



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



*Fair Competition
For Greater Good*

13.08.2015

Notice u/s 6 (2) of the Competition Act, 2002 given by:

- Sapphire Foods India Private Limited (“**Sapphire**”)
- Sapphire Foods Mauritius Limited (“**Sapphire Mauritius**”)
- Samara Capital Partners Fund II Limited (“**Samara**”)
- QSR Management Trust (“**QMT**”)
- Goldman Sachs Investments Holdings (Asia) Limited (“**GS Asia**”)
- IDI Emerging Markets Partners Fund III (“**IDI**”)
- CX Partners Fund 1 Limited (“**CX**”)

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

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U.C.Nahta
Member

Mr. M.S. Sahoo
Member

Mr. G.P. Mittal
Member

Legal Representative: M/s Luthra and Luthra Law Offices



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



Fair Competition
For Greater Good

1. On 17.06.2015, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) (“**Notice**”) filed by Sapphire, Sapphire Mauritius, Samara, QMT, GS Asia, IDI and CX (“**Acquirers**”).
2. The proposed combination relates to the investment by the Acquirers, either directly or through their affiliates, in Sapphire and Sapphire’s acquisition of business of running, maintaining, and operating 117 restaurants (including 2 under development restaurants) under the ‘*Kentucky Fried Chicken/KFC*’ trade name and 91 restaurants (including 1 under development restaurant) under the ‘*Pizza Hut*’ trade name (“**Proposed Combination**”).
3. As regards investment by various Acquirers in Sapphire, it is noted that Sapphire, Sapphire Mauritius, Amethyst Private Limited, AAJV Investment Trust, QMT and GS Asia have executed an amended and restated Share Subscription Agreement and Shareholders Agreement on 11.06.2015¹. It is further noted that Amethyst Private Limited and AAJV Investment Trust are special purpose vehicles through which CX would invest in the proposed combination. Further, Sapphire Mauritius has executed a Share Subscription Agreement with Samara on 08.06.2015 and with IDI on 27.05.2015.
4. As submitted, the acquisition of 117 KFC and 91 Pizza Hut outlets, by Acquirers are to be effected as under:
 - (i) 87 KFC outlets would be acquired from Yum! India in accordance with the Business Transfer Agreement entered into between Yum! India and Sapphire on 14.03.2015.
 - (ii) 29 KFC outlets (including 2 under development outlets) would be acquired from A.N. Traders Private Limited (“**ANTPL**”) in accordance with the Business Transfer Agreement entered into between ANTPL and Sapphire on 15.05.2015.

¹ The proposed combination had been filed earlier based on the execution of the Business Transfer Agreement between Yum! Restaurants India Private Limited (“**Yum! India**”) and Sapphire on 14.03.2015. The Commission had decided that this notice was not valid as detailed in paragraph 8.



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



*Fair Competition
For Greater Good*

- (iii) 1 KFC outlet would be acquired from Silver Leaf Hospitalities Private Limited (“**SLH**”) in accordance with the Business Transfer Agreement entered into between SLH and Sapphire on 15.05.2015.
- (iv) 5 Pizza Hut outlets would be acquired from Gamma Pizzakraft Private Limited (“**Gamma India**”) in accordance with the Share Subscription Agreement and the Shareholders Agreement, entered into between Gamma Pizzakraft (Overseas) Private Limited (“**Gamma Overseas**”), shareholders of Gamma Overseas and Sapphire on 28.04.2015, and the Share Purchase Agreement between Mr. Sandeep Kohli (a shareholder in Gamma Overseas), Gamma Overseas and Sapphire executed on 28.04.2015.
- (v) 5 Pizza Hut outlets (including 1 under development outlet) would be acquired from AVZA Enterprises Private Limited (“**AVZA**”) in accordance with the Business Transfer Agreement entered into between AVZA and Sapphire on 28.03.2015.
- (vi) 81 Pizza Hut outlets would be acquired from Dodsals Hospitality Private Limited (“**Dodsals**”) in accordance with the Share Purchase Agreement, entered into between Dodsals, shareholders of Dodsals and Sapphire on 16.07.2015.
5. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 25.06.2015, the Acquirers were required to provide certain information/document(s) latest by 29.06.2015, the reply to which was submitted on due date. Vide letter dated 09.07.2015, the Acquirers were again required to provide certain information by 13.07.2015. The Acquirers submitted the reply on 29.07.2015 after seeking extension of time.
6. In terms of Regulation 16 (1) of the Combination Regulations, the Acquirers, vide their letter dated 13.07.2015, informed the Commission that Broad Street Investments (Singapore) Pte. Limited, a part of Goldman Sachs group, has executed definitive agreements with Azure



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



Fair Competition
For Greater Good

Hospitality (“**Azure**”) on 02.07.2015 for acquisition of less than 50 percent of the share capital of Azure. Azure is stated to be involved in the business of owning, operating, aggregating and/or managing restaurants and catering services in India under the brand names “Mamagoto”, “SpeedyChow” and “Rollmall”. However, it was submitted that this transaction is independent of the Proposed Combination and is eligible to avail of the *de minimis* exemption granted by Notification S.O. 482(E) dated 04.03.2011. The Commission considered the changes and noted the same.

7. In terms of Regulation 16 (1) of the Combination Regulations, the Acquirers, vide their letter dated 27.07.2015, informed the Commission that Sapphire has executed definitive agreements with Dodsal on 16.07.2015 to effect the acquisition of 81 Pizza Hut outlets operated by Dodsal. The Commission considered the changes and noted that information about this step of the Proposed Combination had also been provided in the Notice.

8. The Commission noted that Sapphire had earlier filed a notice on 10.04.2015 with regard to its proposed acquisition of business of running, maintaining and operating 87 restaurant outlets (under the KFC trade name) of Yum! India. The same was considered by the Commission in its ordinary meeting held on 26.05.2015 wherein it was noted that Sapphire’s principal shareholder, i.e. Samara, was in negotiations with various private equity investors, who were interested in acquiring direct or indirect shareholding in Sapphire (“**Potential Investors**”). It was also noted that apart from the acquisition of 87 restaurants operated by Yum! India, Sapphire intended to acquire certain additional Pizza Hut and KFC outlets in various cities across India, which were regarded as Ancillary Transactions in the notice filed by Sapphire on 10.04.2015. On further examination of the agreements entered into between the parties, the Commission observed that the Ancillary Transactions and investments by the Potential Investors are also a part of the proposed combination. The Commission noted the submission by Sapphire that it is the sole acquirer in respect of the proposed combination and the Potential Investors are merely the shareholders, and decided that the same may not be accepted in terms of the provisions of Regulation 9(4) and Regulation 9(5) of the Combination Regulations. Accordingly, the Commission decided that the notice filed by Sapphire is not in conformity with the provisions of the Regulations 9(4) and 9(5) of the Combination Regulations and therefore, not valid and



further, Sapphire be directed to file a fresh notice along with other acquirers, for the proposed combination within a period of thirty days from the date of receipt of communication in this regard. Pursuant to the directions of the Commission, a fresh notice under sub-section (2) of Section 6 of the Act was filed by the Acquirers on 17.06.2015.

Parties to the combination

Acquirers

9. QMT is a trust constituted under the Indian Trusts Act, 1882 for the purpose of managing Sapphire. Currently, it does not manufacture any products or provide any services. Sapphire, a wholly-owned subsidiary of QMT, has been created as a special purpose vehicle for effecting the Proposed Combination. Sapphire-Mauritius is also a special purpose vehicle incorporated under the laws of the Mauritius with the purpose of investing in equities or other securities. CX is a private limited company incorporated in Mauritius. It has made investments in India in different sectors viz. power, electronics, hotels, telecommunications and financial services. GS Asia is a company established in Mauritius and is an indirect wholly owned subsidiary of the Goldman Sachs Group, Inc. IDI is organized as a partnership limited by shares under the laws of Luxembourg. It is focussed on investing in companies in emerging markets such as China, India, and South East Asia etc. Samara is a private equity fund, which provides growth capital to companies operating in India. Samara has investments in a range of portfolio companies having diversified operations in India.

Target Entities

10. Yum! India is a group entity of Yum! Brands Inc., which is a leading restaurant company based out of Louisville, Kentucky. It comprises of three restaurant brands; Pizza Hut, KFC and Taco Bell. ANTPL, SLH, AVZA, Gamma India and Dodsals are franchisees of Yum! India and operate Pizza Hut/KFC outlets across various locations in India.



Competition Assessment

11. As stated above, the proposed combination relates to the business of running, maintaining and operating restaurant outlets or the food service market. The food services market can be segmented into three broad segments, viz., the unorganized segment, the licenced standalone segment and the chain segment. The chain segment can be further classified on the basis of factors such as type of restaurant, menu positioning, target customer group, seating arrangement and locations etc., in several distinct yet overlapping sub-segments such as cafes, quick service restaurants (“**QSRs**”), frozen desserts/ice creams, casual dining, fine dining and pubs, bars, clubs and lounges. As per the India Food Services Report 2013 issued by National Restaurant Association of India and Technopak Advisers, KFC and Pizza Hut Delivery (“**PHD**”) are classified as QSRs and Pizza Hut is classified as a casual dine restaurant.
12. The Commission noted that as per the India Food Services Report 2013 and information submitted by the Acquirers, there are a number of competitors in the QSR segment including Dominos Pizza, Subway, McDonalds, Goli Vada Pav, US Pizza, Nirula’s etc. In terms of number of outlets, Dominos Pizza leads the market with around 552 outlets followed by KFC with around 352 outlets. Subway and McDonalds occupy third and fourth spots with 344 and 311 outlets. Thus, the market seems to be well distributed between the various competitors. Similarly in the casual dining space the same report puts the figure of total restaurants in the range of 1700-1800. The Casual Dine segment includes market players such as Moti Mahal, SagarRatna, Yo! China, Mainland China etc. In terms of number of outlets, Pizza Hut leads the market with around 380 outlets followed by Moti Mahal with around 100 outlets. SagarRatna and Yo! China occupy third and fourth spots with 88 and 48 outlets.
13. As regards the operations of various Acquirers relating to restaurant business, the Commission noted that some of the Acquirers have investments in other restaurant outlets. Samara has investments in 7 outlets of Paradise Food Court Private Limited (“**Paradise**”) and CX has certain investments in 46 Barbeque Nation outlets in India. As stated by the Acquirers, both Paradise and Barbeque Nation are casual dine restaurants. Further, the Acquirers have also submitted that Goldman Sachs group holds certain investments in restaurant business in India. The Goldman Sachs group, in addition to the investment in Azure referred above, holds less than 2 percent of



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



*Fair Competition
For Greater Good*

share capital of Jubilant Foodworks Limited (“**Jubilant**”), which operates two QSR brands, viz., Dominos Pizza and Dunkin Donuts, and less than 15 percent of share capital of LaKaffa International Co. Limited (“**LaKaffa**”), which operates Chatime, a restaurant classified as Cafe. As regards the Azure brands, the Commission noted that Speedy Chow and Rollmall are classified as QSRs and Mamagoto is classified as casual dine restaurant chain. On the basis of aforesaid, the Commission assessed the impact of the Proposed Combination in the narrower market segments of QSR and casual dine. As the proposed combination is not likely to cause an AAEC, considering all the overlaps including those stated in Paragraph 13 above, for the reasons detailed in ensuing paragraphs, the Commission decided to leave the delineation of the exact relevant market open.

14. The Commission noted that the proposed combination envisages acquisition of shares/assets of various franchisees of Yum! India. This implies that the impact of the proposed combination is to consolidate the franchisee owned outlets while Yum! India will continue to operate in the market along with other competing restaurant brands. On the aspect of any adverse effect on competition between various franchisees, the Commission noted the Parties submissions that pricing decisions are proposed and finally decided by the franchisor, i.e., Yum! India. The Commission observed that competition in context of the Proposed Combination is at the inter brand rather than intra brand level.
15. Further, as per the information submitted by the parties, there are overlaps in casual dining segment in 13 cities namely Gurgaon, Mumbai, Pune, Goa, Ahmedabad, Vadodara, Surat, Bengaluru, Mysore, Vizag, Vijaywada, Hyderabad and Raipur. In QSR segment, the only overlapping city is Delhi. As per information submitted by the parties, there is substantial competition in all the cities from other competitors in both the QSR and casual dine segments.
16. 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 India in any of the relevant market(s) and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/06/285)



*Fair Competition
For Greater Good*

17. This order shall stand revoked if, at any time, the information provided by the parties is found to be incorrect.

18. The Secretary is directed to communicate to the Acquirers accordingly.