



## COMPETITION COMMISSION OF INDIA

Ref. No. M&A – 2021/01/810

7<sup>th</sup> August 2023

***In re: Proceedings under Section 43A of the Competition Act, 2002 against  
Massachusetts Mutual Life Insurance Company***

**CORAM:**

**Ms. Ravneet Kaur**  
**Chairperson**

**Ms. Sangeeta Verma**  
**Member**

**Mr. Bhagwant Singh Bishnoi**  
**Member**

**Appearances during the hearing**

*For Massachusetts Mutual  
Life Insurance Company:*

Mr. Rohan Batra and Mr. Padmanabh  
Sethunath, Advocates

### **ORDER UNDER SECTION 43A OF THE COMPETITION ACT, 2002**

1. This Order shall dispose of the proceedings against Massachusetts Mutual Life Insurance Company (**‘MassMutual’/ ‘Acquirer’**) under Section 43A of the Competition Act, 2002 (**‘Act’**) in relation to its acquisition of approximately 16% shareholding in Invesco Limited (**‘Invesco’/ ‘Target’**) [**‘Transaction’**].

#### **Background**

2. The Transaction was given effect pursuant to the execution of an Agreement and Plan of Merger, executed, *inter alios*, amongst MM Asset Management Holding LLC (a wholly



owned indirect subsidiary of MassMutual) and Invesco on 17<sup>th</sup> October 2018 (**‘Agreement 1’**) and a Shareholder Agreement between MassMutual and Invesco on 24<sup>th</sup> May 2019 (**‘Agreement 2’**) [Hereinafter, Agreement 1 and Agreement 2 are collectively referred to as **‘Transaction Documents’**]. The Transaction was consummated in May 2019.

3. As per the information available in the public domain, MassMutual belongs to the MassMutual Financial Group and is incorporated in Massachusetts, the United States of America (**‘USA’**). It operates as an insurance firm and offers individual and group life insurance, disability insurance, individual and group annuities and guaranteed interest contracts to individual and institutional customers in the USA and Puerto Rico.
4. As submitted by MassMutual, the Target is a company incorporated in Bermuda with its corporate headquarters in Atlanta, USA, and listed on the New York Stock Exchange. As per the information available in the public domain, Target is present in more than 26 countries and manages approximately USD 1.5 trillion in assets for investors around the world.
5. MassMutual submitted that at present, Invesco has four subsidiaries incorporated in India viz. Invesco Asset Management (India) Private Limited (**‘IAMPL’**), Invesco Trustee Private Limited (**‘ITPL’**), Invesco (India) Private Limited (**‘IPL’**) [Hereinafter, IAMPL, ITPL and IPL are collectively referred to as **‘Invesco India Subsidiaries’**] and Redblack Software Private Limited (**‘Redblack Software’**). That, Redblack Software was acquired by Invesco in December 2019 i.e., post the consummation of the Transaction. Further, at the time of the Transaction, Invesco’s main presence in India was through an asset management company (**‘AMC’**) i.e., IAMPL, that managed a mutual fund registered in accordance with the Securities and Exchange Board of India (Mutual Fund) Regulations, 1996 (**‘MF Regulations’**) namely, Invesco Mutual Fund.
6. It is provided in the Transaction Documents that Invesco shall elect any individual designated by MassMutual as a member of its Board. This right was duly exercised by MassMutual. Further, Invesco expanded its Board from 9 to 12 directors on 5<sup>th</sup> November



2020. Subsequently, the Chairman and CEO of a wholly owned subsidiary of MassMutual joined Invesco's Board.

7. Further, Invesco's FY2020 Annual Report, presented vide Form 10-K filings before the United States Securities and Exchange Commission, *inter alia*, states the following:

*"...We are not permitted to take certain actions without the prior written approval of MassMutual, including making certain changes in our capital structure or our organizational documents, adopting a shareholder rights plan or effectuating certain business combination transactions. MassMutual's level of ownership and influence may make some transactions (such as those involving mergers, material share issuances or changes in control) more difficult or impossible without the support of MassMutual..."*

#### **Initiation of Proceedings under Section 43A of the Act**

8. Section 5 of the Act states that acquisition of one or more enterprises by one or more person or merger or amalgamation of enterprises, which exceeds the threshold prescribed therein shall be a combination for the purposes of the Act. The thresholds are specified in the Act in terms of assets or turnover in India and abroad. Further, Section 6(2) of the Act provides that the parties proposing to enter into a combination shall give a notice to the Commission and, as per Section 6(2A) of the Act, no combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission under Section 6(2) or the Commission has passed orders under Section 31 of the Act, whichever is earlier.
9. The Central Government, in exercise of the powers conferred by clause (a) of Section 54 of the Act, in public interest, has exempted combinations from giving notice to the Commission under Section 6(2) of the Act, where the value of assets being acquired, taken control of, merged or amalgamated is not more than INR 350 crore in India or turnover is not more than INR 1,000 crore in India. This '*de minimis*' exemption was issued by the Ministry of Corporate Affairs *vide* Notification No. S.O. 989(E) dated 27<sup>th</sup> March 2017.



10. Based on the information available in public domain, it is observed that MassMutual consummated the Transaction in May 2019 without giving notice to the Commission in terms of Section 6(2) of the Act. The Commission, in its meeting held on 20<sup>th</sup> December 2021, considered the issue of consummation of the Transaction without filing a notice before the Commission. The Commission observed that the Transaction was strategic in nature and was accompanied with the right to nominate a director on the board of Invesco. The intention of MassMutual appeared to be that of participating in the affairs of management of Invesco. Further, it appeared that the appointment of another representative of MassMutual on Invesco's board as well its substituent committees may have also led to the possibility of material influence/control of MassMutual over the affairs and management of Invesco. In view of the foregoing, the Commission was of the *prima facie* view that the Transaction cannot be categorised as or given the colour of 'Solely for Investment' / 'Ordinary Course of Business', and therefore, it cannot benefit from Item 1 under Schedule I of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 [**'Combination Regulations'**].
11. Therefore, the Commission was of the *prima facie* view that the Transaction was given effect to without giving notice to the Commission, leading to contravention of sub-section (2) and (2A) of Section 6 of the Act. Accordingly, the Commission issued a Show Cause Notice ('SCN') to MassMutual, under Regulation 48 of the Competition Commission of India (General) Regulations, 2009, read with Section 43A of the Act on 17<sup>th</sup> January 2022. MassMutual submitted its response to the SCN dated 12<sup>th</sup> March 2022 along with a request for oral hearing in the matter (**'First Response to SCN'**). Thereafter, MassMutual submitted an additional response dated 9<sup>th</sup> May 2022 (**'Second Response to SCN'**) [Hereinafter, First Response to SCN and Second Response to SCN are collectively referred to as **'Responses to SCN'**]. MassMutual also submitted a note on arguments to be advanced during the oral hearing on 6<sup>th</sup> June 2023. The Commission heard MassMutual at length on 13<sup>th</sup> June 2023.



### **Submissions of MassMutual**

12. The broad contentions of MassMutual, as submitted in Responses to SCN and during the oral hearing, are as under:
- i. MassMutual was not required to notify the Transaction to the Commission under Section 6(2) of the Act, as it qualified for the *de minimis* exemption. It was submitted that while assets of Target in India exceeded INR 350 crore, its turnover stood at INR 374 crore in FY 2017-18.
  - ii. MassMutual considered the turnover recorded in the financial statements of Invesco India Subsidiaries. Invesco Mutual Fund maintains separate Annual Reports in respect of the mutual fund schemes. It would be incorrect to consider revenue/turnover generated on account of buying/selling of the securities through mutual funds, that is held in trust for unitholders i.e., persons who hold the unit in a scheme of a mutual fund, for arriving at the turnover of Invesco in India. Akin to any mutual fund, the underlying securities are held in trust for the benefit of the unitholders. Therefore, revenue/turnover generated on account of buying/selling of the securities is only held in trust for the unit holders. This characteristic of a fund has already been recognised by the Commission in the Investcorp Decision<sup>1</sup>. Accordingly, it would be incorrect to consider turnover/revenue/income of the mutual fund for arriving at turnover of Invesco in India.
  - iii. MassMutual acquired only beneficial ownership in Invesco and did not acquire a business in India. At the time of Transaction, there were no portfolio entities over which Invesco could be said to have control, such that their turnover is required to be added to the turnover of Invesco, either through its mutual fund business or otherwise. Further, it was submitted that the financial statements of Invesco India Subsidiaries do not disclose any entity over which such companies had control, either through shareholding, voting

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<sup>1</sup> Order under Section 43A of the Act dated 17<sup>th</sup> December 2021 in relation to Investcorp India Asset Managers Private Limited's acquisition of real estate fund management and private equity fund management businesses of IDFC Alternatives Limited



rights or otherwise. Accordingly, the Investcorp Decision did not apply to the present case.

### **Observations and Findings of the Commission**

13. The core issue in the instant case is whether the transaction was eligible for *de minimis* exemption and accordingly, was not required to file a notice under Section 6(2) of the Act.
14. The Commission observes that mutual fund is a mechanism for pooling money by issuing units to the investors and investing investors funds in securities. Investors of mutual funds are known as unitholders. The trustees of the mutual fund hold its property for the benefit of the unitholders and the AMC manages the funds by making investments in various types of securities. An acquisition of mutual fund business is given effect by acquiring the AMC and the trustee of the mutual fund. As submitted by MassMutual in the Responses to SCN, Invesco is engaged in the mutual fund business in India. Invesco's two Indian subsidiaries namely IAMPL and ITPL are the AMC and trustee of the mutual fund, respectively.
15. Further, it is observed that in combinations pertaining to mutual fund businesses, the value of assets, in accordance with the jurisdictional thresholds provided under Section 5 of the Act, is the aggregate of (i) assets of the AMC of the mutual fund, (ii) assets of the trustee of the mutual fund, if it is also subject to the acquisition and, (iii) assets under management ('AUM') of the mutual funds. Hence, in the instant case, the correct methodology for computing the total assets would include AUM of the Invesco Mutual Fund and the assets of the Invesco India Subsidiaries, as per their financial statements. Based on the information available on Invesco's website, the value of AUM of the Invesco Mutual Fund for March 2018 was more than INR 20,000 crore. In the Responses to SCN, MassMutual has only considered the aggregate value of assets of Invesco India Subsidiaries based on their financial statements, which totals to approximately INR 450 crore in FY 2017-18. This itself exceeds the threshold of assets as provided in the *de minimis* exemption, i.e., INR 350 crore. Therefore, the Commission observes that the computation of value of assets is irrelevant in the instant case as the *de minimis* thresholds are breached in both the scenarios.



16. The issue remaining henceforth is the methodology for computation of turnover. The value of turnover, in accordance with the jurisdictional thresholds provided under Section 5 of the Act, is the aggregate of (i) turnover/revenue from operations of the AMC of the mutual fund, (ii) turnover/revenue from operations of the trustee of the mutual fund, if it is also subject to the acquisition, and (iii) turnover of the mutual funds are to be considered. Turnover of mutual funds are aggregate of: (i) gross value of sale and redemption of securities and (ii) income such as dividend, interests, etc. Accordingly, any income generated from the securities held by a mutual fund company is considered as turnover, irrespective of whether holding of those securities confer control to mutual fund company or not.
17. MassMutual has computed the turnover of Invesco India Subsidiaries at INR 374 crore for FY 2017-18, failing to account for turnover generated by Invesco Mutual Fund in India. While this figure was not provided in the Responses to SCN, MassMutual during the oral hearing submitted that the gross revenue generated from the sale of securities would be in excess of the *de minimis* threshold for turnover, i.e., INR 1,000 crore.
18. In order to determine the notifiability under Section 5 of the Act in terms of assets and turnover and availability of *de minimis* exemption, if any, the assets and turnover of the controlled portfolio entities are also relevant. However, MassMutual in its submission has submitted that *“at the time of the impugned transaction, there were no “portfolio entities” over which Invesco could be said to have “control” such that their turnover is required to be added to the “Turnover” of the Target i.e., Invesco, either through its mutual fund business or otherwise.”* Accordingly, based on these submissions of MassMutual, assets and turnover of any investee entity of Invesco need not be considered and only the business of Invesco in India is considered.
19. Based on the foregoing paragraphs, it is observed that the arguments of MassMutual that the Transaction could avail *de minimis* exemption is not tenable as MassMutual has failed to account for the presence of the Invesco Mutual Fund business in India. The Commission



concludes that *de minimis* exemption was not available to the Transaction and thus, MassMutual failed to give notice to the Commission in terms of Section 6(2) of the Act.

20. Section 43A of the Act provides that if any person or enterprise fails to give notice to the Commission under Section 6(2) of the Act, the Commission shall impose on such person or enterprise a penalty which may extend to 1% of the total turnover or the assets, whichever is higher, of such a combination. Thus, Section 43A of the Act empowers the Commission to determine the appropriate amount of penalty in a matter, subject to the maximum of 1% of the total turnover or the assets, whichever is higher. Considering the circumstances of the instant matter and the conduct of MassMutual, the Commission considers it appropriate to impose a penalty of INR 5,00,000 (Indian Rupees Five Lakh only) on MassMutual, which is directed to pay the penalty within 60 days from the date of receipt of this order.
21. The Secretary is directed to communicate this order to MassMutual.