser, into a transitional supply/toll manufacturing agreement as may be required by the Approved Purchaser in order to ensure the continued supply of the Divestment Product(s) in the relevant markets;



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- i. where the consent of third parties is required, ensure that the relevant consent is obtained; and
 - j. as the business relating to above stated products is not a standalone business or entity, enter into related commitments regarding the separation of the business relating to above stated products from the other business of FMC and preservation of the viability, marketability and competitiveness of the above stated products business.
- iii. Besides, the Acquirer also submitted following regarding the Indian divestment business required for implementation of VRP.
- a. All tangible (if there are any) and intangible assets {(including intellectual property rights, trademarks (product specifications, manuals, instructions and recipes etc.)}; product information sheets, training materials, price lists and presentations, and other marketing materials.
 - b. All necessary licenses, permits and authorisations (including marketing authorisations) issued by any governmental or statutory authority related to and/or being used in connection with the Indian Divestment Business;
 - c. All existing inventory of Divested products which includes raw materials, stocks, work-in-progress and finished products.
 - d. All contracts, leases, commitments, and understandings of and related to the Indian Divestment Business;
 - e. All customer records, credit records and other records such as business plans and forecasts, pertaining to the Indian Divestment Business;
 - f. All Personnel, including Key Personnel (If there are any) and engaged exclusively on the Indian Divestment Business.



The elements provided in sub-paragraphs (i) to (iv) are collectively referred to as “Assets”.

- g. In addition, the Indian Divestment Business shall include such transitional support as may be agreed between the Approved Purchaser and the Acquirer which are necessary to enable the Approved Purchaser to conduct the Indian Divestment Business in at least the same manner as the Parties operated the Indian Divestment Business at the time of execution of the Combination Agreement dated 31st March, 2017.

iv. According to Acquirer, the VRP shall not include:

- (a) any manufacturing facilities of the Parties (In case no separate facilities exist);
- (b) intellectual property which does not contribute to the current operations and/or is not necessary to ensure the viability and competitiveness of the FMC Divestiture Business;
- (c) If any of the intangible assets are used by FMC for any product other than the stated products, FMC can retain such assets and only license them to the purchaser on an irrevocable, perpetual, royalty-free basis exclusively for use in above stated products;
- (d) any marketing authorisations currently held by Parties outside of India for divestment products;
- (e) any rights to divestment brands outside of India;
- (f) books and records required to be retained pursuant to any statute, rule, regulation or ordinance, provided that the approved purchaser shall be entitled to obtain a copy of the same and shall be permitted access to the original of such books and records upon reasonable request during normal business hours;
- (g) monies owed to FMC by customers for the purchase of products pertaining to FMC Divestiture Business, and monies owed by the FMC to suppliers for materials used in the productions of these products, or to suppliers for the production of these products
- (h) Sales offices or other physical plants; and
- (i) FMC employees (In case no separate facilities exist)



26. **Undertakings**

26.1 Apart from the divestiture of the above stated products, Acquirer is also directed to provide following undertakings that:

- i) It is currently not active in and it will not re- enter the commercialization of the products / formulations containing the (i) Carbofuran AI and (ii) Thiacloprid AI, having applications on the chewing insects in groundnut, soybean, rice and vegetable (others), in India for a period of [REDACTED] from the date of receipt the order.
- ii) It would not sell the products / formulations containing (i) Carbofuran AI and (ii) Thiacloprid AI having applications on the chewing insects in groundnut, soybean, rice and vegetable (others), in India, directly or indirectly, by exporting to India, including through their affiliates for a period of [REDACTED] from the date of receipt the order.
- iii) It would issue necessary directions to its subsidiaries and affiliates not to supply any product / formulation containing (i) Carbofuran AI and (ii) Thiacloprid AI having applications on the chewing insects in groundnut, soybean, rice and vegetable (others) into India for the period of [REDACTED] from the date of receipt order”.

26.2 The Acquirer is directed to furnish all requisite undertaking (s) as stated above to the Commission within a period of [REDACTED] from the date of the receipt of this order.

27. **Divestiture during the First Divestiture Period:**

27.1 That the Acquirer shall Divest, or procure the Divestiture of the Indian Divestment Business within the First Divestiture Period, absolutely and in good faith, to an Approved Purchaser pursuant to and in accordance with the Approved Sale and Purchase Agreement.

27.2 That the Divestiture shall not be given effect to unless and until the Commission has approved (i) the terms of the final and binding sale and purchase agreement; (ii) the



purchaser proposed by the Parties; and (iii) transitional agreements, if any, to be entered into by the Parties and Approved Purchaser.

27.3 That the Acquirer shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser within [REDACTED] from the Effective Date.

27.4 That pursuant to execution of the Approved Sale and Purchase Agreement, the Parties shall ensure that the Closing takes place within the First Divestiture Period.

27.5 That the Divestiture of Indian Divestment Business shall be carried out by way of sale of the Assets to an Approved Purchaser.

27.6 That the Parties are permitted to sell such other additional asset(s) that they and the Approved Purchaser may agree in context of the Divestiture.

28. **Preservation of Economic Viability, Marketability and Competitiveness**

28.1 Until the Closing Date, the Acquirer shall take such steps as are necessary to maintain economic viability, marketability and competitiveness of the Indian Divestment Business, minimize the loss of competitive potential of Indian Divestment Business and shall prevent the destruction, removal, wasting, deterioration, sale, disposition, transfer (including creation of encumbrance) or impairment of the assets (if there are any) related to the Indian Divestment Business, except as would occur in the ordinary course of business.

28.2 Until the Closing Date, the Acquirer shall maintain the operations of the Indian Divestment Business at least as they are currently operated (including efforts to generate new business) consistent with the practices of the Indian Divestment Business and the Acquirer's business, capital and strategic plans, in place on the date of the Combination Agreement. The Parties shall use their best efforts to preserve the existing relationships with suppliers, vendors, customers, agencies, and other Third Parties having business related to the Indian Divestment Business. Further, the Parties shall perform (i) all maintenance to, and replacements of, the assets (If there are any) of the Indian Divestment Business in the ordinary course of business, in accordance with past practice, and Parties' business, capital,



- and strategic plans in place on the date of execution of the Combination Agreement; and
- (ii) carry on such capital projects, physical plant improvements, and business plans as are already under way or planned, including, but not limited to, existing or planned renovation and expansion projects (If there are any), in accordance with Acquirer business, capital, and strategic plans in place on the date of execution of the Combination Agreement.
- 28.3 Until the Closing Date, the Acquirer shall make available, or procure to make available, sufficient resources for the development of the Indian Divestment Business, on the basis and continuation of the existing business plans.
- 28.4 The Acquirer shall take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel, if there are any, to continue his or her position consistent with the past practices and/or as may be necessary to maintain the marketability, viability and competitiveness of the Indian Divestment Business. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Indian Divestment Business.
- 28.5 The Acquirer shall remove any impediments that may deter Key Personnel, if there are any, from accepting employment with the Approved Purchaser including, but not limited to any non-compete or confidentiality provision of the employment or other contracts with the Key Personnel that would affect the ability of the Key Personnel to be employed by the Approved Purchaser.
- 28.6 In exceptional circumstances, if any member of Key Personnel (if there are any) terminates his or her employment with the Acquirer prior to the Closing Date, the Parties shall provide to the Monitoring Agency a reasoned proposal to replace such member of Key Personnel with the replacement who is well suited to carry out the functions of the said member of Key Personnel.



29. **Hold-separate obligations**

29.1 The Acquirer shall, until Closing, procure that the Indian Divestment Business is kept separate from the business that the Parties will be retaining and that: (i) management and staff of the business retained by the Parties have no involvement in the Indian Divestment Business; and (ii) the Key Personnel and Personnel, if there are any, have no involvement in any business retained by the Parties and do not report to any individual outside the Indian Divestment Business.

29.2 Until Closing, the Acquirer shall assist the Monitoring Agency in ensuring that the Indian Divestment Business is managed as a distinct and saleable entity separate from the business retained by the Parties. Within [REDACTED] of the date of the Order, the Parties shall appoint a Hold Separate Manager(s) for the Indian Divestment Business, who shall manage Indian Divestment Business independently and in the best interest of the business with a view to ensure its continued economic viability, marketability and competitiveness and its independence from the businesses retained by the Parties. The Hold Separate Manager(s) shall closely cooperate with and report exclusively to the Monitoring Agency and, if applicable, the Divestiture Agency. Any replacement of the Hold Separate Manager(s) shall be subject to the approval of the Commission.

29.3 The purpose of the hold separate obligations is to (a) preserve the Indian Divestment Business as a viable, competitive and on-going business, independent of the Parties until the Closing; (ii) assure that no Confidential Information is exchanged between the Parties and the Indian Divestment Business, except as otherwise provided in the Order; and (iii) prevent interim harm to competition in the relevant market pending Divestiture.

30. **Ring-fencing**

30.1 The Acquirer and their Affiliates shall ensure that Confidential Information obtained by the Parties and/or their Affiliates is eliminated and is not used by the Parties or their Affiliates. For this purpose, the Parties shall implement, or procure implementation of necessary and adequate measures. The Acquirer shall also ensure that the participation of the Indian



Divestment Business in the central information technology network will be discontinued to the extent possible, provided however, such discontinuation should not affect the viability and competitiveness of Indian Divestment Business. The employees of the Acquirer who provide support to the Indian Divestment Business shall retain and maintain Confidential Information as confidential and except as permitted under the Order, shall not provide, discuss, exchange, circulate, or otherwise furnish any such information to or with any person whose employment involves the business retained by the Parties. Such employees shall also execute agreement(s) prohibiting disclosure of Confidential Information.

- 30.2 The Acquirer to take measures to hold the Indian Divestment Business separate from the combined entity and ensure that the combined entity did not obtain any confidential information relating to the Indian Divestment Business that is not already known to Parties.
- 30.3 The Acquirer may obtain or keep information relating to the Indian Divestment Business which is reasonably necessary for the Divestiture or the disclosure of which is required by law or which is reasonably required by the Parties to comply with their financial reporting or other legal obligations (including in relation to tax filings).

31. **Non-solicitation clause**

- 31.1 The Parties shall ensure that neither the Parties nor their Affiliates employ, or make offer of employment to any member of Key Personnel, (if there are any), transferred with the Indian Divestment Business for a period of [REDACTED] after Closing, unless the employment of such member of Key Personnel has been terminated by the Approved Purchaser.

32. **Due diligence**

- 32.1 In order to enable potential purchasers to carry out a reasonable due diligence of the Indian Divestment Business, the Acquirer shall, subject to customary confidentiality assurances and depending on the stage of the Divestiture process provide to potential purchasers sufficient information (i) as regards the Indian Divestment Business; and/or (ii) relating to



the Key Personnel and Personnel (if there are any), and allow them reasonable access to the Key Personnel and Personnel.

33. Reporting

33.1 The Acquirer shall submit written reports on the Divestiture process to the Monitoring Agency no later than seven days after the end of every month following the date of the receipt of Order (or otherwise at the Monitoring Agency's request), including, if applicable, on potential purchasers of the Indian Divestment Business and developments in the negotiations with such potential purchasers, and on the status of Divestiture. The Parties shall submit a list of all potential purchasers which have expressed interest in acquiring the Indian Divestment Business to the Monitoring Agency at each stage of the Divestiture process, as well as a copy of all offers made by such potential purchasers within five days of their receipt.

33.2 The Acquirer shall keep the Monitoring Agency informed about the Divestiture process, in particular, on preparation of the data room documentation and the due diligence procedure and shall submit copies of any information memorandum and/or similar documents to the Monitoring Agency.

34. No acquisition of influence:

34.1 The Parties shall, for a period of [REDACTED] from the Closing Date, not acquire direct or indirect influence over the whole or part of the Indian Divestment Business.

35. Purchaser Requirements:

35.1 The purchaser proposed by the Acquirer, in order to be approved by the Commission, must, *inter-alia*:

- i. be independent of and with no connection whatsoever with the Parties or their Affiliates;



- ii. not be either a past or present employee or director (or spouse or child of such employee or director)
- iii. have the financial resources, expertise and incentive to maintain and develop the Indian Divestment Business as a viable and active competitor to the Parties in the relevant market;
- iv. not have any structural or financial links (whether directly or indirectly) with any existing producer in the relevant market; and
- v. be neither likely to create, in the light of the information available to the Commission prima facie competition concerns, nor give rise to a risk that the implementation of the Order will be delayed, and must, in particular, reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Indian Divestment Business. (The aforementioned criteria for the purchaser hereafter referred to as the “**Purchaser Requirements**”).

36. Approval of Sale and Purchase Agreement and Purchaser:

- 36.1 The final binding sale and purchase agreement (as well as ancillary agreements including transitional agreement(s)), relating to the Divestiture of the Indian Divestment Business shall be conditional on the Commission’s approval. Within a period of [REDACTED] from the Effective Date, the Parties shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), to the Commission and the Monitoring Agency. The Parties must be able to demonstrate to the Commission that the purchaser proposed by the Parties, fulfils the Purchaser Requirements and that the Indian Divestment Business is being divested in a manner consistent with the Order.
- 36.2 The Commission may approve the Divestiture of the Indian Divestment Business without one or more Assets, or by substituting one or more Assets or Personnel with one or more different assets, if this does not affect the viability and competitiveness of the Indian Divestment Business after the Divestiture, taking account of the requirement of the Approved Purchaser.



37. Monitoring Agency:

37.1 The Commission shall appoint an independent agency as Monitoring Agency for the purpose of, *inter-alia*, supervision of the voluntary remedy proposed by Acquirer and accepted by the Commission.

37.2 The Monitoring Agency shall undertake such functions as may be directed by the Commission, which shall include, *inter- alia*, the following functions:

- a. Overseeing the on-going management of the Indian Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitoring compliance by the Parties with the modification to the combination provided in the Order. To that end, the Monitoring Agency shall:
- b. Monitor the preservation of the economic viability, marketability and competitiveness of the Indian Divestment Business, and the holding separate of the Indian Divestment Business from the business retained by the Parties;
- c. supervise the management of the Indian Divestment Business as distinct and saleable entity;
- d. with respect to Confidential Information:
 - determine all necessary measures are being taken to ensure that the Parties do not after the Effective Date obtain any Confidential Information relating to the Indian Divestment Business;
 - in particular strive for the severing of the Indian Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Indian Divestment Business;



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- strive to ensure that any Confidential Information relating to the Indian Divestment Business obtained by the Parties before the Effective Date is eliminated and will not be used by the Parties; and
- decide whether such information may be disclosed to or kept by the Parties as the disclosure is reasonably necessary to allow the Parties to carry out the Divestiture or as the disclosure is required by law;
- e. monitor the splitting of assets, if there would be any, between the Indian Divestment Business and the Parties and/or their Affiliates;
- f. propose to Parties such measures as the Monitoring Agency considers necessary to ensure Parties' compliance with the Order, in particular the maintenance of the full economic viability, marketability or competitiveness of the Indian Divestment Business, the holding separate of the Indian Divestment Business and the non-disclosure of Confidential Information, including but not limited to commercially sensitive information;
- g. review and assess the replacement of the member of Key Personnel, if there are any, who has terminated his or her employment with the Parties and provide its recommendation regarding the suitability of such replacement to the Commission;
- h. review and assess potential purchasers as well as the progress of the Divestiture process and verify that at each stage of the Divestiture process, potential purchasers receive sufficient information relating to the Indian Divestment Business in particular by reviewing the relevant data room documentation, information memorandum and due diligence process and that the potential purchasers are granted reasonable access to the Personnel;
- i. act as a contact point for any requests by Third Parties, in particular potential purchasers, in relation to the Order ;



- j. Submit to the Commission a written report within ten days after the end of every month which shall cover (a) the operation and management of the Indian Divestment Business; and (b) the progress of the Divestiture process as well as potential purchasers. A non-confidential copy of the said report will be provided to the Parties;
 - k. the Monitoring Agency shall report immediately in writing to the Commission of any failure on part of the Parties to comply with the Order;
 - l. submit to the Commission a written report containing its recommendations as regards (a) the suitability of the purchaser proposed by the Parties; (b) whether the Divestiture is being carried in accordance with the Order; and
 - m. Assume the other functions assigned to the Monitoring Agency under the Monitoring Agency Agreement.
- 37.3 A copy of the Monitoring Agency Agreement shall be provided to the Acquirer and the Acquirer shall use their best efforts to facilitate the Monitoring Agency in performance of its duties and obligations provided in the Monitoring Agency Agreement. Any failure by the Acquirer in such facilitation may be deemed to be a contravention of the Order.

38. Divestiture Agency:

- 38.1 If the Closing does not taken place as specified in paragraph 28 of this order, the Commission shall appoint a Divestiture Agency to divest the Indian Divestment Business.
- 38.2 The appointment of the Divestiture Agency shall take effect from commencement of Second Divestiture Period or the day of its appointment, whichever is later.
- 38.3 Upon receipt of the notice of the Commission regarding the appointment of Divestiture Agency, the Parties must, within the period prescribed by the Commission, execute a comprehensive power of attorney in favour of the Divestiture Agency to effect the sale of Indian Divestment Business and all actions and declarations which the Divestiture Agency



considers necessary or appropriate for achieving the sale of Indian Divestment Business, including the power to appoint advisors to assist with the sale process. The power of attorney shall include the authority to grant sub-powers. During the Second Divestiture Period, the Divestiture Agency shall have the sole authority to sell the Indian Divestment Business at no minimum price to an Approved Purchaser. Upon request of the Divestiture Agency, the Acquirer shall cause the documents required for effecting the sale and the Closing to be executed.

- 38.4 The Divestiture shall not be affected by the Divestiture Agency unless and until the Commission has approved the terms of sale and purchase agreement (including any ancillary agreement) and the purchaser proposed by the Divestiture Agency.
- 38.5 If the Monitoring Agency and the Divestiture Agency are not the same legal or natural persons, the Monitoring Agency and the Divestiture Agency shall cooperate with each other during the Second Divestiture Period in order to facilitate each other's tasks.
- 38.6 A copy of the Divestiture Agency Agreement shall be provided to the Acquirer and the Acquirer shall use their best efforts to facilitate the Divestiture Agency in performance of its duties and obligations provided in the Divestiture Agency Agreement. Any failure by the Parties in such facilitation may be deemed to be a contravention of the Order.

39. Sale of Indian Divestment Business in Second Divestiture Period:

- 39.1 Within the Second Divestiture Period, the Divestiture Agency shall divest at no minimum price the Indian Divestment Business, to an Approved Purchaser.
- 39.2 The Divestiture Agency shall have the discretion as to the manner in which it sells the Indian Divestment Business. The Divestiture Agency shall include in the sale and purchase agreement, or other disposal arrangement, (as well as in any ancillary agreements) (a) such terms and conditions as it considers appropriate for an expedient sale in the Second Divestiture Period; and (b) such customary representations and warranties and indemnities as are reasonably required to affect the sale. The Divestiture Agency shall protect the



legitimate commercial interests of the Parties, subject to the Parties' unconditional obligation to divest at no minimum price in the Second Divestiture Period.

39.3 During the Second Divestiture Period, the Divestiture Agency shall provide the Commission with a comprehensive monthly (or otherwise at the Commission's request) report on the progress of the Divestiture process. The monthly reports shall be submitted within ten days after the end of every month with a simultaneous copy to the Monitoring Agency and a non-confidential copy to the Parties.

40. Duties and obligations of the Parties:

40.1 The Acquirer shall provide and shall cause their advisors to provide the Monitoring Agency and Divestiture Agency with such co-operation, assistance and information as the Monitoring Agency and/or Divestiture Agency may reasonably require to perform its tasks. The Monitoring Agency and Divestiture Agency shall have full and complete access to any of the Indian Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Order and the Parties and the Hold Separate Managers shall provide the Monitoring Agency and Divestiture Agency upon request with copies of any document required by the Monitoring Agency or the Divestiture Agency, as the case may be. The Parties shall make available to the Monitoring Agency and Divestiture Agency one or more offices on their premises.

40.2 The Acquirer shall provide the Monitoring Agency with the managerial and administrative support that it may reasonably request in relation to the management of the Indian Divestment Business. This shall include administrative support functions relating to the Indian Divestment Business which are currently carried out at headquarters level. The Parties shall provide and shall cause its advisors to provide the Monitoring Agency, on request, with the information submitted to potential purchasers, in particular give the Monitoring Agency access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. The Parties shall inform the



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Monitoring Agency on potential purchasers, submit lists of all potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Agency informed of all developments in the Divestiture process.

41. The Acquirer shall indemnify the Monitoring Agency, its employees and agents and Divestiture Agency and its employees and agents (each an “**Indemnified Party**”) and hold each Indemnified Party harmless against any liabilities arising directly out of the performance of the Monitoring Agency’s duties under the Order, except to the extent that such liabilities result from the willful default, recklessness, gross negligence or bad faith of the Indemnified Party.
42. The Commission may share confidential information proprietary to the Parties and the Indian Divestment Business with the Monitoring Agency and Divestiture Agency, without seeking any approval from the Parties.
43. Prior to the Closing Date, the Acquirer shall secure all consents and waivers from all Third Parties that are required by the Approved Purchaser in relation to the Indian Divestment Business as of the Closing Date. Provided, however, that the Parties may satisfy this requirement by certifying that the Approved Purchaser has, to the Approved Purchaser’s satisfaction, either (i) executed such agreements directly with each of the relevant Third Parties, or (ii) secured a similar contract with similar terms from the customers or from supplier(s) supplying such product or service.
44. The Commission may, at any time, request information from the Parties that is reasonably necessary for the effective implementation of the Order.
45. The Acquirer shall notify the Commission at least thirty days prior to any proposed change in the corporate structure of the Parties that may adversely affect the compliance obligations of the Parties.
46. All appendices and Schedules annexed to the Order shall form an integral part of the Order.



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47. In carrying out the aforesaid modification, the Parties shall comply with the provisions of the Act, the Combination Regulations and the Competition Commission of India (General Regulations), 2009.
48. The Order shall stand revoked, if any time, the information provided by the Acquirer is found to be incorrect.
49. The Secretary is directed to communicate to the Acquirer accordingly.



Appendix A

Glossary

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| <i>Affiliates</i> | Enterprises controlled by the Parties and/or by the ultimate parents of the Parties, including the ultimate parents, whereby the term “Enterprises” and “Control” shall bear the meaning provided in the Act. |
| <i>Approved Purchaser</i> | The entity approved by the Commission as acquirer of the Indian Divestment Business in accordance with the criteria set out in paragraph 35. |
| <i>Approved Sale and Purchase Agreement</i> | The sale and purchase agreement for sale of Indian Divestment Business which has been duly approved by the Commission. |
| <i>Assets</i> | Shall mean the tangible and intangible assets in relation to the Indian Divestment Business provided paragraph 25 |
| <i>Closing</i> | The transfer of the legal title of the Indian Divestment Business to the Approved Purchaser. |
| <i>Closing Date</i> | The date on which Closing takes place. |
| <i>Combination Agreement</i> | The Agreement entered into by and between the Parties on 31 st March, 2017. |
| <i>Confidential Information</i> | Any business secrets, know-how, commercial information, or any other Information of a proprietary nature relating to the Indian Divestment Business that is not available in public domain. |
| <i>Divestiture</i> | Shall mean the sale and transfer of the Indian Divestment Business. The words, “divest”, “divested”, “divesting” and “divestment” shall be interpreted accordingly. |
| <i>Divestiture Agency</i> | One or more natural or legal person(s), independent from the Parties, which is appointed by the Commission, and which has the duty to Divest the Indian Divestment Business during the Second Divestiture Period. The Monitoring Agency may also act as Divestiture Agency. |
| <i>Divestiture Agency Agreement</i> | The agreement executed by and between the Commission and the Divestiture Agency. |
| <i>Effective Date</i> | The date of receipt of this Order. |
| <i>First Divestiture Period</i> | The period of [REDACTED] from the Effective Date. In the event the consummation of proposed combination does not take place within a period of [REDACTED] from the Effective Date, the First Divestiture Period may, subject to approval of the Commission, be extended to include a further period of [REDACTED] from the date of consummation of the proposed combination. |
| <i>Hold Separate Manager</i> | means an individual with experience in the management, sales, marketing, or financial operations of the Indian Divestment Business, who is appointed by the Parties to manage the Indian Divestment Business till the Closing Date. |
| <i>Indian Divestment Business</i> | The Indian Divestment Business shall include the elements provided in paragraphs sub-paragraph 25. In the Second Divestiture Period, the Indian Divestment Business shall mean the Alternative Indian Divestment Business. |
| <i>Key Personnel</i> | Employees (if there are any) who are necessary to maintain the viability |



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| | and competitiveness of the Indian Divestment Business,. |
| <i>Monitoring Agency</i> | One or more natural or legal person(s), independent from the Parties, who is appointed by the Commission, and who has the duty to monitor the Parties' compliance with the modifications provided in the Order. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission. |
| <i>Monitoring Agency Agreement</i> | The agreement executed by and between the Commission and the Monitoring Agency. |
| <i>Order</i> | Final order of the Commission approving the proposed combination under the relevant provisions of Section 31 of the Act. |
| <i>Personnel</i> | Employees who worked at least [REDACTED] for the Divestment Business during the [REDACTED] period prior to the Closing Date, including but not limited to shared employees and seconded employees. <i>(if there are any)</i> |
| <i>Second Divestiture Period</i> | The period of [REDACTED] from the end of the First Divestiture Period. |
| <i>Third Party(ies)</i> | Any entity other than the Parties and the Approved Purchaser. |