



**COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/05/400)**

8th June, 2017

**Notice under Section 6 (2) of the Competition Act, 2002 jointly given by
Dow Chemical Company, E. I. du Pont De Nemours and Company, DowDuPont Inc.,
Diamond Merger Sub Inc. and Orion Merger Sub Inc.**

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
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Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. G.P. Mittal
Member

Legal Representatives: 1. Shardul Amarchand Mangaldas & Co
2. Dua Associates

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

INTRODUCTION

1. On 19th May, 2016, the Competition Commission of India (“**Commission**”) received a notice jointly filed by Dow Chemical Company (“**Dow**”), E. I. du Pont de Nemours and Company (“**DuPont**”), DowDuPont Inc. (“**DowDuPont**”), Diamond Merger Sub Inc. (“**Diamond Merger Sub**”), and Orion Merger Sub Inc. (“**Orion Merger Sub**”) under Section 6 (2) of the Competition Act, 2002 (“**Act**”) (hereinafter, Dow, DuPont, DowDuPont, Diamond Merger Sub and Orion Merger Sub are collectively referred to as “**Parties**”).
2. The notice was filed pursuant to execution of Merger Agreement (‘**MA**’) by and between the Parties on 11th December, 2015. The proposed combination relates to merger of businesses of Dow and DuPont and intends to create three independent companies: (a) an agriculture company; (b) a material sciences company; and (c) a speciality products company.
3. At the time of filing the notice, the Parties had submitted an undertaking to provide, at a later date, certain material information / data relating to substitutability of products in Material Sciences segment (“**Undertaking**”) under Regulation 5(6) of the Competition Commission of India



(Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011 (“**Combination Regulations**”). The said information was critical in carrying out competition assessment of the proposed combination.

4. Although, information in respect of Undertaking was furnished by the Parties on 8th July, 2016, it was noted that the same was not complete, considering that substitutability analysis at the level of individual co-polymer (within the broader segment of chemicals in the Material Sciences segment) was not furnished.
5. In view of the above, vide letter dated 2nd August, 2016 (**‘Letter 1’**), in terms of sub regulation (3) of Regulation 14 of the Combination Regulation, the Parties were directed to provide complete information (in accordance with the Undertaking) as well as other information required for competition assessment. The Parties gave a response to the said letter on 8th September 2016, after seeking extension of time. As the said response was still incomplete, another letter dated 23rd September 2016 (**‘Letter 2’**) was issued to the Parties (Letter 1 and Letter 2 are referred to as **‘Letters’**). Besides, Parties also submitted information from time to time, through emails.
6. In its meeting held on 28th December, 2016, the Commission observed that complete information relevant for the assessment of proposed combination was given only on 3rd November, 2016, and therefore, the timeline, in terms of Section 31 (11) of the Act, shall commence from said date.
7. In the same meeting, the Commission also decided to seek certain clarifications from the Parties regarding discrepancies noted in the overlap in the Parties’ products’ which was communicated to them on the same day. The response to the same was received on 3rd January 2017.
8. Considering the global nature of the proposed combination, the Commission cooperated with the other jurisdictions.
9. In order to assist the Commission in assessment of the case, an expert was engaged under the provisions of Section 36 (3) of the Act.

PROPOSED COMBINATION

10. The Commission noted that the MA dated 11th December, 2015, entered into by and between the Parties would be effected through following two steps:
 - i. Dow and DuPont have incorporated DowDuPont, which in turn have incorporated two subsidiaries, Diamond Merger Sub and Orion Merger Sub.
 - ii. Dow will merge with Diamond Merger Sub, such that Dow will be the surviving entity and DuPont will merge with Orion Merger Sub, with DuPont as the surviving entity.

Thereafter, Dow and DuPont will become subsidiaries of DowDuPont.

PARTIES TO THE COMBINATION

DOW

11. Dow, a global science and technology company incorporated in USA, is, *inter-alia*, active in chemical, plastic, agricultural products (including crop protection products and seeds) health care and personal care.



DUPONT

12. DuPont, a global science and engineering company incorporated in USA, is *inter-alia*, active in agriculture (including crop protection products and seeds), electronics and communications, nutrition and health, performance chemicals and performance materials.

DOWDUPONT

13. Dow and DuPont have incorporated DowDuPont Inc., which will be the holding company of Dow and DuPont, post combination.

ORION MERGER SUB

14. Orion Merger Sub has been incorporated by DowDuPont as its wholly owned subsidiary. Pursuant to terms of the MA, Orion Merger Sub will merge into DuPont such that DuPont would continue as the surviving company.

DIAMOND MERGER SUB

15. Diamond Merger Sub has been incorporated as a wholly owned subsidiary of DowDuPont. Pursuant to terms of the MA, Diamond Merger Sub will merge into Dow such that Dow would continue as the surviving company.

INVESTIGATION UNDER SECTION 29 OF THE ACT

16. The Commission, in its meeting held on 4th January, 2017, considered facts on record, details provided in the notice, responses to the Letters and submissions of the Parties from time to time and formed a *prima facie* opinion that the proposed combination is likely to cause appreciable adverse effect (“AAEC”) on competition in following markets in India:

- a. *Fungicides for grapes which target fungus ‘Ascomycota’ in India; and*
- b. *MAH grafted polyethylene (low graft) in India.*

17. The competition concerns raised were primarily based on information provided by the Parties in the notice and responses and information available in public domain and Responses. It might be possible that the Proposed Combination also raises competition concerns in certain other areas which could be discovered during the course of the investigation and have a bearing on the final determination of the relevant market and assessment of competition therein.

18. Accordingly, a show cause notice, in terms of sub-section (1) of Section 29 of the Act (“SCN”), was issued to the Parties on 19th January 2017. The Parties were directed to respond, in writing, within thirty days of the receipt of SCN, as to why investigation in respect of the proposed combination should not be conducted.

19. The competition concerns raised in the SCN were primarily based on information provided by the Parties in the notice and responses to letters and information available in public domain. Accordingly, Parties were also informed that the proposed combination could also raise competition concerns in certain other areas, which could be discovered later during the investigation and may have a bearing on the final determination of the relevant market and assessment of competition therein.



20. The Commission, in its meeting held on 4th January, 2017, also decided to seek certain information relating to the Material Sciences Segment from third parties under regulation 19(3) of the Combination Regulations.
21. The response to the SCN was received on 20th February, 2017, which was subsequently amended vide letters dated 1st March, 2017 and 2nd March, 2017 (“**Response to SCN**”). The Commission, in its meeting held on 3rd March, 2017, considered Response to SCN, and formed a *prima facie* opinion, under sub-section (2) of Section 29 of the Act, that the proposed combination is likely to cause AAEC in markets in India. Accordingly, under sub-section (2) of Section 29 of the Act read with Regulation 22 of the Combination Regulations, the Commission directed the Parties to publish details of the proposed combination, within ten working days of the said direction, for bringing the proposed combination to the knowledge or information of the public and persons affected or likely to be affected by such combination. The said direction was communicated to the Parties vide letter dated 6th March, 2017.
22. In accordance with the directions of the Commission, the details of the proposed combination were published by the Parties on 18th March, 2017 in Form IV contained in Schedule II of the Combination Regulations. Vide the said publication, the Commission invited comments / objections / suggestions, in writing, in terms of the provisions of sub-section (3) of Section 29 of the Act from any person(s) adversely affected or likely to be affected by the proposed combination within fifteen working days from the date of publication. The last date for receiving comments was 10th April, 2017.
23. Pursuant to said publication, comments were received from public / stakeholders and the same were noted by the Commission in its meeting held on 28th April, 2017.
24. Thereafter, the Commission proceeded with the case in accordance with the provisions contained in Section 31 of the Act.

COMPETITION ASSESSMENT

25. As per the Act, examination of the 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”

26. The Commission noted that the Parties are involved in manufacture and sale of products relating to broader segments of agriculture, speciality chemicals and material sciences in India and identified the overlaps between the products of Parties in the said broader segments in India.
27. Within the above said broader segments, products of the Parties overlap in a number of sub-segments as given below:
 - A) **Crop protection products:** The Commission observed that Parties have a portfolio of insecticides, fungicides and herbicides effective on multiple pests / fungus / weeds, infesting many common crops (e.g. cereals, fruits, vegetables etc.). The Parties’ products overlap in several products in sub-segment of insecticides, fungicides and herbicides.
 - B) **Research & Development in crop protection products (‘R&D’):** Apart from above, the Commission noted that both Dow and DuPont are engaged in R&D with facilities located at various places across the globe [REDACTED]. In this regard, the Commission observed that this may have the effect on new products coming in to the India.



- C) **Seeds:** The activities of the Parties overlap in manufacture and sale of non-genetically modified corn seeds in India. Regarding Genetically Modified ('GM') cotton-seed, the Commission observed that although, DuPont breeds and commercializes GM cotton-seed expressing Bollgard II trait, it licenses the same from [REDACTED]. With respect to Dow, the Commission observed that whilst it has proprietary technology – WideStrike® – for cotton-seed, the same is under field trials awaiting regulatory approvals.
- D) **Speciality Chemicals:** In this segment, the products of the Parties overlap in Purified carboxymethylcellulose ('Purified CMC').
- E) **Material sciences:** In this segment, Parties' activities overlap in certain hydrocarbons and ethylene derivatives products ('Co-polymers'), specifically Acid Copolymers, Acrylate Co-polymers, and MAH Grafted Polymers.
28. The competition assessment of the proposed combination has been carried out by delineating the relevant market in terms of relevant product market and relevant geographic market keeping in view the afore-mentioned overlaps.

RELEVANT MARKET

Relevant Product Market (s)

29. 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 characteristics of the products or services, their prices and intended use".

- 29.1. The Commission defined the relevant product market (s) on the basis of overlap (s) as identified in the preceding paragraphs, for the following broader segments:

29.1.1. Relevant product market (s) in Crop protection products

29.1.1.1. The Commission observed that crop protection products 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, weed or fungi. Accordingly, crop protection products are sub-divided based on their effectiveness on distinct types of target pests infesting on 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.

29.1.1.2. The Commission further observed that separate relevant product market exist for every specific combination of crop (e.g. brinjal, sugarcane etc.) and class of insect (i.e. chewing / sucking / rasping). Similarly, fungicides also target a specific fungus, for example Ascomycota, Oomycetes. Accordingly, the Commission noted that herbicides can be classified into selective and non-selective categories.

29.1.1.3. For analysis of substitutability between the Parties' products in insecticides / fungicides / 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, fungicides and herbicides can be analysed based on the active ingredient, formulation and mode of action.



29.1.2. Relevant product market (s) in Seeds

29.1.2.1. In relation to the seed segment, the Commission observed that there exists an overlap vis-a-vis non-GM corn seeds. In this regard, the Commission further noted that seeds for different crops have different characteristics and differ in their intended use and therefore, non-GM corn seeds constitute a separate relevant product market.

29.1.3. Relevant product market (s) in Speciality Chemicals ('Purified CMC')

29.1.3.1. The Commission observed that purified CMC is used in food products, pharmaceuticals and personal care products. 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.

29.1.4. Relevant product market (s) in Material Sciences

29.1.4.1. The Parties have submitted that the relevant product market is: (i) Acid co-polymers; (ii) Acrylic co-polymers; and (iii) MAH Grafted co-polymers. However, considering preference (s) of consumers for individual co-polymers, the Commission is of the view that the abovementioned segments need to be assessed at individual co-polymers level.

30. Relevant Geographic Market

30.1. As per Section 2(s) of the Act, the 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"

30.2. The Commission observed that the relevant geographic market for the above mentioned relevant product market (s) is the territory of India.

ASSESSMENT OF AAEC CONCERNS

31. The competition assessment of the relevant markets in each of the following segments i.e. crop protection products, seeds, specialty chemicals and material sciences segment is given as under.

30.1 Crop protection products

30.1.1 The Commission carried out assessment of each of the overlapping relevant market(s). Considering factors such as low combined market shares of the Parties, low increment as a result of the proposed combination, and presence of several competitors and other competing products of competitors, the Commission did not find competition concerns in any relevant market except in the market - *Fungicides for grapes which target fungus 'Ascomycota' in India.*

30.1.2 In respect of the relevant market - *Fungicides for grapes which target fungus 'Ascomycota'*, the Commission observed that market share of DuPont and Dow are 30-35 percent and 5-10 percent, respectively, for the year 2014. Accordingly, the market is moderately concentrated with the pre-merger HHI of 1825-1830, increasing to 2205-2210, post-combination with increment of 375-380. Further, other competitors in the relevant market are distantly placed e.g. Syngenta (15-20 percent), Rallis (10-15 percent), UPL (5-10 percent), Nagarjuna (0-5 percent), Bayer (0-5 percent).



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Fair Competition
For Greater Good

Regarding entry conditions, the Commission observed that there exist entry barriers as it requires a great deal of research, field trials, approvals from different authorities *etc.* which involves considerable time period to introduce a new crop protection product in the market. Also, the end-users i.e. individual small farmers generally do not have countervailing buying power.

- 30.1.3 Considering the 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 was of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition in India in the relevant market for '*Fungicides for grapes which target fungus Ascomycota*' in India.
- 30.1.4 **R&D in crop protection products:** With regards to the effect of the proposed combination on the Research & Development relating to crop protection products in India, the Commission observed that a considerable research and development activity of the Parties related to crop protection products occurs outside India. Post-combination, this may lessen the rate at which new products come to the India and therefore, adversely affect the Indian crop protection market.
- 30.1.5 In this regard, the Commission observed from the submissions of Parties that they have offered global divestiture to the European Commission relating to: (i) herbicides, (ii) insecticides and (iii) Research and Development ('**R&D**'). The R&D part of global remedy package include divestiture of a R&D site, biology facilities and development centres located in [REDACTED]. Further, the divestiture also includes certain field biology and regulatory employees to maintain the pipeline products. The Commission took note of the submission of the Parties that as a result of the above said global R&D divestiture, the purchaser would benefit from a stand-alone innovation organization which will support creation of a pipeline of molecules in fungicides, herbicides and insecticides.
- 30.1.6 With regards to the India, the Commission observed that the above mentioned global divestiture consists of:
- a. [REDACTED]
 - b. [REDACTED]
 - c. [REDACTED]
- 30.1.7 For the purpose of carrying out the above said global remedy, the Parties have entered into a definitive agreement with FMC Corporation ('**FMC**'), a US based entity. With regards to the suitability of the FMC as a credible competitor, the Commission observed as under:
- i. FMC, a public listed company incorporated in USA, is a diversely held company i.e. it is neither owned nor controlled by a single individual or undertaking. Further, DuPont and Dow do not have any shareholding in FMC.
 - ii. FMC has industry expertise and financial resources necessary for carrying and developing the divestiture business as an active competitor.
 - iii. FMC is active in the manufacture and sale of crop protection products in India.
 - iv. The transfer of DuPont's standalone R&D organisation, together with the size and technical capabilities of products may enable FMC to develop advanced R&D capabilities and incentivize it to further innovate and continue to introduce new products in the India.



30.1.8 The Commission has considered the above said global remedy package and is of the opinion that the same addresses competition concerns that emanates from the proposed combination in relation to R&D in crop protection products, if any, in India.

30.1.9 In this regard, the Parties are directed to inform the Commission as soon as the above said modification in relation to R&D, is carried out and the proposed combination is consummated. In case, there is any change in the terms and conditions of the above said modification or if the modification is not carried out, Parties are directed to intimate the Commission of such changes without any delay and the Commission may reconsider its order of approving the proposed combination.

30.2 Seeds

30.2.1 As already stated, the only effective overlap in the activities of the Parties is in the market for non-GM corn seeds in India. The Commission observed that combined market share of the Parties is in the range of 25-30 percent and the proposed combination results in insignificant increment of (0-5 percent). Further, the Commission also noted presence of several other players such as Monsanto, Syngenta, Kaveri Seeds, Nuziveedu Seeds and CP Seeds that are producing and supplying non-GM corn seeds in India.

30.2.2 With regards to the licensing of traits for seeds, the Commission noted the submission of Parties that:

“DuPont does not have any trait out-licensing business in India. In relation to Dow, as stated previously, whilst it has its proprietary technology – WideStrike® – for cotton seeds, this technology is still awaiting regulatory approvals. [Redacted]. Therefore, there is no commercial licensing of this technology. [Redacted]”.

30.2.3 In relation to interdependence of seeds and agrochemicals, Parties have submitted that they do not offer any crop seed which has a trait making such seed tolerant to a particular agrochemical in India.

30.2.4 Considering the 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 an appreciable adverse effect on competition in the above stated market in India.

30.3 Purified CMC

30.3.1 The Commission observed that the market for purified CMC in India is import based, wherein share of Dow is insignificant and there are other competitors such as Akzo Nobel N.V., CP Kelco, Ugur Seluloz Kimya A.S, Química Amtex S.A. De C.V, DKS Co. Ltd., Nippon Paper Industries Co. Ltd, Daicel Corporation, Ashland Inc., and Lamberti S.P.A., Daicel Corporation, Shanghai Shenguang Edible Chemicals Co. Ltd.

30.3.2 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 Purified CMC in India.

30.4 Material Science



- 30.4.1 In relation to the relevant product markets - Ethylene Acrylic Acid, Ethylene Ethyl Acrylate, Ethylene Methyl Acrylate and MAH grafted polyethylene (high graft), the Commission assessed each of the relevant market on the basis of information available and observed that there are no competition concerns, considering all or any of the factors such as low combined market shares of the Parties, low increment as a result of the proposed combination, presence of several competitors and other competing products, etc.
- 30.4.2 However, in respect of the relevant market '*MAH grafted polyethylene (low graft)*', the Commission observed that market share of DuPont and Dow are 10-15 percent and 25-30 percent, respectively, for the year 2015. Accordingly, the market is moderately concentrated with the pre-merger HHI of 1595-1600 increasing to 2070-2075, post-combination with increment of 475-480. Further, other competitors in the relevant market are distantly placed e.g. SK Corp (15-20 percent), Mitsui (10-15 percent), Borealis (10-15 percent) and others.
- 30.4.3 Considering facts on record and 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 likely to have an appreciable adverse effect on competition in India in the relevant market for "*MAH grafted polyethylene (low graft)*" in India.
- 30.4.4 In material science segment, the Commission noted that the Parties have offered certain commitments, involving divestitures, to the European Commission with a view to resolve competition concerns in acid copolymers and ionomers. Dow has offered complete divestiture of its global acid co-polymer and ionomer businesses, including its dedicated acid co-polymers production facility in Freeport, Texas, USA and in Tarragona, Spain. Since, Dow does not manufacture ionomers, it will assign its contract manufacturing agreement with [REDACTED] to the purchaser. To comply with the above said commitments, Dow has entered into a binding agreement with SK Global Chemical Co. Ltd. ('**SK Global**'), a subsidiary of SK Innovation Co. Ltd. ('**SKG**') which is principally engaged in the manufacture and distribution of petroleum products.
- 30.4.5 With regards to the SK Global, Parties have submitted that:
- i. It is the third largest conglomerate in South Korea.
 - ii. It has operations in a broad range of industries such as chemical, petroleum and energy industries.
 - iii. It is neither owned nor controlled by a single individual or undertaking. Further, neither DuPont nor Dow has any shareholding in the SK Global or SKG.
 - iv. The divestment business products are a good fit with SK Global and SKG overall strategy to supply performance chemicals and polymers in a global market. SK Global currently operates wholly-owned production facilities in Korea and China, and its global sales network encompasses regions including North America, South America, Europe, Asia and the Middle East.
- 30.4.6 [REDACTED]
32. The aforementioned analysis of the Commission revealed likelihood of AAEC concerns emanating from the proposed combination in following markets:
- a. *Fungicides for grapes which target fungus 'Ascomycota' in India; and*
 - b. *MAH grafted polyethylene (low graft) in India.*



The Commission noted that in accordance with the provisions of the Act, it may either direct that the combination shall not take effect in accordance with sub-section (2) of Section 31 of the Act or may propose a modification to the combination in accordance with sub-section (3) of Section 31 of the Act. The modification proposed would need to be comprehensive and effective in order to eliminate the possibility of adverse effect on competition, while enabling the Parties to consummate the proposed combination.

33. Based on the above assessment of the likely adverse effect of the proposed combination on competition in the afore-said relevant market (s), the Commission was of the opinion that the likely AAEC of the proposed combination can be eliminated by suitable modification(s). Given the competition dynamics of each of the above stated relevant markets and resultant stronger position of Parties and their submissions made from time to time, the Commission considered it appropriate to propose a suitable modifications to eliminate the competition concerns in above said markets.

MODIFICATION TO ADDRESS AAEC CONCERN

34. In view of the above, the Commission proposed modifications, under sub section (3) of Section 31 of the Act, to the Parties vide its letter dated 5th May 2017. Vide their letter dated 15th May, 2017, although the Parties had communicated their acceptance to the proposal for modification, they had communicated their beliefs and assumptions with respect to certain paras of the proposal for modification. In this regard the Commission observed that the purport of the proposal for modification was very clear and unambiguous. Commission's observations on the beliefs and assumptions of Parties were communicated to them vide letter dated 01st June, 2017. Parties communicated their unconditional acceptance to the proposal for modification on 2nd June, 2017. The modifications proposed are detailed here under.

34.1 Proposed modification for addressing the competition concerns in the relevant market of Fungicides for grapes which target fungus 'Ascomycota' in grapes in India

- 34.1.1 Before describing the proposed modifications duly accepted by the Parties, it would be pertinent to mention salient features of the relevant market as submitted by the Parties:
- Flusilazole formulations accounted for majority of market share of DuPont in the relevant market.
 - Flusilazole is off-patent and DuPont does not have any process patents that cover the manufacture of Flusilazole.
 - DuPont's Flusilazole, under the brand NUSTAR, has been discontinued worldwide. Further, in India, DuPont also discontinued marketing of Flusilazole in 2012.
 - [REDACTED]
 - Parties' combined market share in relevant market excluding DuPont's Flusilazole sales would be 5-10 percent.
- 34.1.2 Considering the above, the Commission proposed the following to address the competition concerns in the relevant market:
- Parties to provide an undertaking to the Commission that they are currently not active in and will not re-enter the commercialization of Flusilazole AI and the products / formulations containing the Flusilazole AI in India for a period of [REDACTED] from the date of the undertaking.



- ii. Parties to file an application with the Central Insecticide Board & Registration Committee wherein DuPont would withdraw its registration of the products / formulations containing Flusilazole AI. The Parties to immediately file CIB&RC's acknowledgement of such communication with the Commission. Further, Parties to give an undertaking not to register with the CIB&RC, Flusilazole AI and products / formulations containing Flusilazole AI in India for a period of [REDACTED] from the date of the undertaking.
 - iii. Parties to file an application with the Trade Mark Registry in India, wherein DuPont would cancel its trademark for NUSTAR and surrender the same for all purposes. The Parties to immediately file Trade Mark Registry's acknowledgement of such communication with the Commission.
 - iv. Parties to give an undertaking not to sell Flusilazole AI or the products / formulations containing Flusilazole AI in India, directly or indirectly, by exporting to India, including through their affiliates.
 - v. Parties to give an undertaking that they would issue necessary directions to all their subsidiaries and affiliates not to supply Flusilazole AI or any product / formulation containing Flusilazole AI into India for the period of [REDACTED] from the date of undertaking.
 - vi. Parties to undertake that they will inform all relevant government departments regarding the above said compliance.
- 34.1.3 The Parties are directed to furnish all requisite undertaking (s) to the Commission within a period of [REDACTED] from the date of the receipt of this order. The Commission, in its meeting held today approved the proposed combination subject to carryout of the above modification proposed by the Commission and accepted unconditionally by the Parties.

34.2 Proposal for modification for addressing the competition concerns in the relevant market of MAH grafted polyethylene (low graft) in India

- 34.2.1 Before describing the proposed modifications duly accepted by the Parties, it would be pertinent to mention salient features of the relevant market as submitted by the Parties:
- i. Dow sells MAH grafted polyethylene (low graft) under the brand name 'Amplify'. Apart from MAH grafted polyethylene (low graft), Dow also sells a number of other products under the brand 'Amplify'.
 - ii. Dow does not manufacture MAH grafted polymers itself and relies on third-party contract manufacturers ("CMOs") to manufacture MAH grafted polymers for resale in countries around the world.
 - iii. The process followed for supply of MAH grafted polyethylene (low graft) in India by Dow is as under:
 - a. Dow [REDACTED] supplies the same to a local CMO;
 - b. Dow also supplies base polymer LLDPE to a CMO in India for diluting the concentrate MAH grafted polymer;
 - c. The CMO in India combines these raw materials and converts them into a "low graft" MAH polyethylene ('AMPLIFY TY 1351') and returns the latter to Dow.
 - d. Thereafter, Dow supplies the finished product to customers.



- 34.2.2 Considering the above, the Commission observed that modification in the present case should be such that it allows for creation of a viable, effective, independent and long term competitor in the relevant market for MAH grafted polyethylene (low graft). In order to make the proposed modification viable, the new supplier would need to receive the brand, assured supplies of raw materials and access to other inputs required for manufacture and supply of MAH grafted polyethylene (low graft). The objective of the proposed modification is to; at least, restore existing level of competition in the relevant market. Thus, the approved purchaser of Indian Divestment Business must have the necessary components, including transitional support arrangements, to compete effectively.
- 34.2.3 Accordingly, the Commission proposed the following modification in order to address the competition concerns in the relevant market of MAH grafted polyethylene (low graft):
- Transfer of Dow's "low graft" MAH grafted polymer business in India ("**Indian Divestment Business**") to an independent and unconnected third party (referred to as the "**Purchaser**").
 - The details of the Indian Divestment Business are as under:

Indian Divestment Business

- 34.2.3.1 Parties to create a new trademark, "Amplify TY 1351" for Indian Territory exclusively in relation to sale of low graft MAH grafted polyethylene to customers in India. The said new trademark will be an essential part of Indian Divestment Business.
- 34.2.3.2 In order to facilitate Purchaser's prompt entry and future viability in the Indian low graft MAH grafted polyethylene, Parties are required to enter into an agreement to supply to the Purchaser raw materials for production of "low graft" MAH grafted polyethylene i.e.
- The concentrate MAH grafted polyethylene ('**Concentrate**') [REDACTED]
 - In case the purchaser identifies that Dow holds patent/ IPR over the Concentrate or its manufacturing process and is essential for the viability of the Indian Divestment Business, Dow to provide the same to the Purchaser.
 - LLDPE (which Dow manufactures in-house), in such quantities as are required to dilute the concentrate MAH grafted polyethylene in order to produce "low graft" (i.e., "fully-formulated") product for sale to customers in India.
 - The agreement should be at least for a period of [REDACTED]. Thereafter, Parties and Purchaser may discuss in good faith an extension to the raw material supply agreement for a further period of [REDACTED];
- 34.2.3.3 Dow to sell to Purchaser its existing inventory of "low graft" MAH grafted polyethylene which includes raw materials, work-in-progress and finished products, to facilitate Purchaser's immediate entry in to the relevant market.
- 34.2.3.4 Dow's role to be limited to that of a raw material supplier. Dow to sell these raw materials to Purchaser at an independent, third-party index price (i.e., the price not to be set by Dow). Further, Dow to have no control over the price at which the Purchaser sells the formulated product;
- 34.2.3.5 Dow to provide an undertaking to not to sell in India directly or indirectly, through subsidiaries and affiliates, MAH grafted polyethylene (low graft) post the completion of transfer of Indian Divestment Business, for a period of [REDACTED].



- 34.2.3.6 Dow to make available to the Purchaser the product information sheets, training materials, price lists and presentations, and other marketing materials that relate to the sale of fully formulated MAH grafted polymers to customer based in India. Dow to provide the Purchaser with sales records and contact details for customers of the Indian Divestment Business, covering the last three years.
- 34.2.3.7 Dow to provide Purchaser any intellectual property or know-how that Purchaser identifies as necessary in order to run the Indian Divestment Business or to establish its own supply arrangement with a CMO.
- 34.2.3.8 Dow to provide an undertaking that the post combination combined entity would not solicit or supply the MAH grafted polyethylene (low graft) to existing customers (Existing customers mean those appearing in the sales and customer records for the past three years) of the Indian Divestment Business for a period of [REDACTED] following the date of agreement between the Parties and approved Purchaser.
35. The Commission, in its meeting held today considered the proposed combination and approved the same subject to carryout of the modification proposed by the Commission and accepted unconditionally by the Parties. The Proposed Modification shall be given effect to in accordance with the terms and conditions provided below.
- 35.1 **Divestiture during the First Divestiture Period:**
- 35.1.1 That the Parties 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.
- 35.1.2 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.
- 35.1.3 That the Parties shall execute the Approved Sale and Purchase Agreement with the Approved Purchaser [REDACTED] from the Effective Date.
- 35.1.4 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.
- 35.1.5 The Indian Divestment Business shall include the elements set out in paragraph 34.2.3 and 35.2 specifically defined in the Schedules annexed with this order.
- 35.1.6 That the Divestiture of Indian Divestment Business shall be carried out by way of sale of the Assets to an Approved Purchaser.
- 35.1.7 That the Parties are permitted to sell such other additional asset(s) that they and the Approved Purchaser may agree in the context of the Divestiture.
- 35.2 **Structure of the Indian Divestment Business:**
- 35.2.1 The Indian Divestment Business shall include:
- All tangible (if there are any) and intangible assets (including intellectual property rights, newly created trademark (, product specifications, manuals, instructions and recipes); the product information sheets, training materials, price lists and presentations, and other marketing materials.



- ii. All necessary licenses, permits and authorisations issued by any governmental or statutory authority related to and/or being used in connection with the Indian Divestment Business;
- iii. All existing inventory of “low graft” MAH grafted polymers which includes raw materials, work-in-progress and finished products.
- iv. All contracts, leases, commitments, and understandings of and related to the Indian Divestment Business;
- v. All customer records, credit records and other records such as business plans and forecasts, pertaining to the Indian Divestment Business;
- vi. All Personnel, including Key Personnel (If there are any) and engaged exclusively on the Indian Divestment Business.

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

35.2.3 In addition, the Indian Divestment Business shall include such transitional support as may be agreed between the Approved Purchaser and the Parties 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 11th December, 2015.

35.3 Preservation of Economic Viability, Marketability and Competitiveness

35.3.1 Until the Closing Date, the Parties 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.

35.3.2 Until the Closing Date, the Parties 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 Parties’ 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 Parties’ business, capital, and strategic plans in place on the date of execution of the Combination Agreement.

35.3.3 Until the Closing Date, the Parties 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.

35.3.4 The Parties 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.

- 35.3.5 The Parties 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.
- 35.3.6 In exceptional circumstances, if any member of Key Personnel (if there are any) terminates his or her employment with the Parties 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.

35.4 **Hold-separate obligations**

- 35.4.1 The Parties 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.
- 35.4.2 Until Closing, the Parties 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.
- 35.4.3 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.

35.5 **Ring-fencing**

- 35.5.1 The Parties 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 Parties 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 Parties 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.

- 35.5.2 The Parties 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.
- 35.5.3 The Parties 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).

35.6 **Non-solicitation clause**

- 35.6.1 The Parties shall not, and ensure that their Affiliates do not employ, or make offers 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.

35.7 **Due diligence**

- 35.7.1 In order to enable potential purchasers to carry out a reasonable due diligence of the Indian Divestment Business, the Parties 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, and allow them reasonable access to the Key Personnel and Personnel.

35.8 **Reporting**

- 35.8.1 The Parties 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.
- 35.8.2 The Parties 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.

35.9 **No acquisition of influence:**

- 35.9.1 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.

35.10 **Purchaser Requirements:**

- 35.10.1 The purchaser proposed by the Parties, in order to be approved by the Commission, must, *inter-alia*:
- 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**”).

35.11 **Approval of Sale and Purchase Agreement and Purchaser:**

- 35.11.1 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.
- 35.11.2 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.

35.12 **Monitoring Agency:**

- 35.12.1 The Commission shall, under Regulation 27 of the Combination Regulations, appoint an independent agency as Monitoring Agency for the purpose of, *inter alia*, supervision of the modification accepted by the Parties.
- 35.12.2 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;



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- 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;
 - 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.
- 35.12.3 A copy of the Monitoring Agency Agreement shall be provided to the Parties and the Parties 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 Parties in such facilitation may be deemed to be a contravention of the Order.

35.13 **Divestiture Agency:**



- 35.13.1 If the Closing has not taken place as specified in paragraphs 35.1 of this Proposal for Modification, the Commission shall appoint a Divestiture Agency to Divest the Indian Divestment Business.
- 35.13.2 The appointment of the Divestiture Agency shall take effect from commencement of Second Divestiture Period or the day of its appointment, whichever is later.
- 35.13.3 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 Parties shall cause the documents required for effecting the sale and the Closing to be executed.
- 35.13.4 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.
- 35.13.5 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.
- 35.13.6 A copy of the Divestiture Agency Agreement shall be provided to the Parties and the Parties 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.

35.14 **Sale of Indian Divestment Business within Second Divestiture Period:**

- 35.14.1 Within the Second Divestiture Period, the Divestiture Agency shall divest at no minimum price the Indian Divestment Business, to an Approved Purchaser.
- 35.14.2 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.
- 35.14.3 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.

35.15 **Duties and obligations of the Parties:**



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- 35.15.1 The Parties 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.
- 35.15.2 The Parties 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 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.
36. The Parties 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 wilful default, recklessness, gross negligence or bad faith of the Indemnified Party.
37. 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.
38. Prior to the Closing Date, the Parties 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.
39. The Commission may, at any time, request information from the Parties that is reasonably necessary for the effective implementation of the Order.
40. The Parties 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.
41. All appendices and Schedules annexed to the Order shall form an integral part of the Order.
42. 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.



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43. The Order shall stand revoked, if any time, the information provided by the Parties is found to be incorrect.
44. The Secretary is directed to communicate to the Parties accordingly.



Appendix A

Glossary

<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 35.10.
<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 35.2.2.
<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 11 th December, 2015
<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>Indian Divestment Business</i>	The Indian Divestment Business shall include the elements provided in sub-paragraphs 34.2.3 and 35.2 and transitional support referred in paragraph 35.2.3. In the Second Divestiture Period, the Indian Divestment Business shall mean the Alternative Indian Divestment Business.
<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>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



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	the Parties' compliance with the modifications provided in the Order. The Monitoring Agency may be appointed as the Divestiture Agency by the Commission.
<i>Key Personnel</i>	Employees who are necessary to maintain the viability and competitiveness of the Indian Divestment Business, if there are any.
<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.