



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2020/04/741)

30th April, 2020

Notice under Section 6(2) of the Competition Act, 2002 jointly filed by Canary Investment Limited and Link Investment Trust II

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

1. On 16th April, 2020, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), jointly filed by Canary Investments Limited (**Canary**) and Link Investment Trust II (**Link**). Canary and Link are affiliates of ChrysCapital, a private equity group with funds incorporated in Mauritius (ChrysCapital and its affiliates are collectively referred to as **Acquirers**). The Notice was given pursuant to the execution of (i) share purchase agreement (**SPA**) between the Canary, Link, MACE CIPEF Limited and MACE CGPE Limited on 10th January, 2020; and (ii) shareholder's agreement (**SHA**) amongst Intas Pharmaceuticals Limited (**Intas**), Duneam Investments (Mauritius) PTE Limited, Crimson Investments Limited, Link Investment Trust, the promoters of Intas and Canary and Link on 13th January, 2020.



2. The Proposed Combination envisages acquisition of ~ 3% of the shareholding in Intas by the Acquirers, along with certain contractual rights under SHA.
3. Canary is an investment company registered in Mauritius. It is wholly owned by ChrysCapital VIII LLC, which in-turn has been set up by ChrysCapital. ChrysCapital is engaged in the business of making investments in different sectors including consumer goods and services, financial services, healthcare and pharmaceuticals.
4. Link is a private trust registered, in India which is also in the business of making investments.
5. Intas is a company engaged in the business of development, manufacturing and marketing of pharmaceutical formulations. It is the ultimate parent of various entities under the Intas group. Andre Laboratories Limited and SM Herbals Private Limited are the subsidiaries of Intas, in India. Intas also has a joint venture in India viz. Alvi Intas Medical Devices Private Limited.
6. As a result of the proposed combination, the shareholding of the Acquirers in Intas would increase from ~3% to ~6% along with the right to receive information regarding the affairs of Intas, right to appoint a director on the board of Intas and right to veto certain corporate actions including amendment to charter documents, commencement of new line of business and change in capital structure.
7. It has been *inter alia* stated in the notice that “*Given that ChrysCapital is a private equity investor which makes investments in its ordinary course of business, the Proposed Transaction is solely a financial investment....ChrysCapital is a private equity investor which makes financial investments in its ordinary course of business and as such these minority protection rights do not confer control over the management or the affairs of Intas as control over Intas continues to vest with the board of Intas*”. In this regard, it is observed that private equity groups generally raise funds from individuals and corporations to make investment in businesses. The nature and extent of such investment could result in varying degrees of acquisition. A simple



investment by a private equity firm could result in a minority shareholding without any right or ability to participate in the affairs of the target enterprise. Such an acquisition with shareholding less than 10% are currently regarded as acquisition solely as an investment in terms of the explanation to Item I of Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 and accordingly, they need not ordinarily be notified to the Commission. However, strategic acquisitions with an intent to participate in the affairs of the target enterprise cannot be regarded as mere investments. Such acquisitions could range between acquisition of full control and minority shareholding with *de facto* or *de jure* rights that allow active participation or the ability to materially influence the day-to-day affairs or the strategic corporate actions, of the target enterprise. These acquisitions cannot be regarded as solely as an investment.

8. A holistic appreciation of the shareholding and the nature and extent of rights acquired in the target enterprise would be relevant in determining whether the given acquisition is a mere investment or not. Representation on the board of directors (nomination of a director or an observer) and/or its committees (audit committee, appointment & remuneration committee, etc.); veto or consultation rights with respect to strategically important corporate actions such as change in capital structure, mergers and acquisitions, appointment or termination of key managerial personnel, amendment to charter documents (articles of association and memorandum of association) and commencement of new line of business; and the right to access non-public information, are all relevant in determining whether the acquisition is a mere investment or strategic in nature.
9. In the instant matter, it is observed that the activities of Intas are similar to a few of the other pharmaceutical companies in which ChrysCapital has shareholding and contractual rights to participate in some of their strategic corporate actions. ChrysCapital currently holds less than or equal to 10 percent of the share capital in each of Mankind Pharma Limited (**Mankind**) and Eris Lifesciences Limited (**Eris**);



and less than 20 percent of the share capital in each of GVK Biosciences Private Limited (**GVK**) and Curatio Healthcare Private Limited (**Curatio**).

10. The interest of ChrysCapital in Eris is limited to its shareholding. Therefore, Eris has not been considered for identification of overlaps between the portfolio of ChrysCapital and Intas. However, its interest in GVK, Curatio and Mankind include board representation, right to seek information as well as the right to veto certain corporate actions including the change in capital structure, mergers and acquisitions, commencing new line of business and amendment to charter documents (GVK, Curatio and Mankind shall be together referred to as **Portfolio Entities**). A holistic appreciation of these rights suggest that ChrysCapital enjoys the ability to influence the strategic focus and operations of GVK, Mankind and Curatio. By way of the Proposed Combination, the Acquirers now propose to acquire minority shareholding in Intas along with rights to participate in some of its strategic corporate actions.
11. The nature of rights enjoyed by ChrysCapital in GVK, Mankind and Curatio do not enable it to unilaterally undertake or stall any corporate action but allow it to veto certain strategic corporate actions. These give the ability to ChrysCapital to materially influence the strategic affairs of the said entities. ChrysCapital would gain similar position in Intas, pursuant to the Proposed Combination. In a combination of this nature, the ability of the Acquirers to access non-public information as well as materially influence the strategic affairs of the competitors, whether by veto or consultation or advisory right or by way of representation on the board such as director or observer, merit examination of the impact of combination on the competition between them.
12. For the purpose of defining markets in pharmaceutical cases, the Commission in the past had looked into the molecular details (ATC 4 level classification) with regard to prescription drugs. For instance, such is the approach in *Sun/ Ranbaxy* (C-2014/05/170). As regards OTC products, the Commission in *Novartis/ GlaxoSmithKline* (C-2014/07/188) identified product markets based on formulation



level as well as therapeutic indication (ATC 3 level classification). It is observed that the industrial classifications may guide the preliminary competition assessment. However, precise delineation of relevant market in a case would depend on the facts and circumstances including the dynamics of the given market.

13. The business of Intas and the Portfolio Entities are similar in respect of more than 150 pharmaceutical products. The combined market share of the parties is greater than 30% in more than 20 pharmaceutical products. These products are used to treat ailments falling under the categories of (a) alimentary tract and metabolism; (b) cardiovascular system; (c) dermatologicals; (d) genito-urinary system and sex hormones; (e) musculo-skeletal system; (f) nervous system; (g) respiratory system; and (h) various.
14. The horizontal overlap between the activities of Curatio and Intas is limited to one product *viz.* Biotin. The market share of Intas and Curatio in this segment is only 7% and 4% respectively. On the other hand, Mankind and Intas are significant competitors at ATC 4 classification. The market share of Intas and the Portfolio Entities in several of the above discussed pharmaceutical products remained similar during the last three years without any significant variation. These suggest that the impugned markets are relatively evolved and did not exhibit dynamism in terms of market position of the established players. **The common interest of the Acquirers in Mankind and Intas would give them the ability to pursue anti-competitive goals such as allocation of product or geographic market, or customers; streamlining innovation efforts; price arrangements; and/or bid-rigging, in the concentrated markets. Such potentials would border between coordinated effects and conduct resulting from common shareholding.**
15. In order to address any concern that may arise out of the Proposed Combination, the Acquirers have offered voluntary modification *vide* their submissions dated 29th April, 2020 (**Annex**). In terms of the voluntary modification, the Acquirer has undertaken to (a) remove their director on the board of Mankind; (b) restrict use of



information relating to Intas, Curatio and Mankind; and (c) not to exercise veto rights in Mankind in relation to change in capital structure, merger and acquisition, amendment to memorandum and articles of association and commencement of new business, with certain limited exemption to protect the extent of shareholding/ investment of the Acquirers.

16. It is observed that the remedy proposed by the Acquirers is expected to significantly reduce the participation of ChrysCapital in the management of Mankind, in such a manner that it could not materially influence the strategic or day-to-day affairs of Mankind. Thus, the remedies offered by the Acquirers are considered sufficient to ensure that the management of Mankind is independent of ChrysCapital. At the same time, ChrysCapital would continue to have certain veto and information rights that are intended to protect the value of its investment in Mankind. Such limited participation only to protect the investment in Mankind addresses competition concern, if any, that may otherwise arise as a result of the Proposed Combination. Accordingly, no further examination of the overlaps between Mankind and Intas is necessary in light of the remedies offered.
17. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combination based on factors stated in sub-section (4) of Section 20 of the Act and the voluntary modification offered by the Acquirers, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.
18. This order shall stand revoked if, at any time, the information provided by Acquirers is found to be incorrect.
19. The information provided by Acquirers is confidential, at this stage, in terms of and subject to the provisions of Section 57 of the Act.



Combination Registration No. C-2020/04/741



20. The Secretary is directed to communicate to the Acquirers, accordingly.



ANNEX

I. Governing Body

1. ChrysCapital undertakes not to engage in the affairs of the Board of Directors of Mankind Pharma Limited (Mankind). In that regard, ChrysCapital undertakes:
 - (a) that its nominee director on the board of directors of Mankind shall tender his / her resignation to the board of directors of Mankind within 15 days of the closing of the Proposed Transaction; and inform the Hon'ble Commission upon (a) the board of directors of Mankind accepting the resignation of the nominee director; and (b) the completion of the statutory formalities in relation to the resignation of such nominee director.
 - (b) that it shall not exercise its contractual right to appoint a ChrysCapital nominee director on the board of directors of Mankind and rights associated thereof, as per the Shareholders' Agreement dated 6 April 2018 executed amongst Mankind, the promoters of Mankind, the existing investors of Mankind (Cairnhill CIPEF Limited and Cairnhill CPGE Limited), Beige Limited and Link Investment Trust.
 - (c) that the director nominated by ChrysCapital on the board of directors of Intas shall be a person who was not associated with Mankind in any capacity, including but not limited to a representative on the board of Mankind, during the preceding year. By way of an illustration, if Mr. X, being a director nominated by ChrysCapital on the board of directors of Mankind, resigns from the board of directors of Mankind on April 30, 2020, then the same Mr. X may be nominated by ChrysCapital on the board of directors of Intas on or after May 1, 2021.
 - (d) that upon the nominee director tendering his/ her resignation, ChrysCapital and/ or its agents shall not, directly or indirectly, engage with the board of



directors of Mankind, its subsidiaries, associates, and partnership firms in which any of the aforesaid is/are partner, or any of its partners, in any manner.

II. Restriction on use of information relating to Intas, Mankind and Curatio

2. ChrysCapital undertakes to place adequate measures to ensure that non-public information accessed or possessed by it relating to Intas, Mankind, and Curatio shall only be used for:
 - (a) the purpose of evaluating its investments in the respective companies; and
 - (b) exercise rights in the respective companies, subject to the other remedies offered herein,

and not for any other purpose. In particular, ChrysCapital undertakes that neither its conduct nor of any of its agents, including its nominee directors, would result in, direct or indirect, exchange of non-public information between Intas, Mankind, and Curatio.

III. Veto rights over strategic corporate actions of Mankind

3. ChrysCapital undertakes not to exercise its veto rights in Mankind with respect to change in capital structure; a merger or an amalgamation or an acquisition; amendment of Memorandum of Association or Articles of Association and commencement of new business.
4. Provided, that ChrysCapital may exercise its veto rights:
 - (a) In relation to change in capital structure by way of issue of shares, options or other instruments, if Mankind does not offer for subscription sufficient number of such shares, options or other instruments to ChrysCapital, at a



price which is not higher than the price offered to the third party, so as to ensure that the percentage shareholding of ChrysCapital in Mankind before such issue is not diluted;

- (b) In relation to a merger or an amalgamation or an acquisition of any entity engaged in a business that is not similar or ancillary to the business of Mankind, its subsidiaries, associates or any partnership firms, in which any of the aforesaid is/ are a partner;
- (c) In relation to amendment to the Memorandum of Association or Articles of Association that would result in curtailment of the rights provided to it under the Shareholders' Agreement dated 6 April 2018, subject to the remedies offered herein; and
- (d) In relation to the commencement of a new business that is not similar or ancillary to the business of Mankind, its subsidiaries, associates or partnership firms, in which any of the aforesaid is/are a partner.

IV. Term of Remedy

- 5. The above remedies shall be applicable on ChrysCapital as long as it has a nominee director on the board of Intas and/ or rights which are not available to an ordinary shareholder of a company.