



**COMPETITION COMMISSION OF INDIA**

**Ref. No. M&A/03/2021/03/CD**

23<sup>rd</sup> August 2023

***In re: Proceedings against Bharti Airtel Limited and Lion Meadow Investment  
Limited under Section 43A of the Competition Act, 2002***

**CORAM:**

Ms. Ravneet Kaur  
Chairperson

Ms. Sangeeta Verma  
Member

Mr. Bhagwant Singh Bishnoi  
Member

**Appearances during the hearing**

*For Bharti Airtel Limited:*

Mr. Rajshekhar Rao, Senior Advocate with Ms. Hemangini Dadwal, Mr. Nitin Nair, Ms. Ruchi Khanna, Ms. Shivangi Pradhan, Mr. Areeb Amanullah, Advocates along with Ms. Shraddha Jha, representative of Bharti Airtel Limited

*For Lion Meadow Investment  
Limited:*

Mr. Arun Kathpalia, Senior Advocate with Mr. Aditya Dhupar, Mr. Gaurav Bansal, Mr. Shivam Jha, Mr. Varun Thakur, Mr. Deepanshu Poddar, Advocates



### **Order under Section 43A of the Competition Act, 2002**

1. This order shall dispose of the proceedings against Bharti Airtel Limited (**'BAL'**) and Lion Meadow Investment Limited (**'LMIL'**) under Section 43A of the Competition Act, 2002 (**'Act'**) in relation to acquisition of 20% shareholding in Bharti Telemedia Limited (**'BTL'**/**'Target'**) by BAL from LMIL (**'Step 1'**) and acquisition of 0.664% shares in BAL by LMIL (**'Step 2'**) (Hereinafter, Step 1 and Step 2 are collectively referred to as the **'Transaction'** and BAL and LMIL are collectively referred to as **'Parties'**).

#### **Background**

2. The Transaction was given effect pursuant to the execution of an Investment Agreement dated 17<sup>th</sup> February 2021 between LMIL, BAL and BTL. It was consummated on 22<sup>nd</sup> March 2021.
3. BAL is a public listed company incorporated under the laws of India and engaged in the business of providing telecommunication services. BTL is a public unlisted company incorporated under the laws of India and a subsidiary of BAL. BTL is engaged in the business of distributing multi-channel television programs directly to subscriber premises by using satellite systems in India. The principal activities of BTL consist of setting up, operating and maintaining Direct-to-Home (**'DTH'**) Cable through digital and other modes of broadcasting service and includes broadcasting of interactive and personalised content within India.
4. LMIL is a private limited company incorporated under the laws of Mauritius and is primarily engaged in investment holding activities. LMIL is an affiliate of Warburg Pincus LLC (**'Warburg Pincus'**). Warburg Pincus is a member-owned private equity firm headquartered in New York, United States of America and acts as a manager to certain private equity funds.



5. The Commission observed that the Transaction was not notified and was consummated prior to the approval of the Commission. Subsequently, a letter dated 3<sup>rd</sup> March 2022 was issued under Section 36(4) of the Act to BAL and Warburg Pincus (**'First Letter'**) directing them to furnish information and documents regarding the Transaction in order to assess whether further proceeding is required under Section 20(1) and/or Section 43A of the Act.
6. BAL filed its response to the First Letter dated 30<sup>th</sup> March 2022 and LMIL filed its response to the First Letter dated 31<sup>st</sup> March 2022 (Hereinafter, both responses are collectively referred to as **'First Responses'**). As the information provided in the First Responses was incomplete in certain aspects, another letter dated 5<sup>th</sup> May 2022 was issued to BAL and LMIL (**'Second Letter'**) to provide complete information. The responses to the Second Letter were filed by both BAL and LMIL on 19<sup>th</sup> May 2022 (Hereinafter, both responses are collectively referred to as **'Second Responses'**) [Hereinafter, First Letter and Second Letter are collectively referred to as **'Letters'**, and First Responses and Second Responses are collectively referred to as **'Responses to the Letters'**].

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

7. In its meeting held on 25<sup>th</sup> July 2022, the Commission considered the Responses to the Letters. The Commission, *inter alia*, observed that BAL held 80% shareholding of BTL and LMIL held the remaining 20% shareholding in BTL along with various rights in BTL. Considering the rights available to LMIL in the Target prior to the Transaction, it appeared that BAL did not have sole control prior to the Transaction and therefore, benefit under Item 2 of Schedule 1 (**'Item 2 Provision'**) of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (**'Combination Regulations'**) was not available to Step 1 of the Transaction. Step 2 of the Transaction was part consideration paid for Step 1 and hence, LMIL was required to notify under Regulation 9(4) of the Combination Regulations. In view of the foregoing, the Commission was of the *prima facie* view that Step 1 of the Transaction could not avail benefit under Item 2 Provision and Step 2 of the Transaction being interconnected to Step 1, ought to have been notified along with Step 1 as a composite notice and thus, cannot,



avail the benefit under Item 1 of Schedule 1 of Combination Regulations (**‘Item 1 Provision’**).

8. Therefore, the Commission was of the *prima facie* view that the Transaction was given effect without giving notice to the Commission, thereby leading to contravention of sub-section (2) and (2A) of Section 6 of the Act. Accordingly, the Commission issued a Show Cause Notice (**‘SCN’**) under Regulation 48 of the Competition Commission of India (General) Regulations, 2009 read with Section 43A of the Act on 4<sup>th</sup> August 2022.
9. LMIL and BAL filed response to the SCN dated 16<sup>th</sup> September 2022 and 20<sup>th</sup> September 2022, respectively, after seeking extension of time, along with a request for oral hearing in the matter. (Hereinafter, both aforementioned responses, are collectively referred to as **‘Responses to SCN’**).
10. The Commission heard BAL and LMIL at length on 11<sup>th</sup> July 2023 and after considering request of the Parties, the Commission granted liberty to the Parties to furnish their written arguments/ submissions latest by 25<sup>th</sup> July 2023. Accordingly, BAL and LMIL submitted their written arguments on 25<sup>th</sup> July 2023.

### **Submissions of BAL**

#### ***I. Step 1 of the Transaction benefitted from Item 2 Provision***

11. ***Benefit under Item 2 Provision:*** BAL submitted that it had a majority shareholding of 80% in BTL prior to the Transaction and therefore, the Transaction meets the first test of the benefit under Item 2 Provision. Further, the exception to the benefit under Item 2 Provision does not apply to the Transaction as there is no transfer from joint to sole control. As per the submissions of BAL, the rights acquired by LMIL in BTL do not qualify as ‘material influence’, let alone joint control. Accordingly, the acquisition of shares by LMIL in BTL did not and cannot be said to have resulted in acquisition of joint control at the time of the Transaction as there was no transfer from joint to sole control by BAL in BTL.



12. ***The test for benefit under Item 2 is that of joint control, not material influence:*** LMIL could have ‘joint control’ with BAL, only when it had rights similar to BAL, that enabled it to jointly control the affairs and management of BTL. In the present case, LMIL did not have any rights that empowered it to materially influence, in any manner, the affairs, management or operations of BTL.
13. The term ‘control’ has been defined under the Explanation (a) to Section 5 of the Competition Act to include: controlling the affairs or management by (i) one or more enterprises or groups over another enterprise or group; or (ii) one or more groups, either jointly or solely, over another group or enterprise. In other words, an entity must acquire those rights that enable it to exercise control, which at the lowest level includes material influence, over the management and affairs, *i.e.*, operations of the business. Moreover, joint control suggests that not just one entity but two or more entities together, exercise the same or, at least, a similar set of rights over the target. It is not sufficient, for joint control to exist, for an investor to merely hold necessary rights to protect its investment over a few items. The rights must enable it to jointly control the operations, affairs and management of the business.
14. ***Joint control is a significantly higher threshold than material influence:*** It has been submitted that the Commission has identified three categories of control:
- a) *De jure control:* *De jure* control or controlling interest means a shareholding conferring more than 50% of the voting rights of an enterprise. LMIL did not have *de jure* control over BTL, as it did not have more than 50% of the voting rights of BTL, either directly or indirectly, through its group entities.
  - b) *De facto control:* *De facto* control implies a situation where an enterprise holds less than the majority of the voting rights, but in practice, controls more than half of the votes actually cast at a meeting. LMIL did not have any *de facto* control over BTL.
  - c) *Material influence:* Material influence is the lowest level of control. Even here, it is imperative, that the rights confer material influence over the day-to-day operations and management of the business under explanation (c) to Section 5 of the Competition Act.



15. At the outset, it is clarified that the test of material influence is inapplicable to the Item 2 Provision. In order for the Item 2 Provision to be inapplicable, the shareholding and rights held by LMIL would need to have conferred upon it ‘joint control’ with BAL over BTL – which is not the case here. LMIL did not exercise even material influence over BTL. The test of joint control has a higher threshold as compared to that of material influence.
16. ***No ‘transfer’ from joint to sole control; BAL was in sole control before the Transaction and remains in sole control of BTL after the Transaction:*** The Transaction did not change, in any manner, the management of BTL or operations whether strategic or day-to-day or governance or decision-making of BTL. All decision-making power in relation to BTL remained with BAL before and after the Transaction. Accordingly, as per the statutory framework of the Act and the Commission’s own decisional practice, LMIL cannot be said to have exercised joint control over BTL. Therefore, the Transaction qualifies for Item 2 and/or Item 8 provisions. The Transaction involves the exit of a financial investor, upon recouping its investment, with the only other existing shareholder acquiring the minority shares of the existing investor. It does not result in any change in the business operations of BTL.

## ***II. Rights of LMIL in BTL prior to the Transaction***

17. ***LMIL’s Rights in BTL are investor protection rights and do not confer any degree of material influence, much less joint control:*** Prior to the Transaction, LMIL had only a very limited set of investor protection rights, which did not allow LMIL to participate in the management and affairs of BTL. Investor protection rights pertain to matters that may substantially affect the underlying value of the investment made by LMIL. None of the LMIL’s investor protection rights relate to any activities of the Target undertaken in its day-to-day management or business operations or the policy making process. Further, wherever necessary, appropriate monetary thresholds have also been provided to ensure that ordinary commercial operations and decisions of the Target are not subject to LMIL’s rights.



18. BAL had the right to appoint 5 out of 6 directors on the Board of BTL. In addition, BAL had the ability to pass ordinary and special resolutions, enjoyed affirmative voting rights and by virtue of these rights, BAL controlled all the affairs of BTL since it was in a position to pass all special resolutions. The directors appointed by BAL could pass resolutions relating to day-to-day operations and management of the business of the Target, even without the participation of, and irrespective of any dissent from the director appointed by LMIL before the Transaction.
19. ***Entire bouquet of rights to be examined to determine control:*** It has been submitted that the Commission has examined the rights in a target company and their bearing on the strategic commercial decisions of the target enterprise, while ascertaining whether an enterprise/ group has acquired control over another enterprise/ group. Certain rights that have been considered as conferring control by the Commission include the right to appoint directors on the board of target coupled with veto rights over key strategic items: (i) approval of the business plan; (ii) approval of budget; (iii) discontinuation of an existing line or commencement of a new line of business (iv) appointment or removal of key managerial personnel (**‘KMP’**) and senior management etc. (collectively referred to as **‘Strategic Rights’**). In its decisional practice, the CCI has not considered a bundle of rights as control conferring unless one or more of such rights is/are Strategic Rights. Such rights allow an investor to participate in day-to-day management and affairs of the business.
20. The Commission has also assessed other veto rights (along with a right to appoint a director) such as (a) right to amend to charter documents; (b) right to change the capital structure of the company; (c) reorganization of business; (d) right to amend dividend policy; and (e) right to appoint auditors, to confer control only when accompanied by the control conferring rights. Investor protection rights on their own cannot be said to be control conferring. Such rights are those that any investor acquires to be able to protect the value of their investment such as information rights, anti-dilution rights and veto over charter documents and change in capital structure that may adversely impact their financial



investment. Such rights are necessary to protect the sizable investments made by such investors.

21. ***LMIL's investment in BTL was merely in the nature of a pure financial investment:*** The underlying intent of this Transaction is not strategic in nature or to gain control of BTL. The rights that LMIL ceded on its exit of its investment in BAL was only for the limited purpose of protecting its investment. Where an investor has significant investment of this nature, then having basic access to key performance indicators of the company in addition to financial statements are critical for an investor to be assured of the protection of its investment – particularly when the sole purpose of the investment is to be profitable on exit. This cannot be said to confer material influence over a company, much less joint control.

### **Submissions of LMIL**

#### ***I. Step 2 of the Transaction benefitted from the Item 1 Provision***

22. It is submitted that, in accordance with the Item 1 Provision and its Explanation, there are three essential conditions for availing its benefit: (a) the acquisition does not entitle the acquirer to hold 25% or more of the total shares or voting rights of the target enterprise; (b) the acquisition is made in the ordinary course of business or solely as an investment; and (c) the acquisition does not lead to an acquisition of control.
23. Further, an acquisition is deemed as being made solely as an investment if (a) the acquisition is of less than 10% of the total shares or voting rights of the target enterprise; (b) the acquirer has the ability to exercise only such rights that are exercisable by the ordinary shareholders of the target enterprise to the extent of their respective shareholding; (c) the acquirer is not a member of the board of directors of the target enterprise and does not have the right or intention to nominate one; and (d) the acquirer does not intend to participate in the affairs and management of the target enterprise and does not have the right or intention to nominate one.





24. It is submitted that Step 2 of the Transaction satisfied each of the above-mentioned conditions of the Explanation to the Item 1 Provision as LMIL acquired less than 25% shares in BAL and did not secure any rights over and above those conferred upon ordinary shareholders.

## II. *Step 1 of the Transaction benefitted from Item 2 Provision*

25. ***BAL exercised sole control over BTL prior to the BAL Acquisition:*** The test of joint control is significantly different from the test of a 'lower degree of control', which the Commission considers to be a part of 'material influence' and has applied in the SCN. In this regard, it is submitted that for Item 2 Provision not to apply, the acquirer should move from 'joint' control to 'sole' control. It is submitted that LMIL did not exercise 'joint control' and in fact, did not exercise even material influence over BTL. It was BAL which was in sole control of BTL prior to, as well as post the Transaction.
26. LMIL has also mentioned that the Commission has considered the following three categories of control: *de jure* control, *de facto* control and material influence, similar to the arguments advanced by BAL. It is submitted that private equity or financial investors typically secure contractual rights to be able to protect the value of their investment (such as exit rights, information rights, anti-dilution rights and veto over matters that may adversely impact their financial investment). Such rights are necessary to protect the sizable investments made by such investors. While interpreting control exercised by financial investors, the Commission has in its decisional practice carefully evaluated (a) investor protection rights not amounting to control; and (b) rights that would allow a private equity player the ability to participate in the strategic matters of the company.
27. LMIL never exercised any control over the management and affairs of BTL. To the contrary, BAL was in sole control over the business affairs of BTL prior to and post the BAL acquisition. BAL had the right to and had in fact appointed the majority of the board of BTL. Accordingly, only BAL had the ability to approve or reject any strategic



commercial decision of BTL, irrespective of the view of LMIL's director. LMIL's right to appoint one non-executive director must not be considered as LMIL exercising any degree of control and especially, joint control over BTL. It has been submitted that BAL had the sole power to approve ordinary as well as special resolutions of BTL. Therefore, every major business decision of BTL that would typically be taken through passing of ordinary/special resolutions was undertaken by BAL and would not have required consent of LMIL.

28. In light of the above submissions, it is submitted that LMIL never exercised any control over the management and affairs of BTL. To the contrary, BAL was in sole control over the business affairs of BTL prior to and post the BAL Acquisition. The intention behind LMIL's investment in BTL was for LMIL to make financial gains on its investment and thereafter exit BTL and not exercise any control over BTL.

### *III. Obligation to notify the Transaction*

29. Given that the Step 2 of the Transaction benefitted from the minority acquisition exemption (*i.e.*, Item 1 Provision) and given that Step 1 of the Transaction benefitted from the Item 2 Provision, a composite merger filing covering the Step 1 and Step 2 of the Transaction was not required.

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

30. 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.

31. The Combination Regulations provides the benefit of normally not filing a notice under Section 6(2) of the Act to certain categories of combinations (as defined under Section 5 of the Act) that are ordinarily not likely to cause an appreciable adverse effect on competition in India. Such categories are provided under Schedule I of the Combination Regulations.

32. The Commission notes the Item 2 Provision of Schedule I, which reads as follows:

*“An acquisition of shares or voting rights, referred to in sub-clause (i) or sub-clause (ii) of clause (a) of Section 5 of the Act, where the acquirer, prior to the acquisition, has 50% or more shares or voting rights in the enterprise whose shares or voting rights are being acquired, except in the cases where the transaction results in transfer from joint control to sole control”.*

33. From the plain reading of the Item 2 Provision, it is clear that the benefit of this provision is not available in instances where the transaction results in a transfer from joint control to sole control. The objective of this provision is to distinguish and not to provide the benefit to transactions involving change in control from joint to sole, where the acquirer, prior to the acquisition, has 50% or more shares or voting rights in the enterprise whose shares or voting rights are being acquired.

34. The core issue for determination in the instant case is whether the Transaction resulted in transfer from joint control to sole control of BTL.

35. The Commission in its past order of *UltraTech Cement Limited*<sup>1</sup> has observed that all degrees and forms of control nonetheless constitute control. The international jurisprudence considers ‘material influence’ as the lowest form of control with other higher forms such

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<sup>1</sup> Order under Section 44 of the Act pertaining to Combination Registration No. C-2015/02/246 dated 12<sup>th</sup> March 2018



as *de facto* control and controlling interest (*de jure* control) in that order. Material influence, the lowest level of control, implies presence of factors which give an enterprise ability to influence affairs and management of the other enterprise including factors such as shareholding, special rights, status and expertise of an enterprise or person, Board representation, structural/financial arrangements etc.

36. Acquisition of shares in a company is coupled with certain statutory rights and may have certain rights provided in its charter documents or by way of mutual understanding (such rights are reflected in documents such as shareholder's agreement or governance agreement or investment agreement) between the stakeholders. Contractual arrangement may vary from case to case depending upon the spectrum of nature of these rights and their effect on behaviour/ degree of influence over the enterprise.
37. The rationale for any arrangement and the source of rights are not relevant for holding whether a right confers ability to materially influence or not. Whether any right provides material influence over the management or affairs or strategic commercial decisions or not, depends upon its nexus with the likely economic behaviour of the target.
38. Ability to participate in board decision-making process by representative not only provides access to commercially sensitive information but also provides ability to influence decision-making process of the target. There may be acquisition of control including material influence, even if it is not the declared intention of the parties. Control is the possibility of exercising material influence rather than its actual exercise.
39. Extent of influence exerted by a representative on the board in decision-making depends upon several factors such as extent of industry knowledge, length of experience, recognition in business world, length of association with the enterprise, dependence of the target for funding, technology, supply of inputs or sale of product and services, etc. Acquirer's industry expertise might lead to its advice being followed to a greater extent than its extent of voting right. Further, target's efforts to pursue certain strategies may get dampened pursuant to perception of the shareholder. Minority presence on the board may enable



exercise of material influence over the management or affairs or strategic commercial decisions of the target.

40. Thus, control, whether it may be in the form of sole or joint, is defined as possibility (*i.e.*, mere existence of rights and not the actual conduct in relation to these rights) of exercising material influence on the enterprise on the basis of shareholding, voting rights, other rights, contracts/agreements or any other means. Joint control exists when two or more persons have the ability to exercise material influence over another enterprise. Joint control does not require for two enterprises to have equal rights or equal degree of control in the other enterprise. A constraining presence on the decision-making process or affairs or management of an enterprise by a person suffices control.
41. BAL and LMIL have based their argument on the difference between control, joint control and material influence. In this regard, based on the foregoing, the Commission observes that when determining the applicability of benefit of Item 2 Provision, ‘joint control’ and ‘sole control’ should be read to include the ability to exercise material influence over the management or affairs or strategic commercial decisions of the target. Thus, the Parties’ submission that test for Item 2 Provision is that of joint control and not material influence, former being a higher threshold, is not tenable.
42. Veto right confers control to the acquirer over the concerned matter of the target. Thus, veto on the matter of economic or commercial significance to the target is always considered conferring control in terms of and for the purposes of the Section 5 of the Act.
43. LMIL held 20% shareholding in BTL prior to the Transaction, along with a bundle of rights, including, *inter alia*,: (a) right to appoint a non-executive director on the board of BTL and nominate such director on the audit committee of BTL as long as LMIL held 7.5% stake in BTL; (b) LMIL director had the right to access the books, accounts, records, properties and facilities of BTL; (c) affirmative veto rights over certain reserved matters such as amendment to the charter documents; amalgamation or merger or demerger or spin-off; change in capital structure with certain exceptions, so long as LMIL held 7.5% stake in



BTL; (d) BTL could consult LMIL while appointing, removing or re-appointing of the KMPs of BTL prior to taking any such decision, so long as LMIL held 7.5% stake in BTL; (e) LMIL director was required for quorum in a scheduled board meeting/shareholder meeting; (f) rights in subsidiaries – all the rights mentioned were available to LMIL in respect of all direct and indirect subsidiaries of BTL, so long as LMIL held 7.5% stake in BTL; and (g) information rights wherein BTL was required to provide management information reports, quarterly audited financial statements and audited financial statements to LMIL.

44. LMIL had 20% shareholding in BTL with corresponding voting rights as well as representation on the board (albeit minority), veto rights, quorum requirements, consultation rights, etc. The rights held by LMIL in BTL also extend to all subsidiaries of BTL. Further, LMIL even exercised its right of appointing board member, Mr. Viraj Sawhney, on the board of BTL. The ability to participate in the board decision-making process provides access to commercially sensitive information in addition to the ability to influence the decision-making process. Further, the quorum requirements also mandated the presence of this board member of LMIL in all scheduled board meetings and shareholder meetings. Only in situations that such quorum was not met in the first instance, the meeting may be rescheduled after 7 days, where such quorum requirement can be waived off. Even in such meetings, no decision on the reserved matters could be taken. These matters, *inter alia*, include amendments to charter documents, proposal for amalgamation, merger, demerger or spin off. The sum total of veto rights appear to be related to affairs or management of BTL and hence confer material influence of LMIL over BTL.
45. Further, the dichotomy in the submissions of BAL and LMIL is also evident from the fact that while the Parties claim these veto rights as investor protection, they fail to elucidate why LMIL does not require such rights in the BTL if its investment falls below 7.5%.
46. Prior to the transaction, where certain material influence over management or affairs or strategic commercial decisions of an enterprise is subject to joint control, but one of the



shareholders exerting joint control loses its ability to materially influence, the other joint controller gains sole control over management or affairs or strategic commercial decisions of an enterprise. In such cases, benefit of Item 2 Provision would not be available. This would hold good irrespective of the fact that the person that gained sole control, already held more than 75% shareholding and thus, sole control over special resolutions.

47. Considering the rights of LMIL, the Commission concludes that the rights held by LMIL in BTL prior to Transaction conferred upon it the ability to exert material influence over management or affairs or strategic commercial decisions. Thereby, the Step 1 is not eligible for the benefit of Item 2 Provision.
48. With regard to submission about eligibility of Step 2 of the Transaction for Item 1 Provision the Commission observes that Step 2 being part payment for Step 1 renders the two tranches interconnected within the meaning of Regulation 9(4) of the Combination Regulations. The interconnectedness of the Step 1 and Step 2 places an onus to jointly notify the Transaction, as per Regulation 9(4) of the Combination Regulation. Accordingly, the Commission concludes that one composite notice ought to be filed to the Commission, prior to consummating any step of the Transaction, jointly by both the Parties, with BAL being the acquirer in Step 1 and LMIL being the acquirer in Step 2.
49. 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.
50. Considering the facts and circumstances of the instant matter, the conduct of BAL and LMIL during the proceedings, and the past violations of the Act by BAL<sup>2</sup>, the Commission

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<sup>2</sup> Orders under Section 43A of the Act pertaining to Combination Registration Nos. C-2017/10/531, C-2017/05/510 and C-2017/05/509 dated 27<sup>th</sup> August 2018, 11<sup>th</sup> May 2018 and 11<sup>th</sup> May 2018, respectively



considers it appropriate to impose a penalty of INR 1,00,00,000 (Indian Rupees One Crore only) on BAL (being the acquirer in Step 1 of the Transaction), which is directed to pay the penalty within 60 days from the date of receipt of this order.

51. Further, under Regulation 8(2) of the Combination Regulations, the Commission hereby also directs BAL and LMIL to file notice with the Commission in appropriate form, in relation to the Transaction, within 60 days from the receipt of the direction of the Commission.

52. The Secretary is directed to communicate to BAL and LMIL accordingly.