M&A Lab

Learning Lessons
Select Case Studies

Strategic, Legal and Tax Dimensions
Indian and International Perspectives

Sun Pharma – Ranbaxy: A Panacea for Ranbaxy's ills?

Reliance – Network18: Reliance tunes into Network18!

Thomas Cook – Sterling Holiday: Let's Holiday Together!

January 2015

Dear Friend,

We are delighted to share our private publication, M&A Lab: Learning Lessons, Select Case Studies (2015). This research publication analyses some of the landmark M&A deals of 2014, namely:

- Sun Pharma – Ranbaxy: A Panacea for Ranbaxy's ills?
- Reliance – Network18: Reliance tunes into Network18!
- Thomas Cook – Sterling Holidays: Let's Holiday Together!

As a law-firm, we are deeply committed towards research, knowledge sharing and thought leadership. Our M&A Lab dissects major deals from a strategic, legal, regulatory and tax perspective - both Indian and international.

This publication would be of interest to Chairmen, CEOs, General-counsels, Board-members, decision makers and learning institutions. The case studies present lessons from select M&A deals, which we believe would assist in making informed decisions in future transactions.

M&A activity is said to be a key indicator of the pulse and vibrancy of an economy. In 2014, the value of M&A and private equity deals rose by 26% to USD 48 billion and the volume of deals rose by nearly 20% to 1, 116 deals. The number of inbound deals rose by 32% whereas outbound deals dropped by 38% which further reflects the buoyant domestic sentiment. The global deal volume also rose two-thirds than in 2013 and the highest since the financial crisis in 2008.

We hope you find this publication useful and interesting. A soft version of the publication is available at our knowledge site: www.nishithdesai.com

Feel free to reach us for feedback, queries or further information.

Best wishes and warm regards,

Nishith Desai | Vaibhav Parikh | Nishchal Joshipura

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Nishith Desai is credited with developing many of the benchmark structures for India focused investments and M&A. He is frequently interviewed by the media and press, and speaks at major conferences. Chambers & Partners (2014) praises Nishith Desai for his extensive knowledge of the intricacies of tax law and also his ability to find solutions for complex tax issues. Clients praise him as a 'visionary'. Legal 500 (2014) honors the team led by Nishith Desai having advised on tax aspects of M&A and fund formation. Legal Era, a prestigious Legal Media Group has recognized Nishith Desai as the Best Tax Lawyer of the Year (2013).

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Nishchal Joshipura is Partner and head of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates. He is a lawyer with background in management & chartered accountancy. He also heads the firm's Real Estate Practice Group and has led several high profile M&A deals and specializes in legal and tax structuring of complex cross-border transactions.

He also advises major MNCs on Corporate & Securities laws, Transfer Pricing, International Taxation, Globalization, Structuring of Inbound/ Outbound Investments, Private Equity Investments, Structuring of Offshore Funds, Taxation of E-Commerce and Exchange Control Law. Nishchal Joshipura has authored several articles in influential journals and publications and has spoken at major domestic and international conferences.

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Karan Kalra is a Senior Member of the Mergers and Acquisitions and Private Equity Practice at Nishith Desai Associates. He also co-heads the banking finance team at the firm. His practice primarily focuses on domestic and cross border M&As, fund investments, structured finance transactions and on providing regulatory and general corporate advice.

With a specific industry focus on the banking and financial services sector, he has advised clients across several jurisdictions and sectors. For his work in IFLR 1000, Legal 500 and the RSG Consulting Survey Karan Kalra has been credited.

About NDA

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore, New Delhi, Munich. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele.

Core practice areas include Mergers & Acquisitions, Fund Investments, International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Capital Markets, Employment and HR, Intellectual Property, Corporate & Securities Law, Competition Law, JVs & Restructuring, General Commercial Law and Succession and Estate Planning. Our specialized industry niches include financial services, IT and telecom, education, pharma and life sciences, media and entertainment, real estate and infrastructure.

Nishith Desai Associates has been ranked as the Most Innovative Indian Law Firm (2014) and the Second Most Innovative Asia - Pacific Law Firm (2014) at the Innovative Lawyers Asia-Pacific Awards by the Financial Times - RSG Consulting. IFLR1000 has ranked Nishith Desai Associates in Tier 1 for Private Equity (2014). Chambers and Partners has ranked us as # 1 for Tax and Technology-Media-Telecom (2014). Legal 500 has ranked us in tier 1 for Investment Funds, Tax and Technology-Media-Telecom (TMT) practices (2011/2012/2013/2014). IBLJ (India Business Law Journal) has awarded Nishith Desai Associates for Private equity & venture capital, Structured finance & securitization, TMT and Taxation in 2014. IDEX Legal has recognized Nishith Desai as the Managing Partner of the Year (2014). Legal Era, a prestigious Legal Media Group has recognized Nishith Desai Associates as the Best Tax Law Firm of the Year (2013). Chambers & Partners has ranked us as # 1 for Tax, TMT and Private Equity (2013). For the third consecutive year, International Financial Law Review (a Euromoney publication) has recognized us as the Indian "Firm of the Year" (2012) for our Technology - Media - Telecom (TMT) practice. We have been named an ASIAN-MENA COUNSEL 'IN-HOUSE COMMUNITY FIRM OF THE YEAR' in India for Life Sciences practice (2012) and also for International Arbitration (2011). We have received honorable mentions in Asian MENA Counsel Magazine for Alternative Investment Funds, Antitrust/Competition, Corporate and M&A, TMT and being Most Responsive Domestic Firm (2012). We have been ranked as the best performing Indian law firm of the year by the RSG India Consulting in its client satisfaction report (2011). Chambers & Partners has ranked us # 1 for Tax, TMT and Real Estate – FDI (2011). We've received honorable mentions in Asian MENA Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Socially Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009. Legal 500 (Asia-Pacific) has also ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fifth year in 2010, NDAites have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian Counsel and Pacific Business Press and the 'Most in Demand Practitioners' by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community. He is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India. He is also the recipient of Prof. Yunus 'Social Business Pioneer of India' – 2010 award.

We believe strongly in constant knowledge expansion and have developed dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs, conducted both in-house and for select invitees. KM and CE programs cover key events, global and national trends as they unfold and examine case studies, debate and analyze emerging legal, regulatory and tax issues, serving as an effective forum for cross pollination of ideas.

Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has now been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage' in the September 2009 issue of Global Business and Organizational Excellence (GBOE).

Please see the last page of this paper for the most recent research papers by our experts.

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Main Contents

M&A Lab

Sun Pharma – Ranbaxy: A Panacea for Ranbaxy's ills?

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1. Prologue

Sun Pharmaceutical Industries Limited (**"Sun Pharma"**) and Ranbaxy Laboratories Limited (**"Ranbaxy"**) set the Indian pharmaceutical industry abuzz with excitement on April 6, 2014 when they released a press statement announcing that they had entered into definitive documents under which Sun Pharma would acquire 100 percent of Ranbaxy (**"Transaction"**).[1] The Transaction which was a heavily guarded secret until the public announcement, is to be effected by means of a merger/ amalgamation between Sun Pharma and Ranbaxy. The combined entity, upon successful consummation of the Transaction, would be the fifth-largest specialty generics company in the world and the largest pharmaceutical company in India.[2] The scale of operations of the resulting entity would be massive, with operations spanning across 65 countries and 47 manufacturing facilities across 5 continents, as well as a sizeable portfolio of specialty and generic products sold across the world, including 629 abbreviated new drug applications (**"ANDAs"**).[3 4]

The announcement of the Transaction was of particular interest to the pharmaceuticals industry as it came at a crucial time for Ranbaxy. Ranbaxy's manufacturing facilities in Toansa, Paonta Sahib, Dewas and Mohali in India have been under the scanner of the United States Food and Drug Administration ("USFDA") following observation of certain lapses in complying with current good manufacturing practices during the course of inspection of these facilities by the USFDA.[5] As a result, the USFDA had prohibited Ranbaxy from distributing drugs manufactured using active pharmaceutical ingredients (**"APIs"**) from these facilities, in the United States. The USFDA sanctions on Ranbaxy and certain other companies in India have caused the multi-billion dollar Indian generic pharmaceutical industry severe loss in international markets. The acquisition by Sun Pharma may result in a turnaround for the beleaguered Ranbaxy and is therefore, welcome news for Ranbaxy as well as its Japanese parent Daiichi Sankyo Co Ltd (**"Daiichi"**). The Competition Commission of India (**"CCI"**) by way of its order dated December 5, 2014 approved the Transaction subject to satisfaction of certain conditions.

The Transaction comes in the wake of various big-ticket deals entered, or proposed to be entered into by pharmaceutical companies across the globe, such as Novartis' and GlaxoSmithKline's (~USD 23 billion) business swap, Pfizer's USD 100 billion offer for AstraZeneca, Bayer's acquisition of Merck's consumer care business for USD 14.2 billion and Valeant's USD 47 billion offer for Allergan. On the home front, Sun Pharma itself has been gearing up for an acquisition drive, with its open offer to the shareholders of Zenotech Laboratories Limited immediately after the announcement of the Transaction.[6]

Several reasons may be attributed to such M&A activity by pharma companies, some of them being:

i. Attaining the scale necessary in those therapeutic areas where they intend to focus, by building a broader product portfolio and services;[7]

ii. Pressure by governmental agencies, insurance companies in North America and Europe to reduce cost of medicines, due to difficulty in meeting mounting healthcare costs etc.[8]

Building a product portfolio is research-intensive and cost-prohibitive for pharmaceutical companies. Therefore, pharmaceutical companies may opt to achieve their objectives through inorganic growth by way of M&A. Further, M&A activity in certain industries such as pharmaceuticals follows a cyclical trend, with acquisitions ramping up over five-year periods. This is evident from the spurt of M&As in 2008-2009 with Pfizer's acquisition of Wyeth, Merck's acquisition of Schering-Plough Corp, Novartis' acquisition of Alcon Inc., as well as Daiichi's acquisition of Ranbaxy.[9]

Indian pharmaceutical companies hold considerable advantage over foreign pharmaceutical manufacturers in terms of cost-effectiveness

1. http://www.ranbaxy.com/sun-pharma-to-acquire-ranbaxy-in-a-us4-billion-landmark-transaction
2. Ibid
3. An ANDA is an application for a U.S. generic drug approval for an existing licensed medication or approved drug. The ANDA is submitted to USFDA's Center for Drug Evaluation and Research, Office of Generic Drugs, which reviews and approves a generic drug product for manufacture and marketing the generic drug product as an effective, low cost alternative, to the American public.
4. http://www.ranbaxy.com/sun-pharma-to-acquire-ranbaxy-in-a-us4-billion-landmark-transaction
5. http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm368445.htm
6. http://www.bseindia.com/corporates/anndet_new.aspx?newsid=68185c15-8a2b-4ee3-8854-4846897f04fb
7. http://www.jmijitm.com/papers/130245123339_47.pdf
8. Ibid
9. http://www.gfmag.com/tools/global-database/economic-data/9976-mergers-and-acquisitions-largest-maa-deals-2009-and-2008.html

of manufacturing processes as well as research and development. Thus, the Transaction has the potential to give rise to a formidable force in pharmaceutical manufacturing leading to wider presence and broader product portfolio. This M&A Lab analyzes in detail, the legal, regulatory, tax and commercial considerations behind the Transaction.

2. Glossary of Terms

Terms	Definitions
AAEC	Appreciable adverse effect on competition
ANDA	Abbreviated new drug application
API	Active pharmaceutical ingredient
BSE	Bombay Stock Exchange
CA 1956	Companies Act, 1956
CA 2013	Companies Act, 2013
Caraco	Caraco Pharmaceutical Laboratories
CCI	Competition Commission of India
Combination Regulations	Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011
Competition Act	Competition Act, 2002
Daiichi	Daiichi Sankyo Co Ltd
EBITDA	Earnings before tax, depreciation and amortization
FDI	Foreign direct investment
February 4 Circular	SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013
FIPB	Foreign Investment Promotion Board
GDR	Global depositary receipts of Ranbaxy
HSR Act	Hart-Scott-Rodino Antitrust Improvements Act, 1976
INR	Indian Rupees
ITA	Income Tax Act, 1961
JV	Joint venture
LLP	Limited liability partnership
M&A	Mergers and acquisitions
May 21 Circular	SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013
NSE	National Stock Exchange
ODI Regulations	RBI's Master Circular on Direct Investment by Residents in Joint Venture (JV)/ Wholly Owned Subsidiary (WOS) Abroad dated July 1, 2014
R&D	Research and development
Ranbaxy	Ranbaxy Laboratories Limited
Ranbaxy ESOPs	Employee stock options of Ranbaxy
RBI	Reserve Bank of India
RD	Regional Director, Company Law Board
SEBI	Securities and Exchange Board of India
SEBI Insider Trading Regulations	SEBI (Prohibition of Insider Trading) Regulations, 1992
Sun Pharma	Sun Pharmaceutical Industries Limited
Sun Pharma ESOPs	Employee stock options of Sun Pharma issued in exchange of Ranbaxy ESOPs in accordance with the scheme
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
Transaction	Acquisition of 100% of Ranbaxy by Sun Pharma by way of scheme of merger
UKMHRA	Medicines and Healthcare products Regulatory Agency
USFDA	United States Food and Drug Administration
US	The United States of America
USD	United States Dollars
VAT	Value-added tax
WOS	Wholly-owned subsidiary
Zenotech	Zenotech Laboratories Limited

3. Details of the Deal

I. Parties Involved

A. Sun Pharma

Sun Pharma is an Indian origin, specialty pharmaceutical company, established in 1983 with a portfolio of five psychiatric medications and a manufacturing facility in Vapi, Gujarat.[10] Sun Pharma established its first research center in 1991, driving further growth for the company.[11] It went public in 1994 and is currently listed on the Bombay Stock Exchange ("**BSE**") as well as the National Stock Exchange ("**NSE**"). Approximately 64 percent of the shareholding of Sun Pharma is still held by the promoters and promoter group. In addition to its formulations in various therapeutic areas, Sun Pharma also manufactures APIs to facilitate the manufacture of complex formulations such as anti-cancers, peptides, sex hormones and controlled substances.[12]

In 30 years of its existence, Sun Pharma has become one of the world's most profitable pharmaceuticals manufacturers. Sun Pharma has complemented its growth by way of extensive acquisitions and joint ventures in India and abroad. The acquisition of Tamilnadu Dadha Pharma has helped Sun Pharma's entry into oncology and gynecology.[13] The company's initial investment in and subsequent takeover of Gujarat Lyka Organic Ltd provided access to a manufacturing facility for cephalexin for supply to the international market.[14] Sun Pharma's 2002-acquisition of MJ Pharma has provided Sun Pharma a USFDA and UKMHRA approved plant which is currently a manufacturing base for the European generic market.[15] In 1997, Sun Pharma invested in Caraco, a Detroit-based manufacturer of generics and in 2010, completely acquired Caraco, enabling its entry into the U.S generic market. The acquisition of majority stake in Taro Pharmaceutical Industries Limited in 2010, an established multinational generics manufacturer, increased the company's U.S presence, as well as in Israel and Canada.[16] In addition to developed markets, Sun Pharma has also focused on emerging markets with its joint venture with MSD.[17]

B. Ranbaxy

Established in 1961, Ranbaxy is an Indian company listed on the BSE, NSE and the Luxembourg Stock Exchange, with ground operations in 43 countries and 21 manufacturing facilities spread across 8 countries. It is engaged in development, manufacture and marketing of pharmaceutical products and APIs.[18] In 1988, Ranbaxy's Toansa plant achieved USFDA approval, thereby enabling it to manufacture pharmaceuticals for the US market.

Ranbaxy has also engaged in acquisitions to further its growth objectives. The company's acquisition of Crosland Research Laboratories, Rima Pharmaceuticals etc. provided it a foothold in niche, high-value markets in the European Union.[19] The acquisition of RPG Aventis helped Ranbaxy achieve a turnover of INR 60,000 million (USD 1000 million) making it the first Indian company to reach such global status.[20]

In 2008, Daiichi entered into definitive agreements with the erstwhile promoters of Ranbaxy (the Singh family) to acquire a controlling stake in Ranbaxy. This was an off-market transaction, pursuant to which Daiichi was required to make an open offer to the public shareholders of Ranbaxy.[21] Pursuant to the conclusion of the open offer, Daiichi acquired an additional 20 percent equity stake in Ranbaxy,

10. http://www.sunpharma.com/formulations
11. https://www.sunpharma.com/history
12. http://www.sunpharma.com/api
13. https://www.sunpharma.com/acquisitions
14. Ibid
15. Ibid, also see http://www.jmijitm.com/papers/130245123339_47.pdf
16. For more information regarding Sun Pharma's acquisition of Taro, please refer to our M&A Lab available at: http://www.nishithdesai.com/information/navigation/navigation2/ma-lab/ma-lab/article/sun-pharma-ndash-taro-pharma-deal-dissection.html
17. Merck & Co., Inc., is known as Merck, Sharp and Dohme (MSD) outside the United States and Canada.
18. http://www.ranbaxy.com/about-us/overview/
19. http://www.jmijitm.com/papers/130245123339_47.pdf
20. Ibid
21. Under the provisions of Regulations 10 and 12 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, acquisition of shares / voting rights in a listed company, which will, in aggregate, give the acquirer 15 percent or more of the voting rights in the company or acquisition of control over a listed company, would trigger an open offer requirement.

resulting in an aggregate shareholding of 63.92 percent in Ranbaxy. [22]

Following the acquisition of controlling stake by Daiichi however, Ranbaxy has had a number of entanglements with the USFDA for issues related to quality-control, making it difficult to keep a clean name.[23] Ranbaxy's plants at Dewas and Paonta Sahib were slapped with import alerts by the USFDA in 2008.[24] In May 2013, Ranbaxy also pleaded guilty to felony charges in the US, relating to the manufacture and distribution of certain adulterated drugs made at Ranbaxy's manufacturing facilities in India and had to pay a fine of INR 30,000 million (USD 500 million).[25] Further, in September 2013, the company's Mohali facility was also banned from manufacturing pharmaceuticals which were intended to be exported to the US.[26] This was followed by the ban on the Toansa facility in Punjab for lapses in quality control and adherence to procedure.[27]

C. Daiichi

Daiichi is a global pharmaceutical company with corporate origin in Japan.[28] In 2008, Daiichi acquired a controlling stake in Ranbaxy. However, the value of Daiichi's investments has halved over the years, as Ranbaxy has not been able to ensure compliance of its factories supplying to the US, with USFDA guidelines.[29]

II. Deal Snapshot

Merging Company	Ranbaxy
Surviving Company	Sun Pharma
Share Swap Ratio	0.8 share of Sun Pharma of face value of INR 1/- each will be allotted to the shareholders of Ranbaxy for each share of INR 5/- each held by them in Ranbaxy.
Implied value per share	INR 457 for each Ranbaxy share, representing an 18 percent premium to Ranbaxy's 30-day volume weighted average share price [30]
Total equity value of the Transaction	USD 3.2 billion (USD 4 billion including payment to NCD holders)

A brief chronology of events pertaining to the Transaction is provided below:

Date	Event
April 6, 2014	Resolutions regarding the amalgamation agreement and other matters passed at the Board of Directors meetings of Sun Pharma and Ranbaxy
April 30, 2014	Andhra Pradesh High Court issues notices to the Securities and Exchange Board of India ("SEBI"), BSE, NSE, Sun Pharma, Ranbaxy and Silver Street Developers LLP to maintain status quo, based on a writ petition alleging insider trading in the shares of Ranbaxy in the days prior to the announcement of the Transaction
May 11, 2014	Daiichi files a petition before the Andhra Pradesh High Court requesting it to vacate the 'status quo' order [31]
May 13, 2014	Sun Pharma moves the Supreme Court against the status quo order of the Andhra Pradesh High Court
May 13, 2014	FIPB to take up Daiichi's FDI proposal in Sun Pharma [32]

22. For more information regarding the acquisition of controlling stake by Daiichi in Ranbaxy, please refer to our M&A Lab at http://www.nishithdesai.com/information/navigation/navigation2/ma-lab/ma-lab/article/ranbaxy-daiichi-deal-dissected.html, last accessed on June 24, 2014
23. http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/EnforcementActivitiesbyFDA/ucm118411.htm
24. http://in.reuters.com/article/2013/09/16/ranbaxy-fda-alert-idINDEE98F02M20130916
25. http://www.justice.gov/opa/pr/2013/May/13-civ-542.html
26. http://in.reuters.com/article/2013/09/16/ranbaxy-fda-alert-idINDEE98F02M20130916
27. http://businesstoday.intoday.in/story/fda-flies-in-ranbaxy-toansa-plant-sample-storage-room/1/202719.html
28. http://www.daiichisankyo.com
29. http://www.business-standard.com/article/companies/sun-pharma-buys-ranbaxy-from-japan-s-daiichi-114040700737_1.html
30. http://forbesindia.com/article/special/daiichi-could-be-the-biggest-beneficiary-of-the-sun-pharmaranbaxy-deal/37546/1
31. http://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/daiichi-sankyo-contests-andhra-pradesh-high-court-fiat-on-ranbaxy-deal/articleshow/34992210.cms
32. http://economictimes.indiatimes.com/news/economy/finance/fipb-to-take-up-34-fdi-proposals-on-tuesday/articleshow/34964423.cms

May 21, 2014	Supreme Court directs the Andhra Pradesh High Court to decide the matter and posts the case for hearing on May 27, 2014
May 24, 2014	Andhra Pradesh High Court vacates status quo order
July 11, 2014	Approval for the scheme from BSE and NSE [33]
August 22, 2014	Court-convened extraordinary general meeting of shareholders of Sun Pharma conducted pursuant to an order dated August 5, 2014 of the High Court of Punjab and Haryana [34]
August 27, 2014	Competition Commission of India ("CCI") directs the Company to publish the details of the proposed combination in the prescribed format
September 4, 2014	CCI invites comments from public in respect of the Transaction
September 19, 2014	Court-convened extraordinary general meetings of shareholders of Ranbaxy to be conducted pursuant to an order dated August 5, 2014 of the High Court of Punjab and Haryana [35]
December 5, 2014	CCI grants conditional approval to the Transaction
December-end, 2014 / January 2015 (estimated)	Merger/ amalgamation completed with approval from high courts in India, the Indian central government and relevant state governments, stock exchanges and approval under the Hart-Scott-Rodino Act in the US [36]

III. Key Terms of the Deal

Ranbaxy will merge into Sun Pharma pursuant to a scheme of merger under Companies Act, 1956. At present, Daiichi owns approximately 63.41 percent of the shares of Ranbaxy. Both Daiichi and the promoters of Sun Pharma have irrevocably agreed to vote in favour of the Transaction at the general meetings of Ranbaxy and Sun Pharma respectively. [37]

Under the terms of the Transaction, 0.8 share of Sun Pharma of face value of INR 1/- each will be allotted to the shareholders of Ranbaxy for each share of INR 5/- held by them in Ranbaxy. Like other subsidiaries of Ranbaxy, Ranbaxy (Netherlands) B.V., which is a wholly owned subsidiary of Ranbaxy, will also become a subsidiary of Sun Pharma pursuant to the Transaction.

A. Shareholding Post Consummation of Transaction

Post closing of the Transaction, Daiichi will become the second largest shareholder in Sun Pharma with a stake of ~9 percent, while the shareholding of the promoter group of Sun Pharma will stand reduced to ~55 percent.[38] The public shareholders of Ranbaxy are expected to hold ~14 percent and existing public shareholders of Sun Pharma will hold ~22 percent in Sun Pharma, post-closing of the Transaction.[39]

B. Daiichi Director

Daiichi shall also have the right to nominate one director on the board of Sun Pharma.[40] This right will terminate when Daiichi's shareholding falls below 5 percent of the equity shareholding of Sun Pharma.[41]

C. Indemnity

Ranbaxy has recently received a subpoena[42] from the United States Attorney for the District of New Jersey requiring Ranbaxy to produce certain

33. http://www.livemint.com/Companies/PwftvxqaZovojwb8GzWEdK/Sun-PharmaRanbaxy-deal-in-CCI-crosshairs.html
34. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Sun_Pharmaceutical_Industries_Ltd2_300714.pdf
35. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd_220814.pdf
36. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd1_070414.pdf
37. M&A Critique, Vol. XXIII, Issue No. 9, May 2014
38. https://research.standardchartered.com/configuration/ROW%20Documents/India_pharmaceuticals__Sun_Pharma-Ranbaxy_merger_-_A_new_journey_on_an_insecure_terrain_07_04_14_16_55.pdf
39. M&A Critique, Vol. XXIII, Issue No. 9, May 2014
40. http://www.business-standard.com/article/companies/sun-pharma-buys-ranbaxy-from-japan-s-daiichi-114040700737_1.html
41. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd_220814.pdf
42. A subpoena is a written order to compel an individual to give testimony on a particular subject, often before a court, but sometimes in other proceedings (such as a Congressional inquiry). Failure to comply with such an order to appear may be punishable as contempt. Please see, http://www.law.cornell.edu/wex/subpoena.

documents relating to issues previously raised by the USFDA with respect to Ranbaxy's Toansa facility in Punjab, India. In connection with the Transaction, Daiichi has agreed to indemnify Sun Pharma and Ranbaxy for, among other things, certain costs and expenses that may arise from the proceeding.[43] Such indemnity may be essential for the consummation of the Transaction as any liability which may arise as a result of an adverse order by the judicial authority may have implications for the successor entity post the merger.

In addition, under the scheme, Sun Pharma is required to indemnify each present or former officer or director of Ranbaxy or any of its subsidiaries, for a period of 6 years from the effective date of the scheme, to the extent such officers and directors are indemnified under the policies of Ranbaxy and its subsidiaries, in the manner and to the extent mutually agreed between Sun Pharma and Ranbaxy.[44]

D. Global Depositary Receipts of Ranbaxy

The board of directors of Sun Pharma may elect, at its sole discretion, to pursue either of the below options for the global depositary receipts of Ranbaxy (“**GDRs**”).[45]

i. Equity option: effect the exchange and cancellation of the GDRs for a proportional number of equity shares of Sun Pharma based on the Share Swap Ratio; or

ii. Cash-out option: cash out existing GDR holders following the effectiveness of the scheme.

E. ESOPs of Ranbaxy

Upon the scheme being approved by the High Courts, Sun Pharma shall issue stock options (“**Sun Pharma ESOPs**”) to employees of Ranbaxy holding stock options of Ranbaxy (“**Ranbaxy ESOPs**”), which shall entitle the eligible employees to purchase equity shares of Sun Pharma. The number of Sun Pharma ESOPs issued shall equal the product of the number of Ranbaxy ESOPs (whether vested or unvested) outstanding at the time the scheme comes into effect, multiplied by the Share Swap Ratio, with any fractional shares rounded down to the next higher whole number of shares (i.e. for every Ranbaxy ESOP held by an eligible employee which entitles such eligible employee to acquire 1.00 equity share in Ranbaxy, such eligible employee will be conferred a Sun Pharma ESOP to acquire 0.80 equity shares in Sun Pharma).

The terms and conditions applicable to the Sun Pharma ESOPs shall be no less favourable than those provided under the Ranbaxy ESOPs. Such Sun Pharma ESOPs will be issued under a new employee stock option scheme created by Sun Pharma, *inter alia* for the purpose of granting stock options to the eligible employees pursuant to the scheme.

F. Reduction of Share Capital and Reserves and Surplus of Ranbaxy

An amount equal to the balance lying to the debit in statement of profit and loss in the books of Ranbaxy on the close of March 31, 2014 shall be adjusted/ reduced as follows in accordance with Sections 391 to 394, sections 78 and 100 to 103 of the Companies Act, 1956 (“**CA 1956**”) and Section 52 of the Companies Act, 2013 (“**CA 2013**”) and any other applicable provisions of law:

i. Firstly, against reduction of the capital reserve account of Ranbaxy amounting to ~INR 1.762 billion;

ii. Secondly, against reduction of securities premium account of Ranbaxy amounting to ~INR 35.014 billion;

iii. Thirdly, against reduction of the general reserve of Ranbaxy amounting to ~INR 5.519 billion, to the extent available or required;

iv. The balance, if any remaining in the debit in statement of profit and loss in the books of Ranbaxy shall be carried in the books of Ranbaxy as on March 31, 2014.

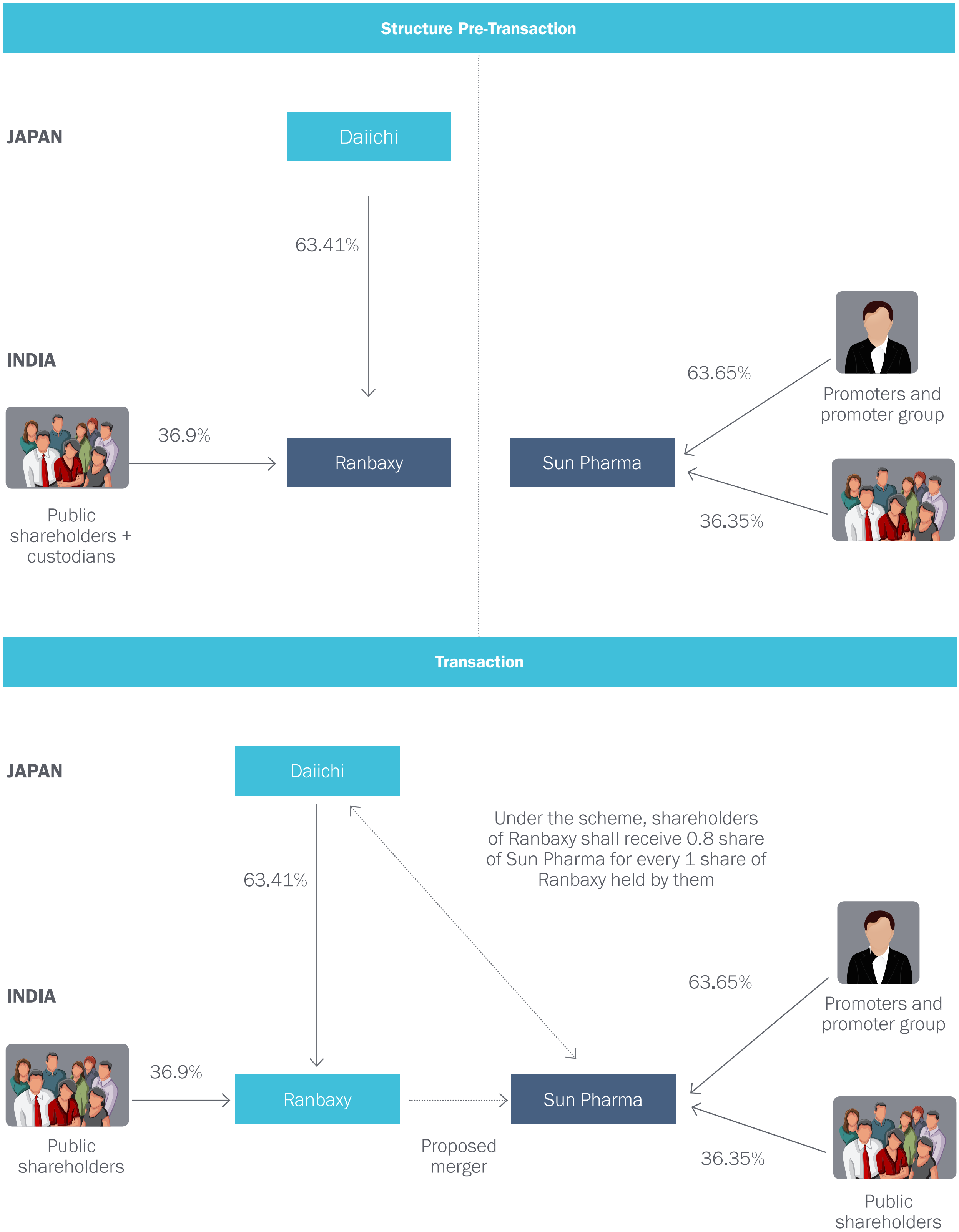
G. Appointed Date and Effective Date

The ‘appointed date’ implies the date of amalgamation, that is, the date from which the undertaking including assets and liabilites of the transferor company vest in the transferee company. Typically, accounts of the transferor company on the appointed date form the basis for valuation of shares and determination of the share exchange ratio. Appointed date is relevant for the purpose of assessment of income of the transferor and transferee companies. The ‘effective date’ is the date on which

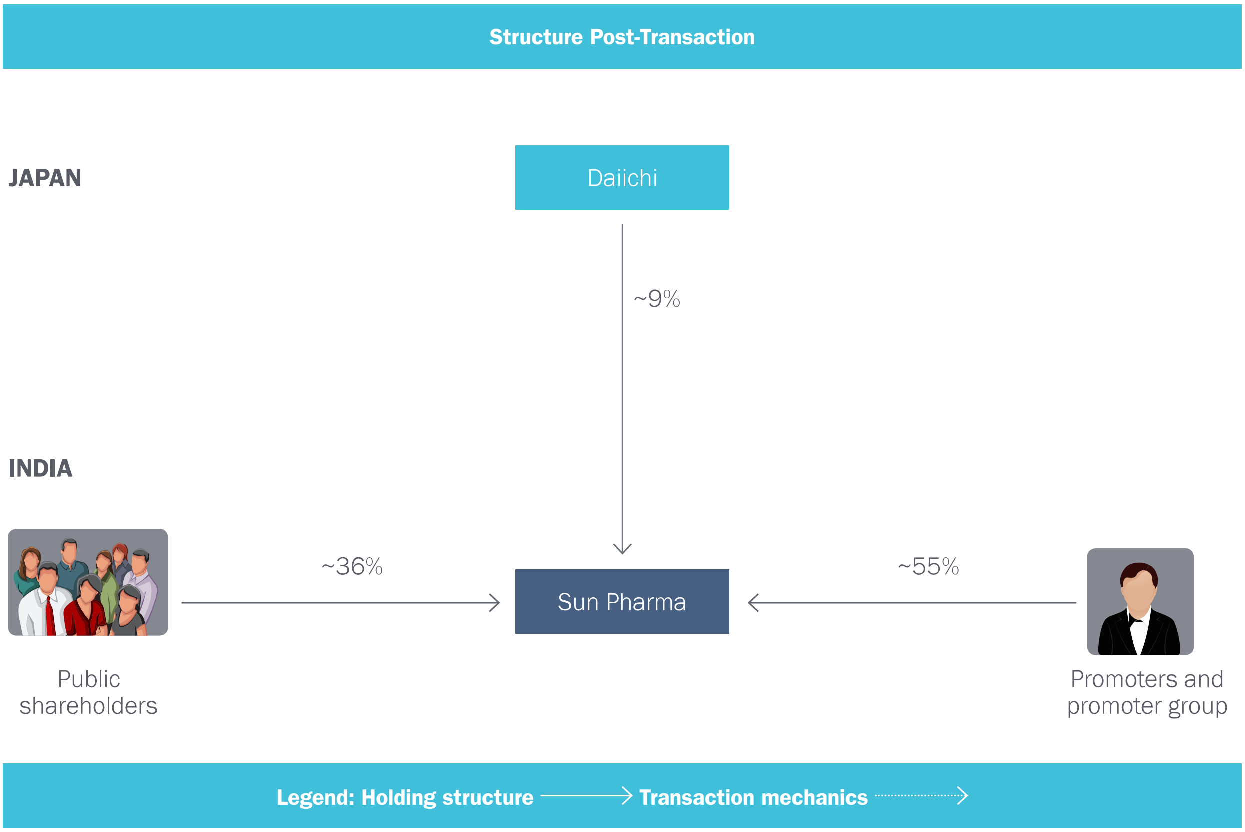
43. http://www.business-standard.com/article/companies/sun-pharma-ranbaxy-deal-how-makov-convinced-daiichi-to-sell-114040700827_1.html,
44. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd_220814.pdf
45. Ibid

the formalities of the merger / amalgamation are completed, i.e., when the certified copy of the High Court's order is filed with the registrar of companies or the final approvals in relation to the scheme have been obtained. From the effective date, the merger becomes effective.

IV. Deal Structure[46]



46. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd1_070414.pdf


Structure Post-Transaction
JAPAN
Daiichi
~9%
INDIA
~36%
Sun Pharma
~55%
Public shareholders
Promoters and promoter group
Legend: Holding structure
Transaction mechanics

4. Commercial Considerations

I. What was Sun Pharma's rationale for acquiring Ranbaxy, despite the troubles faced by Ranbaxy in foreign markets?

A. Increased Market Penetration and Entry into New Markets

A merger or amalgamation is essentially an integration of synergies and one of the prime considerations for the Transaction includes the integration of product portfolio (including APIs), supply chain and manufacturing. Ranbaxy has a significant presence in the Indian market (21 percent sales) and in the US (29 percent sales). Sun Pharma on the other hand, has a strong presence in the US (60 percent of sales) and India (23 percent), while the rest of the world accounts for 17 percent sales of Sun Pharma. Thus, the combined entity will be more diversified with the US, the rest of the world and India contributing 47 percent, 31 percent and 22 percent of sales respectively. In the emerging markets (50 percent of Ranbaxy's sales), it provides a platform which complements Sun Pharma's strengths.[47] Through the Transaction, along with the emerging markets, Sun Pharma will also gain entry into Japan, a market with high growth potential and low penetration of generic drugs.[48] Sun Pharma has estimated that it will save INR 15,000 million (~USD 250 million) in the third year of the merger/ amalgamation because of operating synergy.[49] The Transaction will create the No. 1 drug company in India with a market share of approximately 9% and the fifth largest generic drug firm globally.

B. Diversified Product Portfolio

A combined Sun Pharma and Ranbaxy will have a diverse, highly complementary portfolio of specialty and generic products marketed globally, including 445 ANDAs. Additionally, the combination will create one of the leading dermatology platforms in the United States.[50] Sun Pharma will also get access to Ranbaxy's new product pipeline including a generic version of AstraZeneca's heartburn drug Nexium.[51] A diversified product portfolio is important from a business risk control perspective, with emerging markets leaning towards generic drugs and customers in developed markets preferring to use branded products. Further, rising healthcare costs and increasing awareness of the efficacy of generics has also led to a surge in demand for generics in the developed world.

Mr. Dilip Shanghvi, the promoter of Sun Pharma, had mentioned that resolving Ranbaxy's regulatory troubles would be his priority, saying "*For Sun, it is not the size of the deal which matters...it is the quality of business (we acquire) and its integration*".[52] He further said that Sun Pharma's primary focus will be to comply with regulatory standards, a key issue Ranbaxy is facing now, and make it healthy "*before jumping into the business priorities*".[53]

Sun Pharma is believed to have chalked out a detailed turnaround plan for Ranbaxy and prepared a three-pronged strategy which includes integration of supply chain and field force for enhanced efficiency and productivity, resolution of regulatory issues and higher growth through synergy in domestic and emerging markets.[54] It is believed that Sun Pharma is targeting a three- to four-year period after the closure of the Transaction to engineer the full turnaround of Ranbaxy.[55]

II. Will Dilip Shanghvi be able to turn around Ranbaxy?

In spite of the troubles experienced by Ranbaxy from the USFDA, the Transaction offers a great

47. http://businesstoday.intoday.in/story/ranbaxy-acquisition-good-for-sun-pharma-shareholders-experts/1/205526.html
48. Ibid
49. http://www.livemint.com/Companies/7eHPFVf901sTO45WGBZtvI/Sun-Pharma-Ranbaxy-deal-Layoffs-supply-synergy-key-to-25.html
50. http://www.ranbaxy.com/sun-pharma-to-acquire-ranbaxy-in-a-us4-billion-landmark-transaction/
51. http://in.reuters.com/article/2014/04/07/daiichi-sankyo-ranbaxy-sunpharma-idINDEEA3600G20140407
52. http://www.livemint.com/Companies/vgtq021KleW4Cl8Wcf9ymL/Sun-Pharmas-another-bold-acquisitionRanbaxy-Laboratories.html
53. Ibid
54. http://www.business-standard.com/article/companies/sun-pharma-draws-up-plan-to-fix-ailing-ranbaxy-114091101300_1.html
55. Ibid

value proposition to Sun Pharma as Ranbaxy's manufacturing units, along with the range of globally-marketed specialty and generic products and new drug launches will belong to Sun Pharma, on successful consummation of the Transaction.[56] Apart from Sun Pharma, two private equity funds and one strategic investor too were eyeing Ranbaxy.[57] Sun Pharma, with its experience may help implement a solution to the quality control issues plaguing Ranbaxy. Sun Pharma has a successful track record of turning around distressed assets.[58] For example, in 2010, Sun Pharma bought all the outstanding shares of U.S.-based Caraco Pharmaceutical Laboratories (“**Caraco**”) at a time when Caraco was struggling to address manufacturing quality concerns that led to USFDA bans on its plants.[59] Sun Pharma was able to resolve those issues and Caraco plants resumed production in 2012.[60] A major upside from the deal could be Ranbaxy's product portfolio. Though many of the first-to-file applications of Ranbaxy are pending in the US, they have the potential to give a major boost to revenues once approval comes through. Sun Pharma's efforts towards resolving Ranbaxy's regulatory issues with the USFDA can reap lucrative results in future.[61] Further, it would be interesting to see how Sun Pharma handles Daiichi's misrepresentation allegation against the former shareholders of Ranbaxy for concealment of certain critical information relating to Ranbaxy at the time of acquisition by Daiichi.

The combined entity's revenues are estimated at USD 4.2 billion with EBITDA [62] of USD 1.2 billion for the twelve month period ended December 31, 2013.[63] The transaction value implies a revenue multiple of 2.2 based on 12 months ended December 31, 2013.[64]

III. Why was the Transaction structured as a merger?

In the past, M&As in the pharmaceuticals sector have been effected through various modes such as direct acquisition of shares of the target entity or through business transfer.[65] The Transaction has been structured as a merger for variety of commercial, legal and tax reasons.

In addition to the legal, regulatory and tax implications of a merger structure, there may also be certain commercial reasons for the structure adopted for the Transaction. For a direct acquisition, an acquirer needs to have significant reserves of cash available or accessible sources of leverage for purchasing the shares of the target from its shareholders. While Sun Pharma may have sufficient cash surplus for direct acquisition of the shares of Ranbaxy, a direct acquisition would have taken away a significant chunk out of Sun Pharma's cash reserves. Such cash reserves may be more effectively deployed for future expansion or R&D activities or in ensuring compliance of Ranbaxy's facilities with USFDA norms.

Further, since the Transaction is a domestic transaction with both the acquirer and the target based in India, it would be difficult to obtain leverage for the purpose of acquisition of shares. Indian banks are prohibited by the Reserve Bank of India (“**RBI**”) from lending for the purpose of acquiring shares of an Indian company.[66] Further, availing of foreign debt may have been prohibitively expensive for Sun Pharma. Section 14A of the Income Tax Act, 1961[67](“**ITA**”) states that no deduction shall be allowed for expenditure incurred in relation to earning tax-exempt income. The interest expense incurred in respect of such loans may not be allowed as a deductible expense for Sun Pharma as the income derived from the shares of Ranbaxy by way of dividends would not have been taxable in the hands of Sun Pharma.

Overall, the structure adopted for the Transaction appears to be a win-win strategy for Sun Pharma as well as the shareholders of Ranbaxy. Sun Pharma retains its cash surplus, while the shareholders of Ranbaxy receive shares of Sun Pharma in exchange.

56. http://www.business-standard.com/article/management/expert-take-brand-ranbaxy-may-be-axed-114040701135_1.html
57. http://www.business-standard.com/article/companies/sun-pharma-draws-up-plan-to-fix-ailing-ranbaxy-114091101300_1.html
58. http://in.reuters.com/article/2014/04/07/us-daiichi-sankyo-ranbaxy-sunpharma-idINBREA3600L20140407
59. Ibid
60. Ibid
61. http://www.business-standard.com/article/companies/sun-pharma-draws-up-plan-to-fix-ailing-ranbaxy-114091101300_1.html
62. Earnings before interest, tax, depreciation and amortization
63. http://www.ranbaxy.com/sun-pharma-to-acquire-ranbaxy-in-a-us4-billion-landmark-transaction/
64. Ibid
65. The acquisition of the formulations business of Piramal Healthcare Limited by Abbott Healthcare Private Limited was done through a business transfer. For more information regarding the Piramal – Abbott deal, please refer to our M&A Lab at http://www.nishithdesai.com/information/navigation/navigation2/ma-lab/ma-lab/article/piramal-ndash-abbott-deal-the-great-indian-pharma-story.html
66. RBI's Master Circular- Loans and Advances – Statutory and Other Restrictions dated July 1, 2013, http://www.rbi.org.in/scripts/BS_ViewMasCirculardetails.aspx?id=8135
67. Section 14A of the Income-tax Act, 1961 provides for disallowance of expenditure in relation to income not “includible” in total income.

5. Legal and Regulatory Considerations

I. What are the exchange control implications of the Transaction?

A. FDI in Pharmaceuticals – History

Prior to 2011, foreign direct investment ("**FDI**") up to 100 percent was permitted in the pharmaceutical sector under the automatic route. However, following the acquisitions of various home grown Indian pharmaceutical companies such as Ranbaxy by Daiichi in 2008, Shanta Biotech by Sanofi Aventis of France in 2009 and Piramal Health Care's formulation business by Abbott Laboratories of the US in 2010 [68], the Indian Government adopted a cautious approach in 2011[69] bringing all the investment in the brownfield pharmaceutical sector, under the government approval route. The Indian Government's actions may have been driven by the concern that the entry of foreign pharmaceutical manufacturers into the Indian market may drive up prices of essential drugs, leading to basic healthcare becoming expensive and therefore, inaccessible to a large chunk of the Indian population.

B. FDI Issues and Approval from the Foreign Investment Promotion Board

Under Circular 1 of 2014 notified by the Department of Industrial Policy and Promotion ("**FDI Policy**"), foreign investment in the pharmaceuticals sector is permitted up to 100 percent in both greenfield and brownfield projects.[70] In a greenfield project, FDI of up to 100 percent is permitted under the automatic route and in a brownfield project, FDI of up to 100 percent is permitted with approval from the Foreign Investment Promotion Board ("**FIPB**"). Also, for both such kind of investments, 'non-compete' clause is not allowed except in special circumstances with the approval of the FIPB. It is to be noted that the general approach of the FIPB seems to be positive as it has been granting approvals to most of the FDI proposals in brownfield projects.

As discussed above, as a result of the Transaction, Daiichi will become the second largest shareholder in Sun Pharma with a stake of ~9 percent. Since Daiichi's holding in Sun Pharma, on successful consummation of the Transaction will be a brownfield investment, Daiichi shall be required to obtain approval from the FIPB. Similarly, approval of the FIPB would also be required for the other non-resident shareholders of Ranbaxy obtaining shares in Sun Pharma.

C. ODI Filings

Ranbaxy has a subsidiary in the Netherlands, which will be owned by Sun Pharma post the successful consummation of the Transaction. Under the provisions of RBI's Master Circular on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad dated July 1, 2013 ("**ODI Regulations**"), Sun Pharma would be required to report the details of such change in shareholding pattern of the overseas subsidiary to the RBI, within 30 days of the approval of the decision by the board of the subsidiary in terms of local laws of the host country and include the same in the Annual Performance Report required to be forwarded to the AD Category-I bank.

Further, under the ODI Regulations, an Indian party is permitted to invest in overseas Joint Ventures ("**JV**") / Wholly Owned Subsidiaries ("**WOS**"), not exceeding 400 percent of the net worth as on the date of last audited balance sheet of the Indian party. Post successful consummation of the Transaction, Sun Pharma would have to make filings in Form ODI along with all prescribed enclosures/ documents and ensure that its combined investments in JVs and WOS abroad does not exceed 400 percent of its net worth as on the date of its last audited balance sheet. If an Indian company proposes to directly invest more than 400 percent of its net worth in an offshore JV or WOS, the RBI may consider such proposal under the approval route. However, any financial commitment exceeding INR 60,000 million (USD 1000 million) (or its equivalent) in a financial year by an Indian party would require prior approval of the RBI even when the total financial commitment of the Indian party is within the limit of 400% of its net worth as per the last audited balance sheet.

68. http://zeenews.india.com/business/news/economy/fdi-in-pharma-ministerial-group-may-take-final-call-tuesday_56426.html
69. RBI/2011-12/296 A. P. (DIR Series) Circular No.56 dated December 09, 2011
70. A greenfield investment is a type of venture where finances are employed to create a new physical facility for a business in a location where no existing facilities are currently present, whereas a brownfield investment implies investment into an existing production facility, typically for the purpose of a new product release.

II. What is the procedure under the Companies Act, 1956 for merger/ amalgamation of companies?

Even though most provisions of CA 2013 have been notified by the Ministry of Corporate Affairs, the provisions relating to M&A have not been notified as of April 1, 2014. Therefore, the scheme of merger/ amalgamation would have to be executed under the provisions of CA 1956.

Sections 391 to 394 of the CA 1956 lay down the procedure for mergers and amalgamations.

- Following approval of the scheme by the boards of the merging and surviving companies, the companies are required to file the scheme with the High Court situated in the jurisdiction of their respective registered offices.
- Prior to the scheme being presented before the court, listed companies are also required to file the proposed scheme with the stock exchanges where the equity shares of such companies are listed, for approval.
- On receiving the scheme, the High Court shall give directions fixing the date, time and venue and quorum for the members' meeting and appoint a Chairman to preside over the meeting and submit a report to the Court. The scheme should be approved by a majority of the shareholders representing at least three-fourths in value of the shareholders of each of the companies, present and voting.
- The resolution of the shareholders approving the scheme should be filed with the Registrar of Companies within 30 days of passing the resolution.
- Within 7 days from the date of the meeting of shareholders, the chairman of the general meeting is required to submit a report to the High Court, setting out the number of persons who attended personally or by proxy and the percentage of shareholders who voted in favor of the scheme as well as the resolution passed by the meeting.
- Within 7 days of the chairman submitting the report, the merging and surviving companies shall make a joint petition to the High Court for approving the scheme.
- On receipt of the petition for amalgamation under Section 391 of the CA 1956, the court is required to give notice of the petition to the Regional Director, Company Law Board ("**RD**") and will take into consideration, any representations made by him.
- The Ministry of Corporate Affairs, has by way of General Circular 01/ 2014 dated January 15, 2014, instructed the RDs to obtain inputs and comments from the Income Tax Department, while furnishing their report to the court.[71] This is to ensure that the proposed scheme of amalgamation has not been designed in such a way as to defraud the tax department.[72]
- If there are no objections to the scheme from the RD or any other person entitled to oppose the scheme, the court may after hearing the petition, pass an order approving the scheme.
- The companies may then file the court's order with the Registrar of Companies in their respective jurisdictions, as required under Section 394(3) of the CA 1956.

It would be interesting to analyze the situation where the M&A provisions under CA 2013 are notified prior to approval of the scheme by the High Courts. In such a case, the Ministry of Corporate Affairs may issue a notification exempting all companies which have filed their schemes prior to the notification of the M&A provisions under CA 2013 from the requirement of following the process for scheme of merger under CA 2013.

III. What are the compliances to be carried out by Sun Pharma and Ranbaxy with respect to SEBI and the Stock Exchanges?

A. Stock Exchange

Sun Pharma and Ranbaxy both being listed on the BSE as well as the NSE, are required to comply with the existing Clause 24(f) of the Listing Agreement which mandates them to file a proposed scheme with the stock exchange, for approval, at least a month before it is presented to the court or tribunal.

71. http://www.mca.gov.in/Ministry/pdf/General_Circular_1_2014.pdf
72. http://www.itatonline.org/info/wp-content/files/CBDT_directive_mergers.pdf

B. SEBI Circulars

Further, under the provisions of the SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013[73] (“**February 4 Circular**”), read with the provisions of SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013 (“**May 21 Circular**”), there are certain obligations required to be met by listed companies:

i. Paragraph 5.2 of the February 4 Circular requires the listed company to place the valuation report obtained from an independent chartered accountant before their audit committee for approval.

ii. Companies listed on any stock exchange having nationwide terminals and/ or a regional stock exchange are required to choose the stock exchange having nationwide trading terminals as the designated stock exchange for the purpose of coordinating with SEBI, under Paragraph 5.3 of the February 4 Circular read with Paragraph 5 of the May 21 Circular.

iii. Under Clause 5.4 of the February 4 Circular, listed companies shall be required to: (a) include the observation letter of the stock exchanges, in the notice sent to the shareholders seeking approval of the scheme; and (b) bring the same to the notice of the High Court at the time of seeking approval of the scheme.

iv. Under Clause 5.11 of the February 4 Circular, the listed company shall disclose the draft scheme and all the relevant documents on its website immediately upon filing of the draft scheme with the stock exchanges. It shall also disclose the observation letter of the stock exchanges on its website within 24 hours of receiving the same.

v. In addition, under Clause 5.13 of the February 4 Circular, all complaints/comments received by SEBI on the draft scheme shall be forwarded to the designated stock exchange, for necessary action and resolution by the company. The company shall submit to stock exchanges a ‘Complaints Report’ which shall contain the details of complaints/comments received by it on the draft scheme from various sources prior to obtaining observation letter from stock exchanges on the draft scheme.

C. Insider Trading Regulations

Further, there are certain disclosure obligations on Ranbaxy's directors, officers, promoters or persons belonging to the promoter group under the provisions of Regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (“**SEBI Insider Trading Regulations**”) which are required to be made with the stock exchange on which the company is listed, in case of change in shareholding or voting rights of such persons.

D. Takeover Code

Since the Transaction is structured by way of merger, Sun Pharma would be exempt from the obligation to make an open offer, since under the provisions of Regulation 10(1)(d) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**Takeover Code**”), an acquisition pursuant to a scheme of arrangement involving the target company as a transferor company or as a transferee company, including merger pursuant to an order of a court, is exempt from the requirement to make an open offer under Regulations 3 and 4 of the Takeover Code subject to certain reporting requirements. [74]

Ranbaxy and Daiichi hold ~46 percent and ~20 percent in Zenotech Laboratories Limited (“**Zenotech**”). Since the Transaction would involve Sun Pharma acquiring 55 percent of the shareholding in Ranbaxy, post consummation of the Transaction, it would enable Sun Pharma to exercise ~25 percent voting rights indirectly in Zenotech. This would be considered as indirect acquisition of voting rights under the provisions of Regulation 5 of the Takeover Code. Accordingly, Sun Pharma on April 11, 2014, made an open offer to the equity shareholders of Zenotech for shares constituting 28.1 percent of the fully diluted voting capital of Zenotech.

IV. What were the challenges faced by the Transaction in respect of the SEBI Insider Trading Regulations?

On April 30, 2014, the Andhra Pradesh High Court ordered the BSE and NSE not to approve the Transaction until it decided on a petition alleging insider trading in the shares of Ranbaxy in the days leading to the announcement of the Transaction. The court issued the order pursuant to a writ petition filed by a group of investors who claimed that entities with prior knowledge of the deal illegally profited to the extent of INR 2.85 billion.[75] Shares

73. http://www.sebi.gov.in/cms/sebi_data/attachdocs/1359986006632.pdf

74. Reporting as required under Regulation 10(6) of the Takeover Code would have to be complied.

75. http://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/andhra-pradesh-high-court-puts-on-hold-sun-ranbaxy-deal-till-insider-trade-verdict/articleshow/34374788.cms

of Ranbaxy, which is majority-owned by Japan's Daiichi-Sankyo, saw an unusual increase in price and turnover during six trading days before the deal was announced on April 6.[76] The price of Ranbaxy shares rose by almost 33 percent between March 28, 2014 and April 4, 2014.[77] Retail investors say that Ranbaxy and Sun Pharma, as well as Silverstreet Developers LLP, an entity related to Sun Pharma [78] had used price sensitive information to their benefit, and to the detriment of the retail investors.

Silverstreet Developers LLP held ~1.64 percent stake in Ranbaxy as on March 31, 2014.[79] Sun Pharma clarified that the purchase of purchase of shares of Ranbaxy by Silverstreet Developers LLP does not violate insider trading rules, since both partners of Silverstreet Developers LLP are wholly owned subsidiaries of Sun Pharma.[80] Hence, all benefits flowing from the investment in Ranbaxy shall accrue to Sun Pharma.[81] Further, it is also understood that such shares held by Silverstreet Developers LLP shall be cancelled and no further shares of Sun Pharma will be issued to Silverstreet upon the completion of the merger.

Based on the writ petition, the Andhra Pradesh High Court, issued notices to SEBI, BSE, NSE, Sun Pharma, Ranbaxy, Daiichi Sankyo and Silver Street Developers LLP to maintain status quo. On May 13, 2014, Sun Pharma moved the Supreme Court of India against the status quo ordered by the Andhra Pradesh High Court in the Transaction.[82] On May 21, 2014, the Supreme Court of India, after hearing the appeal, directed the Andhra Pradesh High Court to decide the issue and posted the case for hearing on May 27, 2014.[83] On May 24, 2014, the Andhra Pradesh High Court vacated the status quo order it issued, clearing the way for the BSE, the NSE and SEBI to scrutinize the scheme and grant their assent to the Transaction.

Under the provisions of the SEBI Insider Trading Regulations, an "insider"[84] is prohibited from dealing in securities of a listed company, either on his behalf or on behalf of any other person, when in possession of any unpublished price sensitive information.[85] Silverstreet Developers LLP may be considered an "insider" by virtue of its shareholding in Ranbaxy. However, with the Andhra Pradesh High Court exonerating Silverstreet, all claims as to insider trading have been dropped.

V. Which Anti-Trust approvals would be required for the consummation of the Transaction?

A. Competition Commission of India

i. Competition law in Respect of Merger

Competition law in India is governed and regulated by the Competition Act, 2002 (the "**Competition Act**") together with Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"). Sections 5 and 6 of the Competition Act prohibit a 'combination' which causes or is likely to cause an 'appreciable adverse effect on competition' ("**AAEC**")[86] in the relevant market in India, and treat such combinations as void. "Combination", for the purposes of the Competition Act includes a merger or amalgamation between or among enterprises that exceed the 'financial thresholds' prescribed under the Competition Act.

76. Ibid.

77. M&A Critique, Vol. XXIII, Issue No. 9, May 2014

78. Silverstreet Developers LLP has two partners, both of whom are wholly owned subsidiaries of Sun Pharma.

79. http://www.bseindia.com/corporates/shpperent.aspx?scripcd=500359&qtrid=81&CompName=RANBAXY%20LABORATORIES%20LTD%20&QtrName=March%202014

80. http://businesstoday.intoday.in/story/sun-pharma-denies-insider-trading-charges-in-ranbaxy-deal/1/205032.html

81. Ibid

82. http://www.livemint.com/Companies/bIIFzrFQoZvWGtEuPhB2vJ/Sun-Pharma-moves-SC-against-stay-on-Ranbaxy-merger.html

83. http://www.thehindubusinessline.com/companies/apex-court-to-consider-on-may-27-pleas-of-sun-pharma-ranbaxy-challenging-stay-order/article6032265.ece

84. For the purposes of the SEBI Insider Trading Regulations, an "insider" means any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or has received or has had access to such unpublished price sensitive information.

85. Price sensitive information means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company, and may include (i) periodical financial results of the company, (ii) intended declaration of dividends (both interim and final), (iii) issue of securities or buy-back of securities, (iv) any major expansion plans or execution of new projects, (v) amalgamation, mergers or takeovers, (vi) disposal of the whole or substantial part of the undertaking, (vii) and significant changes in policies, plans or operations of the company etc.

86. Under the Competition Act, certain horizontal agreements – price fixing, bid-rigging and market allocation – are presumed to have an appreciable adverse effect on competition. Other restraints, including vertical restraints, mergers and alleged abuse of dominance are analyzed under a balancing test to determine whether they have an appreciable adverse effect on competition.

ii. Timeline for CCI notification in Case of Mergers

In case of merger, Section 6 of the Competition Act requires the enterprises to notify the CCI of a combination within 30 calendar days of final approval of the proposal of merger or amalgamation by the board of directors of the enterprises concerned. Within 30 days of the notification to CCI, the CCI shall issue a prima facie opinion of whether there would be AAEC. CCI's order dated August 14, 2012 in the matter of Aditya Birla Nuvo Limited ("**Order**") suggests that the 'final' board approval would be the one where the swap ratio, the draft scheme, the valuation and the assets to be transferred amongst other things, are approved by the board. However, the Order does not clarify whether the 30 day time limit for notifying the CCI begins from the date of the last of the merging companies' boards approving the merger or the first of such merging companies' board of directors approving the merger.[87]

iii. Compulsory waiting period for a Combination to take Effect

The Combinations Regulations mandate CCI to form a prima facie opinion on whether a combination has caused or is likely to cause an AAEC within the relevant market in India, within 30 days of filing. The combination will become effective only after the expiry of 210 days from the date on which notice is given to the CCI, or after the CCI has passed an order approving the combination or rejecting the same.

iv. Trigger for CCI notification in Case of Merger

If the combination exceeds the financial thresholds then the merger is subject to pre clearance of the CCI. Financial thresholds prescribed under the Competition Act for determining 'combinations' are as follows[88]:

- A merger or amalgamation where the transferor and transferee jointly have, or where the resulting entity has, (i) assets valued at more than INR 15,000 million (~USD 250 million) or turnover of more than INR 45,000 million (~USD 750 million), in India; or (ii) assets valued at more than USD 750 million in India and abroad, of which assets worth at least INR 7500 million (~USD 125 million) are in India, or, turnover more than INR 1,35,000 million (USD 2,250 million) in India and abroad, of which turnover in India should be at least INR 22,500 million (~USD 375 million).
- A merger or amalgamation where the group[89] to which the resulting entity belongs, has (i) assets valued at more than INR 60,000 million (~USD 1,000 million) or turnover of more than INR 1,80,000 million (~USD 3,000 million), in India; or (ii) assets valued at more than USD 3 billion in the aggregate in India and abroad, of which assets worth at least INR 7500 million (~USD 125 million) should be in India, or turnover of more than INR 5,40,000 million (USD 9000 million) in India and abroad, including at least INR 22,500 million (~USD 375 million) in India.

It is important to note that in case of a merger under Section 5(c) of the Competition Act, the thresholds need to be determined with respect to the surviving entity after the merger; or the group to which the enterprise remaining after the merger would belong after the merger. In calculating the assets and turnover of the group, it is necessary to do so assuming that the merger has already taken place.

iv. How is AAEC determined?

While determining whether there is AAEC, the CCI looks at the following factors:

- Whether there is likelihood that the combination would enable the parties to significantly and sustainably increase prices or profit margins.
- Whether there is any adverse effect on competition likely to be suffered by the 'relevant market'.
- To what extent would substitute products be available or are likely to be available in the market.

87. Our analysis of the Order is available at http://www.nishithdesai.com/information/research-and-articles/nda-hotline/nda-hotline-single-view/article/fit-conference-1.html?no_cache=1&cHash=4c83eb5c9d11eda65cb403885ffdcda1
88. Assuming the exchange rate to be 1 USD = INR 60.
89. For the purposes of Section 5 of the Competition Act, "group" means two or more enterprises which, directly or indirectly, are in a position to —
(i) exercise twenty-six percent. or more of the voting rights in the otherenterprise; or
(ii) appoint more than fifty percent. of the members of the board of directors in the other enterprise; or
(iii) control the management or affairs of the other enterprise;

VI. What steps did the CCI take for investigating the Transaction?

On July 29, 2014, the CCI issued a show cause notice to Sun Pharma and Ranbaxy, asking the companies why a public investigation should not be ordered into the Transaction, stating that the Transaction would result in significant market domination by one company and could affect the prices of life-saving drugs in the domestic market.[90] The major concern of the CCI appears to be the combined entity's highly concentrated market in its portfolio of certain drug formulations.[91]

On August 28, 2014, after the first phase of investigation, CCI found that there would be AAEC if the Transaction is consummated, and ordered a second stage inquiry into the Transaction and issued orders to Sun Pharma and Ranbaxy under Section 29(2) of the Competition Act, 2002 to make public, specific details of the Transaction in Form IV within 10 days of the date of the order.[92] The CCI stated that the public consultation process has been initiated "in order to determine whether the combination has or is likely to have an appreciable adverse effect on competition in the relevant market in India". [93]

On September 4, 2014, CCI invited comments/ objections/ suggestions in writing, from any person(s) adversely affected or likely to be affected by the combination, in terms of Section 29(3) of the Competition Act. The comments were to be submitted to CCI by September 25, 2014.

VII. Did CCI approve the Transaction?

The CCI approved the Transaction subject to certain conditions.

A. Observations of CCI

The CCI in its order observed that both Sun Pharma and Ranbaxy are engaged in the manufacture, sale and marketing of various pharmaceutical products including formulations/ medicines and APIs. Both Sun Pharma and Ranbaxy are predominantly generics manufacturers.

The CCI, in its order noted that:

"The various generic brands of a given molecule are chemical equivalents and are considered to be substitutable. Therefore, the molecule level would be most appropriate for defining relevant markets on the basis of substitutability. Alternatively, pharmaceutical drugs falling within a therapeutic group may also be considered as constituting a potential relevant market. However, in this regard it is noted that the pharmaceutical drugs within a group may not be substitutable because of differences in the intended use, mechanism of action of the underlying molecule, mode of administration, contra-indications, side effects etc. Moreover, in generics markets, competition primarily takes place between different brands based on the same molecule."[94]

Based on the above observation, the CCI defined the relevant product market at the molecule level, i.e., medicines and formulations based on the same API may be considered to constitute a separate relevant product market. CCI determined that, post the consummation of the Transaction, the combined entity would have a cumulative market share of 9.2 percent. In addition, there would also have been a significant horizontal overlap in terms of the molecules/ formulations offered by the combined entity, i.e., 37 molecules/ formulations where the combined market share would be more than 15 percent, 2 molecules/ formulations where the combined market share would be above 90 percent and multiple molecules/ formulations where market share is above 50 percent.

90. http://www.livemint.com/Companies/PwftvxqaZovojwb8GzWEdK/Sun-PharmaRanbaxy-deal-in-CCI-crosshairs.html
91. Ibid
92. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Ranbaxy_Laboratories_Ltd_280814.pdf
93. http://articles.economictimes.indiatimes.com/2014-09-04/news/53563606_1_ranbaxy-labs-cci-chairman-ashok-chawla-molecules
94. http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-05-170.pdf

B. Order of CCI

The CCI by way of its order dated December 5, 2014 approved the Transaction with certain conditions, such as divestment of 7 brands.[95] The CCI was of the opinion that the Transaction is likely to have an AAEC in India for 7 formulations.

Accordingly, CCI proposed modifications to the scheme in terms of Section 31(3) of the Competition Act, by way of letters dated November 27, 2014 and November 28, 2014. The CCI proposed that:

i. Sun Pharma shall Divest

a. All products containing Tamsulosin + Tolterodine which are currently marketed and supplied under the Tamlet brand name.

b. All products containing Leuprorelin which are currently marketed and supplied under the Lupride brand name.

ii. Ranbaxy shall Divest

a. All products containing Terlipresslin which are currently marketed and supplied under the Terlibax brand name.

b. All products containing Rosuvastatin + Ezetimibe which are currently marketed and supplied under the Rosuvas EZ brand name.

c. All products containing Olanzapine + Fluoxetine which are currently marketed and supplied under the Olanex F brand name.

d. All products containing Levosulpiride + Esomeprazole which are currently marketed and supplied under the Raciper L brand name.

e. All products containing Olmesartan + Amlodipine + Hydroclorthiazide which are currently marketed and supplied under the Triolvance brand name.

Further, under the order, Ranbaxy and Sun Pharma would be required to divest the above brands within 6 months of the date of the order.

VIII. Which approvals are required for the Transaction from a US anti-trust perspective?

The Hart-Scott-Rodino Antitrust Improvements Act, 1976 ("**HSR Act**") was first passed into law in 1976. The law generally establishes the requirements for filing notifications with the Federal Trade Commission and the Assistant Attorney General at the time of combination/ mergers between two corporate entities.

There are three parts to test the proposing transactions for filing under HSR Act, and all three parts need to be concurrently fulfilled in order to file under the HSR:

i) **Commercial test**	Where the target or buyer is engaged in U.S. commerce.
ii) Size of transaction test (New threshold, with effect from February 24, 2014)	Any transaction with a deal value above INR 4554 million(USD 75.9 million).[96]
iii) Size of parties test (New threshold, with effect from February 24, 2014)	(A) the bigger party in the transaction has annual sales or total assets greater than INR 9102 million (USD 151.7 million) or (B) the smaller party in the transaction has annual sales or total assets greater than INR 912 million (USD 15.2 million). [97]
The size of Parties Test would be inapplicable in case of transactions over INR 18,204 million (USD 303.4 million) and will require filing/ reporting under the HSR Act.[98]	

The Deal is qualified to come under the purview of the HSR Act as both Sun Pharma and Ranbaxy have sizeable business in the US. There is a 30-day mandatory review period after filing before consummation. The approval from the Federal Trade Commission is still pending.[99] It has been reported that the Transaction is close to obtaining approval from the Federal Trade Commission. Post consultation with the Federal Trade Commission, the combined entity would most likely be required to divest only one drug for the Transaction to be approved.[100]

95. http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-05-170.pdf
96. http://www.cooley.com/revised-2014-hart-scott-rodino-antitrust-thresholds-effective-feb-24-2014
97. Ibid
98. Ibid
99. http://in.reuters.com/article/2014/12/09/ranbaxy-lab-sun-pharma-regulator-idINKBN0JM1AY20141209
100. http://www.moneycontrol.com/news/cnbc-tv18-comments/sun-ranbaxy-deal-may-soon-get-us-ftc-go-ahead_1253435.html?utm_source=ref_article

IX. What are the other regulatory issues involved in the Transaction?

A. Pharmaceutical Licenses

Upon successful consummation of the Transaction, the licenses issued by the Drug Controller General of India and the State Drug Licensing Authorities (such as State Food and Drug Administration) to Ranbaxy for all of its products will be extinguished. Sun Pharma will be required to make fresh applications to the State Drug Licensing Authorities for manufacturing and sale of Ranbaxy's products under the Drugs and Cosmetics Act, 1940 read with the Drugs and Cosmetics Rules, 1945. In addition, Sun Pharma would also have to obtain a no-objection certificate from the Drug Controller General of India for exporting its products, if such products include unapproved or approved new drugs or prohibited drugs.

B. Indirect Tax Registrations

Post the consummation of the Transaction, Sun Pharma would be required to obtained fresh VAT registrations in the states where Ranbaxy's products are sold.

C. Successor Liability

In case of a merger of two corporations, a successor corporation will be liable for the debts and liabilities of the predecessor corporation. In the event of the successful consummation of the merger between Ranbaxy and Sun Pharma, the surviving entity, i.e., Sun Pharma would have to shoulder the debts and liabilities of Ranbaxy which existed prior to the merger. As discussed earlier, Ranbaxy had recently received a subpoena from the United States Attorney for the District of New Jersey in respect of USFDA compliance of its plants, as well as several other regulatory actions that are still pending. Daiichi may have agreed to indemnify Sun Pharma against all liabilities arising out of such regulatory actions and/ or existing liabilities of Ranbaxy. However, the scope of such indemnity is not known as the definitive documents are not available in the public domain. In the event of any losses arising out of previously existing liabilities of Ranbaxy, Sun Pharma would have to make a claim against Daiichi for indemnity against such loss.

D. Delisting

The shares of Ranbaxy will be delisted from the NSE and BSE if the merger is successfully consummated.

E. Change of Control Provisions Under Contracts or Financing Arrangement

Considering that Ranbaxy has operations spanning continents, it has entered into a large number of agreements with suppliers, financiers, lenders etc. The terms of these agreements may dictate that change of control of Ranbaxy shall not occur without prior notification to/ consent of the parties to such agreements. Accordingly, Ranbaxy may have to obtain prior consent/ notify the opposite parties to its agreements, prior to entering into the Transaction.

6. Tax Considerations

I. Is the Transaction tax-exempt?

Under the provisions of Section 47(vi) of the ITA, *"any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company"*, will not be considered as a 'transfer' for the purpose of assessment of capital gains.

Section 2 (1B) of the ITA defines 'amalgamation' as follows:

"amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

i. *all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;*

ii. *all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;*

iii. *shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,*

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company

As a result of the Transaction, (i) the property of Ranbaxy immediately before the merger will become the property of Sun Pharma, (ii) all liabilities of Ranbaxy immediately before the merger will become the liabilities of of Sun Pharma and (iii) current shareholders of Ranbaxy will become the shareholders of Sun Pharma and hence, this should result in a tax-neutral transaction for both Ranbaxy and its shareholders.

II. What are the tax implications for holders of ESOPs and GDRs?

A. ESOPs

The Transaction should have tax implications for stock option holders of Ranbaxy. Post the consummation of the transaction, the Ranbaxy ESOPs will be cancelled and the holders of the Ranbaxy ESOPs will be issued Sun Pharma ESOPs in exchange. While exchange of ESOPs may be considered as transfer as per the ITA, if Ranbaxy ESOPs do not have cost of acquisition, an argument can be made that such exchange should not be subject to tax. Upon vesting of the Sun Pharma ESOPs, the difference in fair market value of Sun Pharma ESOPs and the exercise price may be taxed as salary income in the hands of such stock option holders. Further, upon transfer of the Sun Pharma shares, the difference between the consideration received and fair market value of Sun Pharma ESOPs may be taxable as capital gains.

B. GDRs

Sun Pharma would have two options to deal with the GDRs – the equity option and the cash-out option, as mentioned in the section titled 'Details of the Deal'. One view is that the equity option is akin to conversion of the GDRs into equity shares. The report of the Committee to Review the FCCBs and Ordinary Shares (Through Depository Receipt Mechanism), 1993 had recommended that the conversion of depository receipts not be treated as a taxable event. However, currently there are no specific provisions in the ITA which exempt the conversion of GDRs from taxation and hence it's a taxable event. The other view is that depositary will receive Sun Pharma shares in exchange for Ranbaxy shares which is a tax neutral transaction and then cancel Ranbaxy GDRs against *in specie* distribution of Sun Pharma shares. The second leg will be a tax exempt transaction for the GDR holders since transfer will be from non-resident to non-resident but may be taxable for the depositary since depositary may transfer shares of an Indian company to depositary receipt holder off the floor of the exchange. To that extent, there is an ambiguity with respect to the tax implications of the equity option.

The cash-out option would effectively be extinguishment of the GDRs. Under Section 2(47) of the ITA, 'transfer' in relation to capital asset is defined to include the extinguishment of any rights in such capital asset. The cash-out option may hence be treated as a transfer of capital asset from a non-resident to a resident. Section 115AC of the ITA provides for taxation of capital gains arising from transfer of global depository receipts. Therefore, capital gains arising from the exercise of the cash-out option of the GDRs may be taxable at 10 percent in the hands of the GDR holders under Section 115AC of the ITA.

7. Epilogue

The Transaction promises to bring some cheer to the Indian pharmaceutical industry. However, post the consummation of the Transaction, Sun Pharma has plans to gradually phase out the fifty-year old Ranbaxy brand, with Ranbaxy drugs sold in the United States being gradually rebranded as Sun Pharma treatments.[101] The brand is likely to continue to be present in other markets.[102]

The interest of the pharmaceuticals industry in the Transaction is fueled by two reasons – the size and reach of the resulting entity which may lead to anti-trust issues in India as well as abroad, and the strategy to be adopted by Sun Pharma to turn around Ranbaxy. Mr. Dilip Shanghvi, the managing director of Sun Pharma is well known for acquiring and turning around distressed companies. The industry waits with bated breath to see whether Mr. Shanghvi will repeat his magic, this time with Ranbaxy. Only time will tell whether Mr. Shanghvi's magic will convert Ranbaxy into a 'crown jewel' or a 'white elephant' for Sun Pharma.

101. http://in.reuters.com/article/2014/04/09/ranbaxy-sunpharma-idINDEEA3808E20140409

102. Ibid

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

M&A Lab

Reliance – Network18: Reliance tunes into Network18!

January 2015

Contents

1. Prologue

"... But now, as 2013 dawns, we have licked these problems too—we are a zero debt group, generating free cash flows. No power on Earth can now stop us from becoming a Great and Valuable Company."

Little did Raghav Bahl know as he typed these words in an email to all employees of the Network18 Group on January 1, 2013 that the entity he envisaged to be a 'Great and Valuable Company' would not remain in his control less than 18 months later.

The events that unfolded were fitting for a news group -- swift and rapid. The board of directors of Network18 was informed by Bahl on May 27, 2014 that they were facing a takeover bid from the Reliance group, and that Bahl and his wife, Ritu Kapur had decided it was time to hand over the empire and move on.

Though swift, the move from the elder of the Ambani brothers was not unexpected or unforeseen. The writing was on the wall from early 2012 when the media baron approached Mukesh Ambani, the promoter of the Reliance group, to bail Network18 Group out of its financial crisis.

Reliance, through an independent trust, acquired convertible debentures in the holding companies of Network18 and TV18. These debentures gave Reliance an opportunity to acquire a majority controlling stake in the entire Network18 Group, a target which was finally accomplished on July 7, 2014.

While there has been rampant consolidation in the media sector over the last few years (Essel Group's acquisition of a stake in Dainik Bhaskar, Eros International's acquisition of B4U Television Network, Walt Disney's acquisition of UTV Software Communications being a few), the Reliance-Network18 deal has been one of the most publicized deals in 2014. The importance of the deal cannot be overemphasized, considering the different segments into which Reliance will gain access to.

In this M&A Lab, we have attempted to analyze the legal, regulatory, financing, tax and commercial considerations of this deal.

2. Glossary of Terms

Term	Particulars
AMPL	Adventure Marketing Private Limited
BSE	Bombay Stock Exchange
CA 2002	Competition Act, 2002
CCI	Competition Commission of India
CMPL	Colorful Media Private Limited
Content License Agreement	Content license agreement dated February 27, 2012 entered into between Network18 and TV18 on one hand and RJIL (then Infotel Broadband Services Limited) on the other for providing preferential content access to RJIL
DCPL	Digital Content Private Limited
Deal	The transaction including the share sale under the SPA and the Open Offers.
Delisting Regulations	(Delisting of Equity Shares) Regulations, 2009
Holding Companies	RBMPL, RRBMPL, RBMHPL, AMPL, WIPL and CMPL collectively
ICDR	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009
IMT	Independent Media Trust
Infomedia	Infomedia Press Limited
Infomedia Emerging Voting Capital	The enlarged voting share capital of Infomedia calculated in accordance with Regulation 7 of the Takeover Code
Infomedia Escrow Account	The escrow account opened in accordance with Regulation 17 of the Takeover Code for the purposes of the Infomedia Open Offer
Infomedia Offer Shares	1,30,62,224 equity shares of Infomedia
Infomedia Open Offer	Open offer for the acquisition of Infomedia Offer Shares by the Acquirers
INR	Indian Rupees
ITA	Income Tax Act, 1961
Network18	Network18 Media and Investments Limited
Network18 Emerging Voting Capital	The enlarged voting share capital of Network18 calculated in accordance with Regulation 7 of the Takeover Code
Network18 Group	Network18 along with its various subsidiaries and the joint ventures entered into by RIL or its subsidiaries
Network18 Escrow Account	The escrow account opened in accordance with Regulation 17 of the Takeover Code for the purposes of the Network18 Open Offer
Network18 Offer Shares	22,99,46,996 equity shares of Network18
Network18 Open Offer	Open offer for the acquisition of Network18 Offer Shares by the Acquirers
NSE	National Stock Exchange
PAC	Persons acting in concert
PACs	The persons acting in concert for the relevant open offer, i.e. namely: For Network18 Open Offer: RIL, RIIHL, Shinano (deemed PAC); For TV18 Open Offer: RIL, RIIHL, Shinano (deemed PAC);
	For Infomedia Open Offer: RIL, RIIHL and Network18.
Raghav	Mr. Raghav Bahl
RBHPL	RB Holdings Private Limited
RBMHPL	RB Media Holdings Private Limited
RBMPL	RB Mediasoft Private Limited

Reliance Group	RIL along with its various subsidiaries and the joint ventures entered into by RIL or its subsidiaries
RIIHL	Reliance Industrial Investments and Holdings Limited
RIL	Reliance Industries Limited
Ritu	Mrs. Ritu Kapur
RJIL	Reliance Jio Infocomm Limited (earlier Infotel Broadband Services Limited)
RRBMPL	RRB Mediasoft Private Limited
SCPL	Sanchar Content Private Limited
Shinano	Shinano Retail Private Limited
SPA	Share purchase agreement dated May 29, 2014 entered into between IMT, Raghav, Ritu, the Holding Companies and RBHPL
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011
TV18	TV18 Broadcast Limited
TV18 Emerging Voting Capital	The enlarged voting share capital of TV18 calculated in accordance with Regulation 7 of the Takeover Code
TV18 Escrow Account	The escrow account opened in accordance with Regulation 17 of the Takeover Code for the purposes of the TV18 Open Offer
TV18 Offer Shares	44,65,10,110 equity shares of TV18
TV18 Open Offer	Open offer for the acquisition of TV18 Offer Shares by the Acquirers
WIPL	Watermark Infratech Private Limited
ZOCD	Zero coupon optionally convertible debentures having face value of INR 100 each issued by the Holding Companies
ZOCD Investment Agreement	Investment agreement entered into on February 27, 2012 between IMT, Raghav, Ritu and the Holding Companies pursuant to which the ZOCDs were issued

3. Details of The Deal

I. Parties Involved

A. Acquirer, PACs and Related Parties

i. Independent Media Trust

IMT was set up pursuant to a trust deed dated November 2, 2011 (**"Trust Deed"**) for the purpose of making investments. Mr. L.V. Merchant, was the 'Settlor' and DCPL was its first trustee. L.V. Merchant is the chief financial controller of RIL. DCPL (earlier known as Nilrab Media) was fully owned by Raghav and Ritu.[1]

RIL is the sole beneficiary of IMT as per the Trust Deed. RIIHL, a wholly owned subsidiary of RIL, was appointed as the 'Protector'[2] of IMT. [3]

Mr. Atul S. Dayal, the head legal advisor to the Reliance group of companies and a director of several companies of the RIL group[4] and Mr. P.M.S. Prasad, an executive director of RIL[5] were inducted as additional trustees of IMT on November 12, 2012. Under the Trust Deed, all decisions of IMT were to be taken by a majority of the trustees.

Subsequently, pursuant to a resolution dated May 20, 2014, SCPL (earlier Tilaka Land Private Limited) was inducted as an additional trustee of IMT. Mr. Atul S. Dayal owns approximately 60% (sixty percent) of the paid up share capital of SCPL.[6] Accordingly, from May 20, 2014, the trustees of IMT were DCPL, Mr. Atul Dayal, Mr. P.M.S.Prasad and SCPL.

The board of trustees administers and manages the affairs of IMT in accordance with the Trust Deed. All decisions of the board of trustees are taken by way of majority vote of the trustees. The maximum number of trustees permissible under the Trust Deed is 12.[7]

IMT did not have any operations for the year ended March 31, 2013 and March 31, 2014, and accordingly had no income for the years 2012-13 and 2013-14. It has unsecured loans worth approximately INR 22,780 million (USD 379.67 million) in its books, and a corresponding investment of approximately INR 22,780 million (USD 379.67 million).[8]

ii. Reliance Industries Limited

RIL is a listed company incorporated under the Companies Act, 1956. It was originaly incorporated on May 8, 1973 under the name Mynylon Limited in the State of Karnataka. RIL is India's largest private sector company with a net profit of INR 219 million (US$ 3.65 billion) as on March 31, 2014.[9] It operates various businesses ranging from exploration and production of oil and gas; petroleum refining and marketing; petrochemicals comprising polymers, polyester and fibre. It operates in the above sectors directly and through its subsidiaries and joint ventures (collectively referred to as the "**Reliance Group**"). Mr. Mukesh Ambani is the chairman and managing director of RIL.

iii. Reliance Industrial Investments and Holdings Limited

RIIHL was originally incorporated on October 1, 1986. It is a wholly owned subsidiary of RIL. The status of the company was changed to a 'deemed' public company under Section 43A of Companies Act, 1956 on August 20, 1988. RIIHL is engaged in the sale of petroleum products.

iv. Reliance Jio Infocomm Limited

RJIL (name changed from Infotel Broadband Services Limited), a subsidiary of RIL is a leading provider of IT enabled services in the areas of content distribution, next generation value added services, e-commerce and cloud computing. It has incubated a number of ventures in diverse domains like wireless broadband (Infotel Broadband Services Limited), mobile VAS and content distribution platforms (NexGTv), IPTV, homeland security and surveillance (Polixel), e-commerce– (B2B and B2C (Koovs and BenefitsPlus respecitvely)), next generation CRM

1. http://smartinvestor.business-standard.com/market/read-250860-readdet-Unravelling_RILs_ties_to_Network_18_The_changing_trustees_of_IMT.htm#.VDE_gPmSzkU; http://companyinfoz.com/company/digital-content-private-limited.
2. A trust protector is a person / entity who is not the settlor, beneficiary or trustee of the trust and is appointed to exercise powers affecting a trust and in the interest of the beneficiaries. In certain cases they can make decisions as to who the trustee is, regarding the investment, determine the distribution and also modify or terminate the trust.
3. http://www.sebi.gov.in/cms/sebi_data/commondocs/network18dlof_p.pdf (Page 16)
4. http://investing.businessweek.com/research/stocks/people/person.asp?personId=13637209&ticker=880966
5. http://www.ril.com/html/aboutus/board_composition.html
6. http://www.business-standard.com/article/companies/unravelling-ril-s-ties-to-network-18-the-changing-trustees-of-imt-114070301381_1.html
7. Network18 Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf
8. Network18 Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf
9. http://www.ril.com/downloads/pdf/PR07072014.pdf (page 1)

solutions (Digicall and OneClick) etc.

RJIL has acquired 2G spectrum in 14 out of 22 service areas in the country and is set to commercially launch 4G services in 2015.[10] The Deal is claimed to be beneficial to RJIL, which now has access to the Network18 Group's digital content, thereby resulting in synergies.

v. Shinano Retail Private Limited

Shinano is effectively wholly owned by RIIHL. Shinano held 4.96% and 4.95% of TV18 Emerging Voting Capital and Network18 Emerging Voting Capital respectively prior to the Deal. Shinano was a public shareholder in Network18 and TV 18 prior to the launch of open offer by the Acquirers. It was named as deemed PAC for the purposes of the TV18 Open Offer and Network18 Open Offer.

vi. For the purpose of the Infomedia Open Offer, Network18 was also included as a PAC after the consummation of the transaction under the SPA on July 7, 2014.

B. Sellers and Underlying Companies

i. Sellers

a. Mr. Raghav Bahl

Raghav was the founder-promoter of the Network18 Group, and was the managing director of the Network18 Group prior to the Deal. He was one of the two sellers under the SPA.

b. Mrs. Ritu Kapur

Wife of Raghav, Ritu, was a shareholder in all Holding Companies. She was the other seller under the SPA.

ii. Holding Companies

The following companies (collectively referred to as the "**Holding Companies**") held 71.25% and 3.94% of the Network18 Emerging Voting Capital and TV18 Emerging Voting Capital respectively [11]:

- RB Mediasoft Private Limited ("**RBMPL**");
- RRB Mediasoft Private Limited ("**RRBMPL**");
- RB Media Holdings Private Limited ("**RBMHPL**");
- Adventure Marketing Private Limited ("**AMPL**");
- Watermark Infratech Private Limited ("**WIPL**"); and
- Colorful Media Private Limited ("**CMPL**").

The Holding Companies were all jointly owned by Raghav and Ritu in the ratio of 95:5 respectively prior to the Deal.

C. Target Companies

i. Network18

Network18 is a company incorporated under the Companies Act, 1956 and listed on BSE and NSE. The "**Network18 Group**" comprises of several media and entertainment companies with interests in television, internet, films, e-commerce, magazines, mobile content and allied businesses.

The Network18 Group operates digital, publishing and e-commerce assets including moneycontrol.com, ibnlive.com, HomeShop18.com and bookmyshow.com. It also publishes Forbes India in collaboration with Forbes Media. In addition, the Network18 Group also operates Network18 Publishing, a player in the special interest publishing space. 'Network18' also has investments in Yatra, Stargaze and other Capital18 portfolio companies.[12]

ii. TV18

TV18, listed on BSE and NSE, is a subsidiary of Network18 and a part of the Network18 Group.

TV18 operates news channels including CNBC-TV18, CNBC Awaaz, CNBC-TV18 Prime HD, CNN-IBN, IBN7 and IBN-Lokmat. TV18 is also a partner with Viacom in their joint venture, Viacom18, which operates a number of leading entertainment channels such as Colors, MTV, Comedy Central, Vh1, Nick. Viacom18 houses, Viacom18 Motion Pictures, the Network18 Group's film entertainment business.

Network18 held approximately 51% of the paid up share capital of TV18 prior to the consummation of the Deal.

iii. Infomedia Press Limited

Infomedia was incorporated on May 30, 1955 as 'The Commercial Printing Press Limited'. The name of the company was changed to Infomedia Press Limited on July 5, 2012. Infomedia is also listed on the NSE and BSE.

Infomedia was engaged in the printing business. However, in 2012-13, it closed down the printing press due to commercial unvaibility, and is currently

10. http://timesofindia.indiatimes.com/tech/tech-news/Reliance-Jio-Infocomm-to-launch-4G-in-2015-Mukesh-Ambani/articleshow/36763068.cms
11. Network18 Letter of Offer, 2012, available at: http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf and TV18 Draft Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1331275593801.pdf
12. http://network18online.com/

considering venturing into new business.[13]

Network18 held 47.60% of the Infomedia Emerging Voting Capital as on March 31, 2014, with the remaining being held by the public.

II. Transaction Documents

A. Share Purchase Agreement (29th May, 2014)

A share purchase agreement dated May 29, 2014 was entered into between IMT, Raghav, Ritu, the Holding Companies and RBHPL (the "**SPA**"). Under the SPA, IMT agreed to buy 100% of the outstanding equity shares of the Holding Companies and RBHPL for an aggregate consideration of INR 7069.5 million (USD 117.8 million).[14] [15]

Under the SPA, IMT also agreed to extend convertible loans amounting to INR 430.8 million (USD 7.18 million) and INR 3049.4 million (USD 50.82 million) to the Holding Companies and RBHPL respectively, for repayment of their outstanding liabilities. These were liabilities in addition to the ZOCDs issued by the Holding Companies.

In accordance with the terms of the SPA, Raghav was also required to relinquish all his executive powers with regard to Network18 and the Network18 Group but he would continue to act as a non-executive director on the board of Network18.[16]

On the consummation of the transactions under the SPA, DCPL was required to resign as a trustee of IMT and the investments held by DCPL (including the equity shares of Network18 and the ZOCDs of the Holding Companies) were transferred to SCPL, in its capacity as a trustee of IMT.[17]

The transactions contemplated under the SPA were consummated on July 7, 2014 pursuant to which IMT acquired 100% shareholding of the Holding Companies.[18] Post the consummation of the transaction under the SPA, DCPL resigned as the trustee of IMT.

B. Other documents

In addition to the SPA, pursuant to which the equity shares of the Holding Companies were acquired by IMT, IMT and certain entities in the Reliance Group had executed certain documents in 2012 to provide funding to the Network18 Group.

i. ZOCD Investment Agreement (February 27, 2012)

An investment agreement was entered into on February 27, 2012 between IMT, Raghav, Ritu and the Holding Companies, pursuant to which IMT agreed to subscribe to certain number of ZOCDs to be issued by the Holding Companies ("**ZOCD Investment Agreement**"). The consideration from the issuance of the ZOCDs was to be utilized by the Holding Companies to subscribe to the equity shares offered by Network18 and TV18 by way of rights issuance. [19]

The ZOCDs (and the equity shares to be issued upon conversion of the ZOCDs) were freely transferable by the subscriber. Each ZOCD could be converted at any time within a period of 10 years from the date of issuance, into 10 equity shares (adjusted for certain events) of the relevant Holding Company.[20] The ZOCD holder could also require the Holding Company to redeem all or part of the ZOCDs at par at any time within a period of 10 years from the date of issuance of the ZOCDs. The ZOCDs which were neither converted into equity shares nor redeemed at the expiry of the 10 year period would automatically be redeemed at par upon the expiry of 10 years from the date of subscription to the ZOCDs.[21]

ii. Content License Agreement (February 27, 2012)

A content license agreement was entered on February 27, 2012 between Network18 and TV18 on one hand and RJIL (known as Infotel Broadband Services Limited at the time) on the other ("**Content License Agreement**"). Under the terms of the Content License Agreement, Network18 and TV18 agreed to provide RJIL access to the content provided by them on a preferential or first-right basis (though not exclusive) through any network providing access.

13. Infomedia, Annual Report, 2013-14 available online at http://infomediapress.in/wp-content/uploads/2014/09/IP_AnnualReport_2013-14.pdf
14. TV18 Draft Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1331275593801.pdf
15. The consideration for the shares of RBHPL was INR 10 million only. RBHPL did not hold any shares in Network18, TV18 or Infomedia
16. TV18 Draft Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/attachdocs/1331275593801.pdf
17. Network 18 Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf
18. http://www.valueresearchonline.com/stocks/Directors_Report.asp?code=17024
19. Network 18 Letter of Offer, 2014, available at: http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf
20. www.sebi.gov.in/cms/sebi_data/attachdocs/1347355493264.pdf
21. www.sebi.gov.in/cms/sebi_data/attachdocs/1347336149124.pdf

III. Deal Snapshot

Direct targets	Holding Companies and RBHPL
Indirect Targets	Network18, TV18, Infomedia
Acquirer	IMT
PACs (for Network18)	RIL, RIIHL and Shinano
PACs (for TV18)	RIL, RIIHL and Shinano
PACs (for Infomedia)	RIL, RIIHL, Network18 and Shinano
Sellers	Raghav and Ritu
Trigger event for Open Offer	Acquisition of 100% equity shares of the Direct Targets by the Acquirers from the Sellers, triggering indirect acquisition of the Indirect Targets under Regulation 3 and 4 read with Regulation 5 of the Takeover Code

Mode of acquisition	**Indirect acquisition:**
	▪ By acquiring the Holding Companies, the Acquirers acquired
	  ▪ 71.25% of the Network18 Emerging Voting Capital;
	  ▪ 55.03% of the TV18 Emerging Voting Capital; and
	  ▪ 47.60% of the Infomedia Emerging Voting Capital.
	Open Offer:
	▪ Open offer made by the Acquirers to the public shareholders of the Indirect Targets to acquire as follows:
	  ▪ Network18: 21.95% of the Network18 Emerging Voting Capital;
	  ▪ TV18: 26% of the TV18 Emerging Voting Capital;
	  ▪ Infomedia: 26% of the Infomedia Emerging Voting Capital.

Total holding contemplated (assuming full tender under the open offer)	▪ Network18: 100% of the Network18 Emerging Voting Capital; ▪ TV18: 85.99% of the TV18 Emerging Voting Capital; ▪ Infomedia: 73.60% of the Infomedia Emerging Voting Capital.
Acquisition price	**Indirect Acquisition:** The consideration for the acquisition of the Holding Companies was approximately INR 32160 million(USD 536 million), attributable as follows: ▪ 74,61,88,987 equity shares of Network18 at a price of INR 41.04 per share aggregating to INR 30620 million (USD 510.33 million); ▪ 6,77,33,486 equity shares of TV18 at a price of INR 30.18 per share aggregating to INR 2040 million (USD 34 million). ▪ Since Network18 owned Infomedia, no separate consideration was attributable to Infomedia. **Open Offer:** ▪ 22,99,46,996 equity shares of Network18 at a price of INR 41.04 per share, aggregating to INR 9,437 million (USD 157.28 million); ▪ 44,65,10,110 equity shares of TV18 at a price of INR 30.18 per share, aggregating to INR 1,3475 million (USD 224.58 million); ▪ 1,30,62,224 equity shares of Infomedia at a price of INR 3 per share, aggregating to INR 39.18 million (USD 653,333).

IV. Chronology of Events

Date	Particulars
February 27, 2012	▪ The ZOCD Investment Agreement is executed between IMT, Raghav, Ritu and the Holding Companies. ▪ Content License Agreement is entered into between Network18 and TV18 on one hand and RJIL (then Infotel Broadband Services Limited) on the other.
May 29, 2014	▪ RIL announces takeover of Network18 by IMT[22] ; ▪ SPA is entered into between IMT, Raghav, Ritu, the Holding Companies and RBHPL.
June 2, 2014	▪ IMT makes public announcement for open offer for shares of Infomedia.
June 3, 2014	▪ IMT makes public announcement for open offer for shares of Network18; ▪ IMT makes public announcement for open offer for shares of TV18.
June 5, 2014	▪ Detailed public statement for open offer of Network18 is made; ▪ Detailed public statement for open offer of TV18 is made; ▪ Detailed public statement for open offer of Infomedia is made.
June 13, 2014	▪ Draft letter of offer for Infomedia is filed with SEBI.
June 17, 2014	▪ Draft letter of offer for Network18 is filed with SEBI; ▪ Draft letter of offer for TV18 is filed with SEBI.
July 7, 2014	▪ The transactions under the SPA are consummated.
July 7, 2014	▪ Meeting of the board of directors of (i) Network18, (ii) TV18 and (iii) Infomedia was held to i. reconstitute the board of directors inducting the nominees of the Acquirers and taking on record the resignation of the earlier directors; ii. take note of the change in the promoters for the respective companies.
July 14, 2014	▪ The recommendations of the committee of independent directors for Network18 announced; ▪ The recommendations of the committee of independent directors for TV18 announced; ▪ The recommendations of the committee of independent directors for Infomedia announced.
November 17, 2014	▪ SEBI issues its comments on the draft letter of offer for Network18; ▪ SEBI issues its comments on the draft letter of offer for TV18; ▪ SEBI issues its comments on the draft letter of offer for Infomedia.
November 27, 2014	▪ Final letter of offer filed for Network18; ▪ Final letter of offer filed for TV18; ▪ Final letter of offer filed for Infomedia.
December 3, 2014	▪ Advertisement cum Corrigendum issued for Network18; ▪ Advertisement cum Corrigendum issued for TV18.
December 5, 2014	▪ Advertisement cum Corrigendum issued for Infomedia.

V. Deal Structure

A. Network18 Open Offer

The Network18 Emerging Voting Capital was held by the following entities prior to the Deal[23]:

i. 1,93,83,100 equity shares of Network18 representing 1.85% of the Network18 Emerging Voting Capital, were held by DCPL in its capacity as a trustee of IMT;

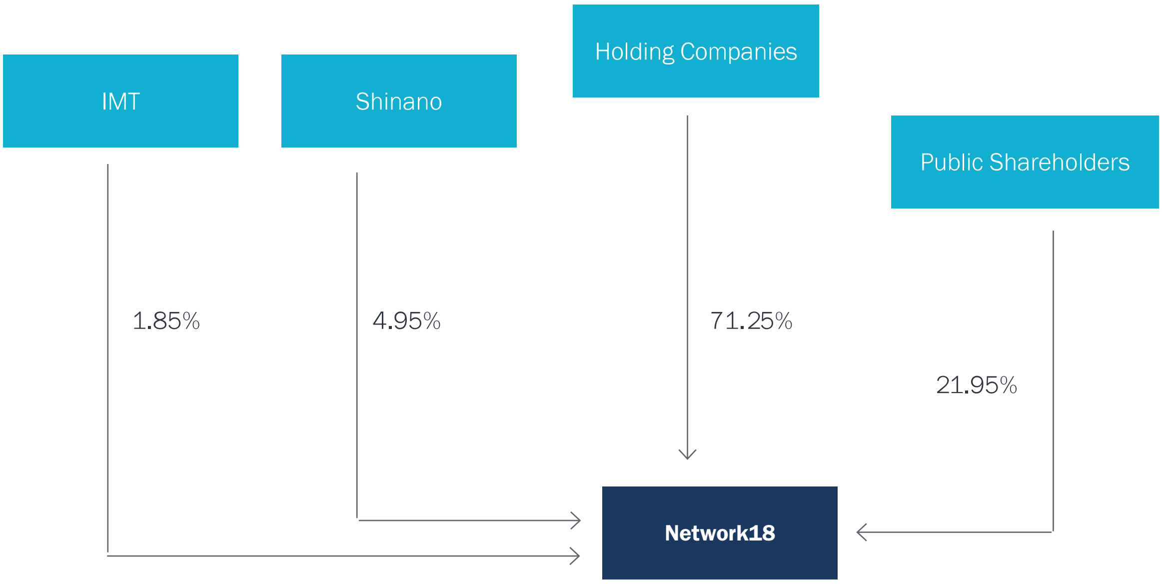
ii. 74,61,88,987 equity shares of Network18 representing 71.25% of the Network18 Emerging Voting Capital were held by the Holding Companies;

22. http://articles.economictimes.indiatimes.com/2014-07-07/news/51133571_1_reliance-industries-ltd-independent-media-trust-differentiated-broadcast-content

23. http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18FOD_p.pdf

iii. 5,17,98,443 equity shares of Network18 representing 4.95% of the Network18 Emerging Voting Capital were held by Shinano; and

iv. 22,99,46,996 equity shares of Network18 representing 21.95% of the Network18 Emerging Voting Capital were held by the public shareholders.



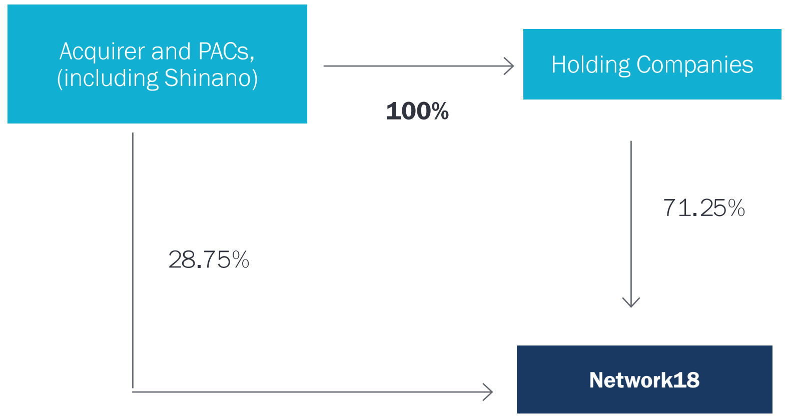
Subsequent to the consummation of the transaction under the SPA, from July 7, 2014, IMT held directly or indirectly, 73.10% individually, and 78.05% along with Shinano (a deemed PAC). The balance was held by public shareholders.

The Acquirers also gained control over Network18. This is evident from the immediate change in the Board of Network18 post consummation of the share purchase, under which 5 of the existing directors retired, and were replaced by the nominees of the Acquirers. The relinquishment of all executive powers and responsibilities of Raghav from July 7, 2014 is also a strong indicator of the change in control. Accordingly, an obligation to make an open offer for 'indirect acquisition' both under Regulation 3 and Regulation 4, read with Regulation 5 was triggered. In accordance with Regulation 22 of the Takeover Code, prior to consummation of the transaction under the SPA, RIL (on behalf of IMT) deposited 100% of the offer amount into the Network18 Escrow Account.

The Acquirers have made an open offer to acquire up to 22,99,46,996 equity shares of Network18 (**"Network18 Offer Shares"**) having face value of INR 5 (which are held by the public shareholders) at a price of INR 41.04 aggregating to approximately INR 9437 million (USD 157.28 million).

The price for the Network18 Offer Shares was determined in accordance with Regulation 8 of the Takeover Code.

Pursuant to acquisition of the equity shares, voting rights and control of the Holding Companies and assuming a 100% acceptance of the Network18 Open Offer, the Acquirers would hold the entire Network18 Emerging Voting Capital.



Considering that the minimum public shareholding in Network18 would fall below the minimum prescribed limit, the Acquirers would be required to bring the public shareholding to at least the minimum prescribed limit of 25% within 1 year from the date such public shareholding falls below 25%. While Shinano was a public shareholder as of June 1, 2014, its shareholding is now under the 'promoter' group. Accordingly, the minimum public shareholding has already decreased below the statutory limit, and the time period of 1 year would trigger from July 7, 2014. Alternatively, Network18 can be delisted if the Acquirer does not intend to keep Network18 listed, in which case compliance under the Delisting Regulations need to be adhered to.

B. TV18 Open Offer

The TV18 Emerging Voting Capital is held by the following entities in the following manner as on June 30, 2014[24]:

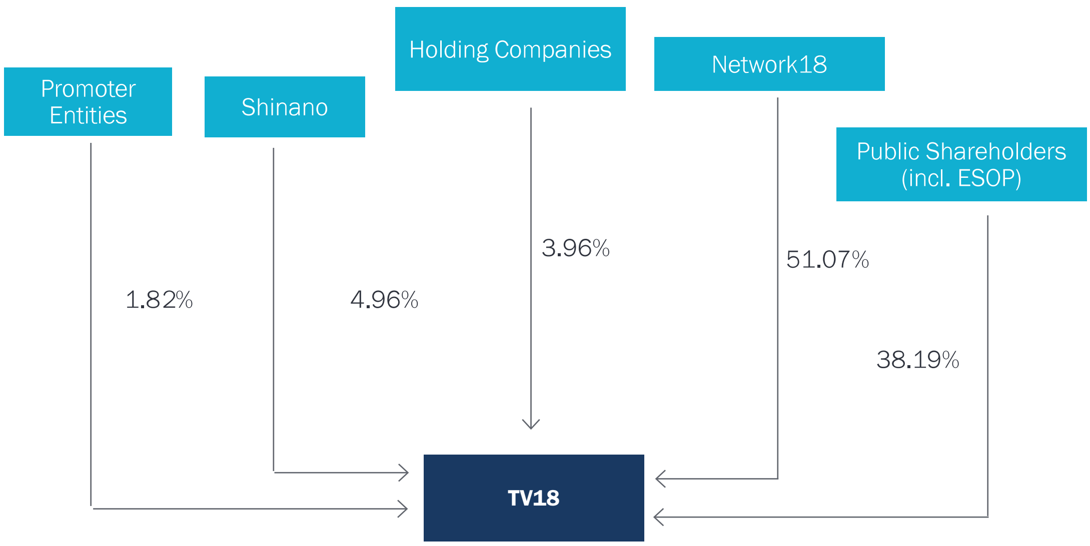
i. 87,70,35,062 equity shares of TV18 representing 51.07% of the TV18 Emerging Voting Capital, were held by Network18;

ii. 6,77,31,123 equity shares of TV18 representing 3.96% of the TV18 Emerging Voting Capital were held by the Holding Companies;

iii. 3,15,95,016 equity shares of TV18 representing 1.82% of the TV18 Emerging Voting Capital, were held by other promoter entities;

iv. 8,51,73,200 equity shares of TV18 representing 4.96% of the TV18 Emerging Voting Capital were held by Shinano; and

v 65,58,12,174 equity shares of TV18 representing 38.19% of the TV18 Emerging Voting Capital were held by public shareholders and provided for in employee stock options.



24. http://www.sebi.gov.in/cms/sebi_data/commondocs/TV18BroadcastFOD_p.pdf

Pursuant to the transaction under the SPA, which consummated on July 7, 2014, IMT acquired 100% of the share capital of the Holding Companies. As per Regulation 22 of the Takeover Code, RIL (on behalf of IMT) deposited 100% of the offer amount into the TV18 Escrow Account prior to the consummation of the transaction under the SPA. Additionally, as noted above, an open offer for the public shareholding of TV18 has been made.

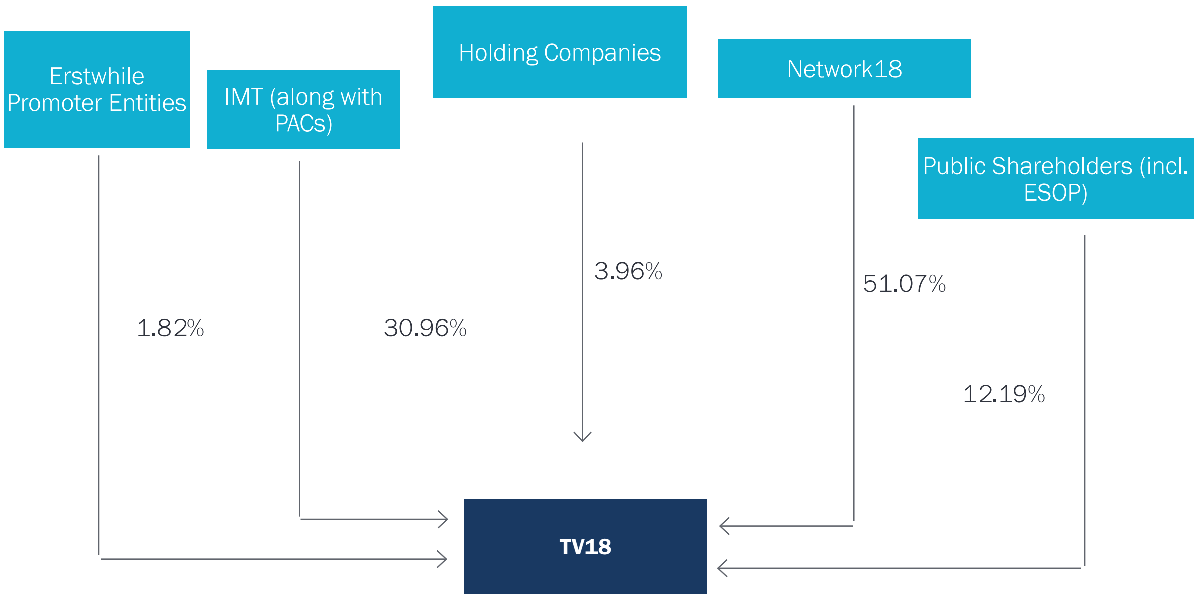
If the TV18 Open Offer is 100% successful, the Acquirer would control 85.99% (51.07% + 3.96% + 4.96% + 26%) of the share capital of Network18. Irrespective of the success of the TV18 Open Offer, the Acquirer would control TV18 by virtue of exercising control over Network18. Additionally, Shinano is also a deemed PAC in the said acquisition.

Accordingly, the Acquirers would control approximately 59.99% of the share capital of TV18, which would trigger an open offer obligation under Regulation 3 read with Regulation 5 of the Takeover Code. Around 1.82% of the shares of the promoter holdings were held by various trusts, namely Network18 Group Senior Professional Welfare Trust (1.68%), IBN18 Trust (0.08%), TV18 Employees Welfare Trust (0.04%), which would not form part of the promoter group post consummation of the Deal.

Additionally, the Acquirers also gained control over TV18 and the composition of the board was changed on July 7, 2014 with the nominees of the Acquirers being inducted on the board, and the other directors of the erstwhile promoters resigning. The relevant filings for change in promoters under ICDR were also made. Accordingly, an open offer obligation was triggered under both Regulation 3 and Regulation 4 read with Regulation 5 of Takeover Code.

The Acquirers have made an open offer to acquire up to 44,65,10,110 equity shares of TV18 (“**TV18 Offer Shares**”) having face value of INR 2 at a price of INR 30.18 aggregating to approximately INR 13475.7 million (USD 224.595 million). The TV18 Offer Shares would represent 26% of the TV18 Emerging Voting Capital.

Pursuant to acquisition of the equity shares, voting rights and control of the Holding Companies and assuming a 100% acceptance in the TV18 Open Offer, the Acquirers would hold approximately 85.99% of the TV18 Emerging Voting Capital. Similar to Network18, if the Acquirers hold more than 75% shares of TV18 post-open offer, the Acquirers would have to increase the minimum public shareholding to the prescribed limit of 25% within 1 year from the date the public shareholding falls below 25%. Alternatively, TV18 can be delisted if the Acquirer does not intend to keep TV18 listed, in which case compliance under the Delisting Regulations need to be adhered to.

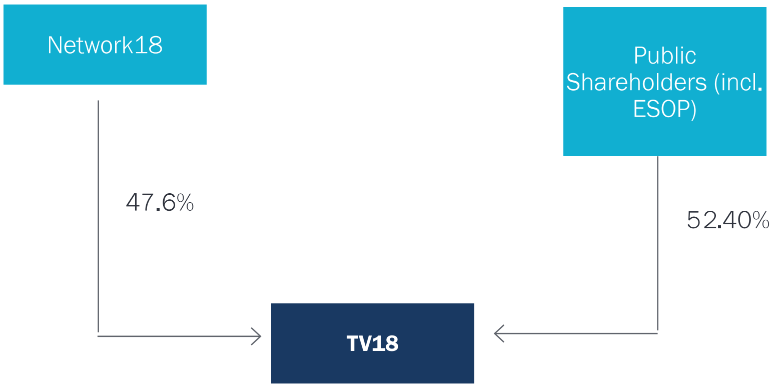


C. Infomedia Open Offer

The Infomedia Emerging Voting Capital is held by the following entities in the following manner[25]:

i. 2,39,13,061 equity shares of Infomedia representing 47.60% of the Infomedia Emerging Voting Capital, were held by Network18;

ii 2,63,26,261 equity shares of Infomedia representing 52.40% of the Infomedia Emerging Voting Capital were held by public shareholders and provided for in employee stock options.

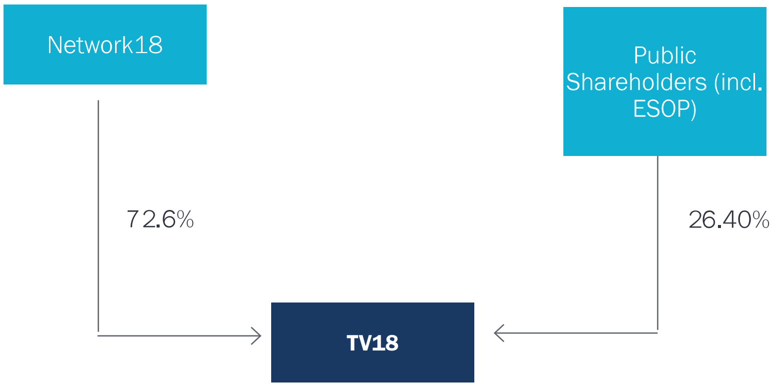


By virtue of acquisition of Network18, the Acquirers also acquired 47.60% of the Infomedia Emerging Voting Capital. Further the control of the board of Infomedia was also acquired by virtue of the (indirect) acquisition of Network18, and accordingly an open offer for Infomedia was required to be made.

The Acquirers have mentioned in the final offer letter that '*there is no specific objective in this indirect acquisition of Infomedia and it is purely consequential to the indirect acquisition of Network18'.*[26]

The Acquirers have made an open offer to acquire up to 1,30,62,224 equity shares of Infomedia ("**Infomedia Offer Shares**") having face value of INR 10 each at a price of INR 3 each aggregating to approximately INR 39.2 million (USD 653,333). The Infomedia Offer Shares would represent 26% of the Infomedia Emerging Voting Capital.

In the final offer letter for the Infomedia Open Offer, Network18 was included as a PAC. This was pursuant to the resolution of the board of Network18 dated July 7, 2014, where it agreed to act as a PAC for the Infomedia Open Offer. While Network18 has not been included as a PAC for TV18, it has specifically been included in the Infomedia Open Offer. The final offer letter also mentions that the shares tendered by the public shareholders of Infomedia shall be acquired by Network18. Accordingly, it seems that the intention of the Acquirers was to consolidate the holdings of Infomedia under Network18 itself, which currently holds 47.60% of the Infomedia Emerging Voting Capital anyway.



25. http://www.sebi.gov.in/cms/sebi_data/commondocs/InfomediaFOD_p.pdf
26. http://www.sebi.gov.in/cms/sebi_data/commondocs/InfomediaFOD_p.pdf

4. Commercial Considerations

I. Why did the Network18 Group require cash in 2011-12 for Reliance Group?

Network18's promoter, Raghav had initiated an aggressive acquisition strategy around 2006. The Network18 Group forayed into diverse sectors in the media and entertainment business, ranging from general entertainment channels to movie production (Viacom 18 Motion Pictures[27]), multiplex business (Stargaze Entertainment[28]), e-commerce (HomeShop18), selling movie tickets (bookmyshow.com[29]), buying a printing press (Infomedia18[30]), investing in a whole host of trade and consumer-led print magazines (Network18, Forbes India[31]), a website which listed reviews of restaurants (Burrp![32]), setting up (and divesting) a phone service search portal (AskMe.com[33]), a website for investment advisory services (Capital18 Media Advisors[34]), a website for breaking news of the stock markets (moneycontrol.com), a sports management firm (Sport18[35]) that mostly organized cycle races, an event management firm (E18[36]) etc.

This diversification strategy adopted by the Network18 Group resulted in the requirement for capital, and the strategy did not reap benefits at the pace of the expansion. Some of these ventures required substantial amount of capital infusion, and this led Raghav to borrow from various sources. This led to a situation where the Network18 Group was reeling under pressure from lenders. The consolidated loans of the Network18 Group for the year ended March 31, 2011 stood in excess of INR 24960 million (USD 416 million), while the overall revenues of the group stood at approximately INR 15960 million(USD 266 million).[37]

This burgeoning debt position of Network18 Group, with increasing interest payment obligations resulted in the Network18 Group requiring cash infusion.

II. Why was RIL interested in funding the debt-laden, loss-making Network18 Group?

RIL had been trying to gain a foothold in the media business. Earlier, in 2008, RIL bailed out Eenadu Group's Ramoji Rao. However, the Network18 Group would give RIL access to information and broadcasting across multiple modes of media, including print and television. The Network18 Group had its presence in 22 channels.[38] There have also been suggestions that the Network18 Group was crucial since it could act as the public relations agency for the Reliance Group.[39] While this may not necessarily imply that RIL was looking to take over the Network18 group, it may have been inferred from RIL's interest in the media sector earlier, and the synergies between media and telecom.

However, probably one of the most important reasons which prompted RIL to invest in the Network18 Group was access to exclusive content across segments for Reliance to foray into 4G services for RJIL (earlier Infotel Broadband Services). This was reflected by the execution of the Content License Agreement between RJIL and the Network18 Group in February 2012 (refer section *Transaction Documents* above).

27. http://www.viacom18.com/aboutus.html
28. http://www.stargaze.co.in/AboutUs.aspx
29. http://in.bookmyshow.com/aboutus
30. http://www.campaignindia.in/Article/309048,network18-aligns-infomedia18-publishing-divisions-under-8216network18-publishing8217.aspx
31. http://www.afaqs.com/news/story/29548_Network18-launches-ForbesLife-in-India
32. http://in.reuters.com/article/2009/04/06/idINIndia-38900220090406
33. http://www.moneycontrol.com/news/business/network18-profitably-divests-yellow-pagesaskme-biz_831657.html
34. http://in.reuters.com/article/2009/04/08/idINIndia-38951220090408
35. http://www.campaignindia.in/Article/224672,network-18-kicks-off-sports-division.aspx
36. http://www.business-standard.com/article/companies/network-18-launches-events-division-107060701096_1.html
37. http://network18online.com/reports/Financial%20Results/Annual%20Reports/Annual%20Report%202010-11.pdf
38. http://www.outlookbusiness.com/printarticle.aspx?279736
39. http://www.outlookbusiness.com/printarticle.aspx?279736

III. How did IMT raise funds to infuse into the Holding Companies, both at the time of subscription to the ZOCDs, and as well as to subscribe to the latest infusion of INR 40 billion?

IMT was funded by RIL on both occasions for investment into the Holding Companies. The press release by RIL dated January 3, 2012 clarifies that IMT shall be subscribing to the ZOCDs of the Holding Companies.[40] While the press release does not explicitly state that RIL is funding the investment, it is apparent that RIL had infused cash for the purposes of the acquisition.[41] On May 29, 2014, RIL again issued a press release declaring that it had approved funding of approximately INR 4 billion to acquire shares of Network18 and TV18 from Raghav and to enable IMT to carry out the open offer obligations triggered by way of the acquisition.

While it is not clear as to how RIL funded IMT for subscription of the ZOCDs, it seems that RIL may have provided unsecured loans to IMT. The audited financials of IMT state that it had unsecured loans outstanding to the tune of INR 2.2728 billion as on March 31, 2014.[42]

IV. Why did IMT have a number of trustees over a period of time?

It seems that the first trustee under the trust deed, DCPL was appointed for two reasons, namely (a) to make it appear that there is change in control from a Takeover Code perspective and (b) to ensure that the independence of the media is sacrosanct and not being compromised. DCPL, as mentioned before, was owned 100% by Raghav and Ritu.[43]

It is pertinent to note that the power to appoint and remove any trustee of IMT was with the 'Protector', i.e. RIIHL, a wholly owned subsidiary of RIL. This implies that the power of appointment and removal of trustees was ultimately with RIL.

Subsequently, Mr. Atul Dayal and Mr. P.M.S. Prasad were inducted as additional trustees by way of resolution dated November 12, 2012. All decisions of IMT were to be taken by way of majority vote of trustees. SCPL was further inducted as additional trustee by way of resolution dated May 20, 2014.[44] SCPL, it is stated is held by Mr. Atul Dayal, and two other RIL executives, Mr. Ramesh Damani and Mr. Sundar Mathrubootheswaran.[45] Finally, the draft letter for the open offer clarifies that DCPL would resign as one of the trustees of IMT post completion of the transaction. The holding of DCPL, in its capacity as the trustee of IMT would be transferred to SCPL, which shall hold such investments, in its capacity as the trustee of IMT.

Accordingly, the control over IMT, which was with Raghav through DCPL, the first trustee had slowly been phased out and handed over to RIL.

V. Why did RIL not appoint RIIHL as the trustee, but merely as a 'protector' for the Trust?

If RIIHL, a subsidiary of RIL was appointed the trustee of IMT, all holdings of RIIHL (in its capacity as a trustee of IMT) would have to be consolidated in the annual accounts of RIL. Additionally, from a Takeover Code perspective, having DCPL as the trustee provided more weightage to the argument that there was no change in control from a persons acting in concert perspective, which could have been an issue if RIIHL was appointed as the trustee for IMT.

VI. What prompted the sale of the shares of the Holding Companies?

The financials of the Network18 Group had improved substantially over 2013-14. The consolidated losses of the Network18 Group reduced from INR 1050 million (USD 17.5 million) in 2012-13 to INR 367.7 million (USD 6.128 million) in 2013-14.[46]

40. http://www.bseindia.com/xml-data/corpfiling/AttachHis/Reliance_Industries_Ltd_030112.pdf
41. http://indianexpress.com/article/entertainment/screen/reliance-takes-control-of-network18-group-in-first-direct-exposure-to-media/99/
42. Infomedia, Draft Letter of Offer, available at http://www.sebi.gov.in/cms/sebi_data/commondocs/InfomediaDLOF_p.pdf
43. Network18 Rights Issue Offer Letter, available at http://www.sebi.gov.in/cms/sebi_data/commondocs/Network18DLOF_p.pdf
44. Offer Letter
45. http://www.rediff.com/business/slide-show/slide-show-1-why-the-ril-network18-deal-was-delayed-for-30-months/20140704.htm#5
46. http://network18online.com/reports/Financial%20Results/Annual%20Reports/Network18-AR-2014.pdf

The restructuring of the Network18 Group was already carried out by Raghav and his team in the years 2012 and 2013. Newswire18 was sold to Samara Capital.[47] Other non-profit making units such as Infomedia18, Sports18, Yellow Pages and AskMe were closed down.[48]Other ventures such as in.com, IBNLive.com, Myschool.com were leaned.[49]Approximately 900 employees were relieved to rationalize costs.[50]

The time seemed right for the Reliance Group to acquire the Network18 Group. It was inevitable that the Network18 Group would start making profits in the near future, which would have increased the valuation of the asset as a whole. Accordingly, RIL and IMT probably stepped in at this time, to acquire the Network18 Group.

47. http://articles.economictimes.indiatimes.com/2012-12-04/news/35594475_1_network18-sole-transaction-adviser-news-terminal-business
48. http://www.livemint.com/Companies/rqT2Oi8fwv4XVjJcHzlcVN/Inside-the-Network18-takeover.html
49. http://www.thehindu.com/business/companies/network-18-to-massively-downsize-staff-cut-costs/article5026457.ece
50. http://www.thehindu.com/business/companies/network-18-to-massively-downsize-staff-cut-costs/article5026457.ece

5. Legal and Regulatory Considerations

I. Did the investment into ZOCDs by IMT in 2012 require CCI approval?

The investment into ZOCDs by IMT in 2012 required CCI approval and a notice under section 6 (2) of CA 2002 was filed.

The investment into the Holding Companies was in excess of the prescribed threshold. Further, the CCI, on analyzing the entire structure, held that the ZOCDs, which could be converted into 99.99% of the equity shares of the Holding Companies at any time within 10 years, gave IMT the ability to '*exercise decisive influence over the management and affairs of each of the target (Holding) companies*'. Accordingly, a CCI approval was required for the investment into ZOCDs.[51]

The CCI analyzed in detail the various segments in which the Reliance Group and the Network18 Group co-existed, including in television channels, event management services, broadband internet services and access to content through such services. The CCI concluded that it was unlikely that the proposed combination would have any adverse effect on competition in India. Accordingly, the CCI did not raise any objections to the proposed acquisition.[52]

One interesting aspect which was highlighted in this decision of the CCI was that acquisition of instruments, which would entitle the holder of the security to receive shares with voting rights, i.e. equity shares in this case, was to be considered as the trigger for making a filing under CA 2002. The definition of 'shares' under CA 2002 clearly include such instruments as well.

II. Did the investment into ZOCDs by IMT in 2012 require an open offer under the Takeover Code?

Under the Takeover Code, an open offer is, inter alia, required to be made by the person, directly or indirectly acquiring shares of a listed target company (i) if the shares held by such acquirer along with PAC(s) exceeds 25% of the shares of the target company or (ii) if the acquirer acquires control of the target company. Additionally, an open offer is also required to be made if any person acquires shares or voting rights in a company or entity, that would enable such person '*to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations*'.

Optionally convertible debentures do not fall within the ambit of 'shares' under the Takeover Code, unlike the CA 2002. Accordingly, the acquisition of ZOCDs by IMT in 2012 did not satisfy the test for acquiring the prescribed number of shares. With respect to control, the trustee of IMT, which held the ZOCDs was DCPL, which was owned by Raghav and Ritu, and accordingly, there was no change in control by the acquisition of the ZOCDs. Accordingly, no open offer was made under the Takeover Code in 2012.

It is interesting to note that while CCI held that control was being acquired by IMT, the Takeover Code was not triggered. The distinction in this case is due to the difference in the intent of the Takeover Code and the CA 2002.[53]

Additionally, it is also important to note that subscription to the rights issuance by Network18 and TV18 did not require an open offer obligation on IMT. This is because the Holding Companies (and other existing shareholders at the time) had agreed to invest in the rights issue in accordance with Regulation 10(4)(a) and Regulation 10(4)(b) of the Takeover Code, under which the investment by the Holding Companies would have been exempt from open offer obligations.

III. Why did RIL use IMT as an Investment Vehicle instead of Subscribing to the ZOCDs Directly?

The reasons why RIL may have utilized a trust, i.e. IMT for the investment into the Holding Companies may be two-fold.

First, to provide semblance that the transaction does not result in a change in control, RIL decided to

51. http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2012-03-47.pdf
52. http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2012-03-47.pdf
53. This distinction was also brought out in the case of the acquisition of shares of Jet Airways Limited by Etihad Airways in 2014, where SEBI clearly distinguished the purpose of CA 2002 with the Takeover Code.

invest through a trust, IMT. The first trustee of IMT was DCPL.[54] The use of a trust vehicle whose trustee was an existing controlling shareholding would not result in 'change of control' and consequently the obligations under the Takeover Code would not be triggered.

Additionally, using an independent trust with the control being with Raghav may also have been important for two other reasons. One, incentivize Raghav to enter into the transaction, since he would not lose control over his empire. Two, with IMT acting as the façade to the investment, it could have been argued that the integrity and independence of the media, one of Network18's main areas of operations, will remain intact. RIL had clarified in its press release at that time, that Raghav and his team will continue to have full operational and management control of both the companies.[55]

However, RIL did not let the entire control over the investment vest with DCPL, as it may have appeared. As a means of protection, the trust deed for IMT named RIIHL as the protector of IMT, which had substantial powers of removal and appointment of trustees of IMT. This would mean RIL, being the parent of RIIHL, ultimately exercised control over the Network18 Group, which was noted by the CCI in its order dated May 28, 2012.[56]

Second, avoid consolidation of accounts. RIL investing directly into the Holding Companies would require it to consolidate the accounts of each of the companies under the Network18 Group in its books, upon the conversion of the ZOCDs into equity shares. This may not have been preferred since the Network18 Group was still incurring losses.[57]

IV. Why did IMT use ZOCDs as an instrument to invest in the Holding Companies?

IMT could have used any instrument to invest in the Holding Companies- equity shares, non-convertible debentures, preference shares, etc. The rationale for using ZOCDs can be explained for the following reasons.

First, ZOCDs provided IMT the flexibility to convert into equity shares of the Holding Companies as per its convenience. As per the terms agreed under the ZOCD transaction documents, the ZOCDs could have been converted into equity shares at any time, at the sole discretion of IMT, within a period of 10 (ten) years. This gave IMT the flexibility to take control of the Network18 Group, at its discretion.

Second, if IMT acquired equity shares or any other instrument which was compulsorily convertible into equity shares, it would result in diluting Raghav's shareholding in the Holding Companies. Additionally, considering the ZOCDs converted into 99.9% shares of the Holding Companies, any instrument that IMT subscribed to would have had to provide it the same extent of control. Acquisition of such stake would also have triggered the open offer obligations at that stage.

Third, the terms of the ZOCD issuance clarify that the ZOCD holders have the option of requiring the Holding Companies to redeem the ZOCDs. In the event that it was decided (with the consent of IMT) that the stake in Network18 and/ or TV18 was to be divested by the Holding Companies, IMT would have the option to require the Holding Companies to redeem the ZOCDs from the proceeds of the sale. This provided the flexibility which none of the other instruments would have probably provided.

Lastly, while investment into ZOCDs would have triggered notice obligation under section 6 of CA 2002 (as explained above), the open offer obligations under Takeover Code are not triggered by investment into convertible instruments, as the definition of shares does not include such instruments, which may give the holder voting rights in future.

V. Why did IMT acquire the equity shares of the Holding Companies and RBHPL from Raghav and Ritu? Why did IMT not convert the ZOCDs held by it in the Holding Companies?

It is unclear as to why IMT did not choose to convert the ZOCDs of the Holding Companies, but acquire the outstanding equity shares from Raghav and Ritu. However, some possible reasons could have been the following:

First, since it was a friendly takeover, it was probably

54. http://www.rediff.com/business/slide-show/slide-show-1-why-the-ril-network18-deal-was-delayed-for-30-months/20140704.htm#3
55. http://www.ril.com/downloads/pdf/PR03012012.pdf
56. Order in relation to Combination Registration No. C-2012/03/47 http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2012-03-47.pdf
57. http://network18online.com/reports/Financial%20Results/Annual%20Reports/Annual%20Report%202011-12.pdf

the only option available to provide Raghav and Ritu cash for handing over the Network18 Group. If IMT had converted, the control of Raghav and Ritu would have been diluted substantially.

Second, if Raghav and Ritu were not in favor of ceding control over their empire without any cash out, the entire scheme of conversion and acquisition would have been akin to a hostile acquisition. It seems likely that the valuation at which the conversion happened would have been challenged by Raghav and Ritu and court battles would have ensued.

Third, even if IMT could manage to convert its ZOCDs into a majority of the equity shares of the Holding Companies, DCPL would have continued to remain as a trustee of IMT. Although the majority of the board of trustees was controlled by the Reliance Group, removing DCPL would have been the preference for the Reliance Group to avoid any bad publicity.

Lastly, the process of acquiring control over the entire group would have been much more cumbersome and lengthy, as opposed to a smooth transition, which has been noticed over the last few months.

VI. Did the acquisition of shares of the Holding Companies by IMT from Raghav and Ritu in 2014 require the approval of CCI ?

As per the CCI order dated May 28, 2012, CCI had held that by subscribing to the ZOCDs, which could convert into 99.99% equity shares of the Holding Companies, IMT acquired control over the Holding Companies. Accordingly, it seems that the approval of CCI was not required under CA 2002.

However, the CCI order in 2012 was unclear if the Holding Companies were controlled solely by IMT (post investment of the ZOCDs) or jointly by IMT and Raghav and Ritu. Accordingly, it is ambiguous if the Deal could be seen as a transfer of control from joint to sole and hence whether CCI approval was required.

VII. Did the acquisition of shares of the Holding Companies by IMT from Raghav and Ritu in 2014 require an open offer obligation under the Takeover Code?

Under the Takeover Code, the acquisition of shares of any entity or company, which would enable the acquirer to exercise such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a public announcement of an open offer for acquiring shares under these regulations, an open offer to the public shareholders would be required.

By virtue of acquisition of the equity shares of the Holding Companies, IMT acquired control over Network18, TV18 and Infomedia. Accordingly, an open offer had to be made by IMT along with the PACs for Network18, TV18 and Infomedia.

VIII. How were the Acquirers able to take control of the Targets prior to the consummation of the Open Offer?

The Acquirers had entered into an escrow agreement on May 30, 2014 for opening an escrow account in accordance with Regulation 17 of the Takeover Code. On June 30, 2014, RIL, on behalf of IMT deposited 100% of the consideration for the open offer (assuming a 100% tender) into the escrow account, in accordance with Regulation 22 of the Takeover Code. As per Regulation 22, the Acquirer may proceed to complete the transaction if 100% of the consideration (assuming 100% tender) has been deposited in the escrow and at least 21 days have passed since the publication of the detailed public statement.

As mentioned, the consideration was deposited on June 30, 2014, and the detailed public statement was made on June 5, 2014. Accordingly, the Acquirers proceeded to complete the acquisition of the shares of the Holding Companies on July 7, 2014.

IX. Why was Shinano considered a deemed PAC?

Shinano, which was effectively 100% owned by RIIHL was a deemed PAC along with the Acquirer for the Deal as per Regulation 2(1)(q)(2)(i) of the Takeover Code. Shinano held approximately 4.95% and 4.98% of the equity shares of Network18 and TV18 from March 2013.[58]

58. http://www.bseindia.com/corporates/ShareholdingPattern.aspx?scripcd=532800&flag_qtr=1&qtrid=77.00&Flag=New

6. Tax Considerations

I. What was the tax implication on Raghav and Ritu pursuant to the sale of the Holding Companies?

Raghav and Ritu would be subjected to capital gains tax under the ITA for the sale of the equity shares of the Holding Companies i.e for the amount of consideration received for the sale of the equity shares in excess of the price paid by them for the acquisition of the respective shares. If the shares are held by them for a period in excess of 36 months, the gains would be taxed as long term capital gains. However, if the period of holding of the shares is 36 months or less, Raghav and Ritu would be subjected to short term capital gains tax. Accordingly, if the shares were acquired by Raghav and Ritu prior to July 7, 2011, the capital gains attracted would be long term capital gains.

Additionally, Raghav and Ritu, being residents would also be entitled to indexation benefits under section 48 of the ITA.

II. What is the tax implication in the hands of public shareholders for the tendering of shares in the Open Offers?

The public shareholders of the Network18 Offer Shares, TV18 Offer Shares and Infomedia Offer Shares would be subjected to capital gains tax on the sale of the equity shares held by them in Network18, TV18 and Infomedia, respectively. If the public shareholder held shares for a period of 12 months or less, it would be taxable as short term capital gains, while if shares were held for a period longer than 12 months, it shall be taxable as long term capital gains.

III. Would there be any implication on IMT under section 56 of the ITA for the acquisition of the shares of the Holding Companies by IMT?

Under section 56 of the ITA, if any company or firm receives property, being the shares of a company at a consideration below the fair market value of the shares[59], the difference between the consideration and the fair market value would be taxed in the hands of the acquirer.

However, as mentioned above, the tax implication under section 56 (2)(viia) would be applicable only where the recipient is a 'firm or a company'. The language does not include a trust and accordingly a view can be taken that since the recipient in this case is a trust, the section would not be attracted, and there would be no section 56 implication. However, it is not clear what view the tax authorities will take in this regard, and they may still hold that section 56 is applicable since the trustees comprised a company and individuals acting on behalf of the trust.

59. To be calculated in accordance with the mechanism provided under the ITA and the corresponding rules

7. Epilogue

The takeover of the Network18 Group by the Reliance Group marks a new beginning in the media industry. While it is too early to state whether the acquisition of the Network18 Group would be the 'death of media independence', as has been claimed by various quarters[60], it is clear that acquiring the biggest media company in the country, that too an undervalued group is another feather in the cap for the Reliance Group. It is to be seen whether the Network18 Group and the Reliance Group will be able to achieve what the CNBC TV18 catch line succinctly aims at:

"Triumphs Behind. Triumphs Ahead"

60. http://www.forbes.com/sites/meghabahree/2014/05/30/reliance-takes-over-network18-is-this-the-death-of-media-independence/

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

M&A Lab

Thomas Cook – Sterling Holiday: Let's Holiday Together!

January 2015

Contents

1. Prologue

"A vacation used to be a luxury, but in today's world it has become a necessity" – Anonymous.

With the boom in the working upper-middle class and the rise in accessibility to travel and leisure, exotic vacationing has become the trademark of this generation. India's wide ranging topography and climate, provides a variety of experiential options to the average traveller. This rise in demand has resulted in a steep growth in the setting up of resorts and hotels across the country. Sterling Holiday Resorts Limited ("**Sterling**") first pioneered the ability to plan and invest towards future vacations in the late eighties and has since seen a bumpy ride, following market changes, in providing people with the trip they need. In early 2014[1],Thomas Cook (India) Ltd ("**TCIL**"), announced the acquisition of Sterling to take its portfolio beyond travel planning and insurance in to the domain of vacation ownership.

The part-cash, part-equity acquisition ("**Deal**") was structured in a complex manner. Naturally, the acquisition made headlines, owing to the brands involved, the possibility of a change in the dynamics in the holiday sector in India and the particular structure of the transaction.

The Deal brings together TCIL, a travel and travel finance business, and Sterling, India's pioneer in vacation ownership and leading hotel and resort company. Through this deal, TCIL also purchases over 20 hotels, resorts and other properties owned by Sterling across India, Sri Lanka and Mauritius. This acquisition comes close on the heels of TCIL's acquisition of IKYA Human Capital Solutions in 2013. The Deal and its structure is also a step towards defining TCIL as the Indian investment vehicle of Prem Watsa's Fairfax, TCIL's Canadian promoter.

While, the public announcement made on February 7, 2014 gave the impression of a strait-jacket corporate merger between two bigwigs in their respective domains, in reality, it was a much more complex transaction. The transaction contemplated a merger of Sterling with TCIL but the merger was preceded by a series of inter-linked corporate actions intended to extract best results out of the proposed merger. It was a step by step integration of the business operations of Sterling into the Thomas Cook group. With a cash-out for Sterling's promoter and large shareholders by way of a secondary purchase of shares, primary infusion of capital into Sterling, mandatory open offer and then a composite scheme of demerger and merger, every trick in the book seems to have been used for getting the Deal done.

The Deal draws attention on many counts but what will be of most interest would be to take a deeper look into the complex structure of the Deal and see where it leads us.

In this lab we make an attempt to examine the transaction structure and the implications thereof. As always, we analyse the Deal from commercial, legal, regulatory and tax perspective.

1. http://www.thomascook.in/tcportal/downloads/PressReleaseTCILannouncesmergerwithSterlingHolidayFebruary_2014.pdf

2. Glossary of Terms

Acquirer / TCISIL	Thomas Cook Insurance Services (India) Limited
BSE	Bombay Stock Exchange
Companies Act	Companies Act, 1956
Competition Act	Competition Act, 2002
Contract Act	Indian Contract Act, 1872
Deal	The acquisition of Minimum Shares, and if applicable, the Top-up Shares pursuant to the SPA, the subscription to the Subscription Shares by the Acquirer pursuant to the SSA, the purchase of Equity Shares of Sterling from the Public Shareholders pursuant to the Open Offer, the Open Market Purchases, the Merger and the Demerger
Emerging Share Capital	The share capital of Sterling assuming allotment of Subscription Shares and 1,023,258 Equity Shares upon exercise of employee stock options / purchase schemes and calculated as per the Takeover Code
Equity Shares	The equity shares of Sterling of face value INR 10/-
Fairbridge Capital	Fairbridge Capital (Mauritius) Limited
Fairfax	Fairfax Financial Holdings Limited, Canada
ICDR	Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009
INR	Indian Rupees
ITA	Income Tax Act, 1961
Minimum Shares	11,592,846 Equity Shares amounting to 12.83% of the Emerging Share Capital agreed to be sold under the SPA
Offer Price	The price offered by TCISIL for any shares tendered during the Open Offer
Open Market Purchases	Purchases of Equity Shares made by TCIL on the open market, not contemplated under the SPA
Open Offer	The mandatory open offer under the Takeover Code made by TCISIL, TCIL and PAC 2 via offer letter dated May 23, 2014
PAC	Persons Acting in Concert
PAC 1	Thomas Cook (India) Limited
PAC 2	Travel Corporation (India) Limited
Public Announcement	Public announcement made by TCISIL along with TCIL to the public shareholders of Sterling on February 7, 2014 to acquire up to 23,486,264 fully paid up equity shares amounting to 26% of the Emerging Share Capital
Purchase Price	The agreed sale price of the Purchase Shares sold under the SPA
Purchase Shares	The aggregate of the Minimum Shares and the Top-up Shares
Scheme	The composite scheme of arrangement and amalgamation between Sterling, TCIL, and TCISIL under Section 391 of the Companies Act, proposed to be filed before the Bombay High Court and Madras High Court.
Sellers	Persons and entities other than TCIL, TCISIL, Travel Corporation and Sterling who were party to the SPA including: Mr. Sidharth Shankar, Mrs. Dhanlakshmi S., Mr. Rakesh Jhunjhunwala, Bay Capital Investments Ltd., Bay Capital Investment Managers Pvt. Ltd., and India Discovery Fund Limited
SPA	The share purchase agreement dated February 7, 2014 entered into between the Sellers, TCISIL and TCIL.
SSA	The share subscription agreement entered into between TCIL, TCSIL and Sterling
Sterling	Sterling Holiday Resorts (India) Limited
STT	Securities Transaction Tax
Subscription Shares	20,650,000 Equity Shares, representing 22.86% of the Emerging Share Capital
Takeover Code	Securities Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011
TCIL	Thomas Cook (India) Limited

Top-up Shares	The number of equity shares that is the lower of: (i) 6,414,831 Equity Shares held by the relevant Sellers; or (ii) such number of Equity Shares that together with the Equity Shares held by the Acquirer and PACs (including the Subscription Shares, Equity Shares acquired pursuant to Open Offer and the Minimum Shares), would cause the aggregate shareholding of the Acquirer and PACs in the Company to be equal to 74.9% of the Emerging Share Capital on the date of completion of the SPA.
USD	United States dollar

3. Details of the Deal

I. The Parties

A. TCIL

TCIL is a public listed company incorporated in India. TCIL commenced its India operations in Mumbai in 1881 as a branch of Thomas Cook and Sons, dealing in travel and travel finance related business. The company was incorporated as a company in 1978, under its current name, and was later listed in 1983. In 2012, Thomas Cook Group plc, UK (the erstwhile parent) sold its majority shareholding in Thomas Cook (India) Limited (“**TCIL**”) to Fairbridge Capital (Mauritius) Limited (“**Fairbridge Capital**”) a 100% subsidiary of Fairfax Financial Holdings Limited, Canada (“**Fairfax**”).[2]

TCIL is the leading service provider of travel and travel related financial services in India offering services that include Foreign Exchange, corporate travel, MICE, leisure travel, insurance, and visa and passport services.[3]

TCIL’s footprint currently extends to over 235 locations (including 15 airport counters) in 99 cities across India, Mauritius, and Sri Lanka. It is supported by a strong partner network of 114 Gold Circle Partners and 165 Preferred Sales Agents in over 136 cities across India.

B. TCISIL

TCISIL is a public unlisted wholly owned subsidiary of TCIL, incorporated in 1989. TCISIL largely handles TCIL’s insurance business and is also a corporate agent of Bajaj Allianz General Insurance Company Limited.

C. Travel Corporation

Travel Corporation (India) Limited is also a public unlisted wholly owned subsidiary of TCIL, incorporated in 1961. Its businesses are inbound tourism and corporate travel management.

D. Sterling

Sterling is a public listed company initially promoted by Mr. R. Subramanian. It was established in Chennai in 1986 as a private limited company. Over the years, Sterling pioneered the Vacation Ownership sector in India. It became a public company in 1989 and is currently listed on the Bombay Stock Exchange and the Madras Stock Exchange. It is a leading Timeshare/Vacation Ownership and leisure hospitality company in India. Currently, Sterling has a total inventory of 1512 rooms spread across 21 resorts in 18 scenic holiday destinations in India. The company also has 15 additional sites that are currently undeveloped.[4] Tough market conditions and stiff competition forced the company in to debt and losses in and around 2008. This brought the entry of Bay Capital, an institutional investor, who since acquiring a majority stake in 2009 has promoted Sterling. Though this round of funding clubbed with the return of CEO Ramesh Ramanathan saw a turn-around for the company, it is still today running losses and carries over INR 250 Million (USD 4.17 Million) in debt.[5]

At the time of announcement of the Deal, Sterling had various individual and institutional investors such as Bay Capital, Mr. Rakesh Jhunjhunwala, Mrs. Dhanlakshmi S. and Mr. Radhakrishna Damani who held substantial stake in it.

2. http://www.thomascook.in/pages/indus/tcportal/aboutus.html
3. *Ibid*
4. http://www.sterlingholidays.com/about/overview
5. http://www.thehindu.com/todays-paper/tp-business/sterling-holidays-debt-recast-plan/article3174806.ece

II. Chronology of Events

February 7, 2014	▪ TCIL and TCISIL executed the SSA with Sterling for the allotment and subscription of Equity Shares amounting to 22.86% of the Emerging Share Capital. ▪ TCIL, TCISIL, and the Sellers execute the SPA for the purchase of up to 19.94% of the Emerging Share Capital. ▪ The board of directors of TCIL, TCISIL, and Sterling approved the Scheme ▪ Public Announcement of the Open Offer (under the Takeover Code).
February 10, 2014	The Parties issued a detailed public statement.
February 10 - 21, 2014	TCISIL acquired a cumulative of 10.41% of the Emerging Share Capital through multiple purchases on the open market.
February 14, 2014	▪ Travel Corporation acquired 1.66% of the Emerging Share Capital of Sterling through purchases on the open market. ▪ The Parties provided CCI with notice of the Merger / Demerger as a proposed combination agreement, for its approval.
February 24, 2014	Offer Letter (under the Takeover Code) filed with SEBI.
March 5, 2014	CCI granted approval for the Deal.
March 14, 2014	Sterling allotted Equity Shares constituting 22.86% of the Emerging Share Capital to TCISIL pursuant to the SSA.
April 29, 2014	TCISIL acquired 6.80% of the Emerging Share Capital from some of the Sellers pursuant to the SPA via a block trade on BSE.
May 21, 2014	CCI imposed a penalty of INR 100 Million on TCIL and TCISIL for the open market purchases carried out between the 10th and 12th of February, 2014.
May 30, 2014	TCISIL along with TCIL and Travel Corporation (as Persons Acting in Concert) made a mandatory Open Offer under the Takeover Code to acquire 26% of the Emerging Share Capital.
June 12, 2014	Open Offer concluded. TCISIL acquired only 0.01% of the Emerging Share Capital [6] in the open offer.
July 31, 2014	TCIL, TCISIL and Sterling filed the Scheme before the Bombay High Court and Madras High Court for approval.
September 03, 2014	TCISIL acquired 13.14% of the Emerging Share Capital pursuant to the SPA through an off-market transfer.

III. Deal Snapshot

Target	Sterling Holiday Resorts (India) Limited
Acquirer	Thomas Cook Insurance Services (India) Limited
PAC 1	Thomas Cook (India) Limited
PAC 2	Travel Corporation (India) Limited
Total contemplated acquisition	68.80% of the Emerging Share Capital of Sterling (assuming full acceptance in the Open Offer). The break-up of the total contemplated acquisition is as follows: i. 22.86% under the SSA; ii. 19.94% under the SPA; and iii. 26% - under the Open Offer.
Modes of acquisition proposed	*i. Share Subscription* TCIL, TCISIL and Sterling entered into the SSA, wherein it was agreed between the parties that TCISIL shall subscribe to the 22.86% of the Emerging Share Capital of Sterling. *ii. Share Purchase* TCIL, TCISIL and the Sellers entered into the SPA, under which it was agreed

6. Post offer advertisement issued by manager to the offer, on behalf of TCIL, TCISIL and Travel Corporation, under Regulation 18(12) of the Takeover Code.a

	that TCISIL shall purchase a minimum of 11,592,846 shares (12.83%) ("**Minimum Shares**"), and subsequently up to a total of 18,007,677 shares (ie. 19.94% of Emerging Share Capital), held by the Sellers. *iii.* *Open Offer* TCISIL along with TCIL and PAC 2, as persons made a mandatory Open Offer to acquire 26% of the Emerging Share Capital.
Total actual acquisition	TCISIL, TCIL, and PAC 2 acquired and subscribed to a total of 48,885,743 shares representing 54.88% of the Emerging Share Capital of Sterling. The details of the acquisition are as follows: i. *Share Subscription* TCISIL subscribed to Subscription Shares i.e. 20,650,000 Equity Shares, representing 22.86% of the Emerging Share Capital of Sterling. ii. *Share Purchase* TCIL and TCISIL purchased, from the Sellers, a total of 18,007,677 Equity Shares, representing 19.94% of the Emerging Share Capital of Sterling in two tranches of 6,144,343 and 11,863,334 Equity Shares respectively. iii. *Open Offer* TCISIL Acquired 10,209 Equity Shares, representing 0.01% of the Emerging Share Capital of Sterling. iv. *Open Market Purchase* TCISIL acquired a cumulative of 9,401,191 Equity Shares, representing 10.41% of the Emerging Share Capital of Sterling by way of multiple market purchases. PAC-2 acquired 1,500,000 Equity Shares, representing 1.66% of the Emerging Share Capital.
Scheme of arrangement and amalgamation	The Scheme was approved by the board of TCIL, TCISIL and Sterling under which the timeshare and resort business of Sterling will be demerged and will be transferred to TCISIL, and Sterling along with its remaining business will be merged with TCIL. Thereafter, TCISIL will be renamed as Sterling Holiday Resorts (India) Limited.
Consideration	The total consideration for the Deal is valued at INR 8700 million (USD 145 Million) which was paid partly in cash and partly by way of a share swap under the Scheme. The following are the details of the cash consideration part of the Deal: *i.* *Share Subscription* INR 1,868,618,500 (Rupees One Billion, Eight Hundred and Sixty Eight Million, Six Hundred and Eighteen Hundred Thousand, Five Hundred) INR 1868 million (USD 31.14 Million). *ii.* *Share Purchase* INR 1,764,752,346 (Rupees One Billion, Seven Hundred and Sixty Four Million, Seven Hundred and Fifty Two Hundred Thousand, Three Hundred Forty Six) INR 1765million (USD 29.41 Million). *iii.* *Open Offer* INR 1,000,482 (Rupees One Million, Four Hundred and Eighty Two) (USD 16,675). *iv.* *Open Market Purchases* ▪ INR 915,834,143 (Rupees Nine Hundred Fifteen Million, Eight Hundred Thirty Four Thousand, One Hundred and Forty Three) INR 922 million (USD 15.36 Million); and ▪ INR 147,000,000 (Rupees One Hundred Forty Seven Million) INR 147 million (USD 2.45 Milllion) Following was the equity consideration given under the Scheme: *i.* *Demerger* The entire business division and undertaking of Sterling engaged in time share and resort business shall be transferred by way of demerger from Sterling to TCISIL, in lieu whereof 116 equity shares of TCIL will be issued to the shareholders of Sterling for every 100 equity shares held by such shareholders of Sterling ("**Demerger**"). *ii.* *Merger* Sterling with its remaining business shall be amalgamated into TCIL in lieu whereof 4 equity shares of TCIL will be issued to the shareholders of Sterling for every 100 equity shares held by such shareholders in Sterling ("**Merger**").

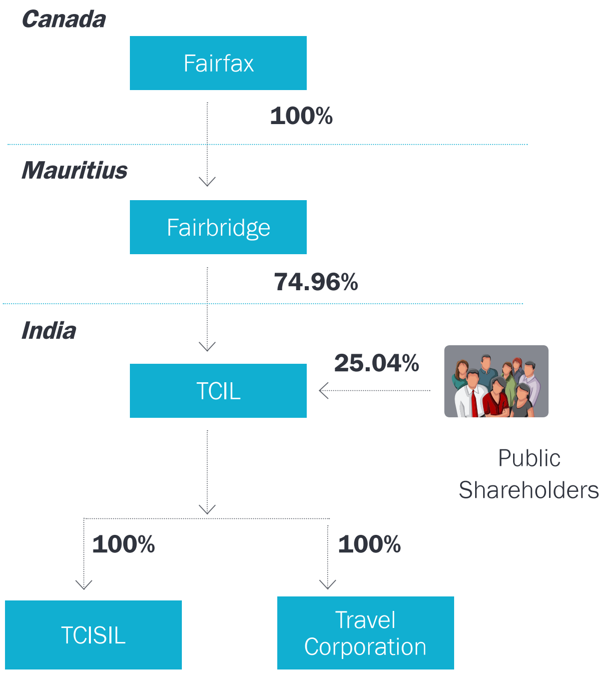
IV. Structure of the Deal

A. Funding the transaction

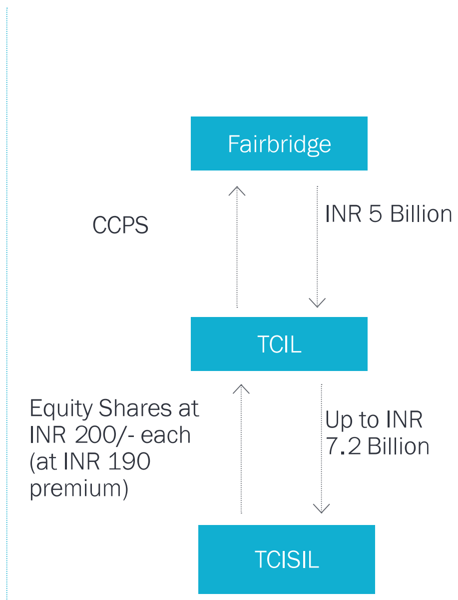
The total Deal was valued at approximately INR 8700 million[7] (USD 145 Million), involving a cash consideration of up to INR 5.93 Billion (i.e. aggregate of INR 1.88 Billion under SSA, INR 1.76 Billion under SPA and INR 2.3 Billion for Open Offer) INR 5930 million (USD 98.83 Million) and a share swap for the remaining amount under the Scheme. TCIL was funded by its immediate promoter, Fairbridge Capital, through the subscription to Compulsorily Convertible Preference Shares ("**CCPS**") worth INR 5000 million (USD 83.33 Million). The remaining amount required was funded through internal accruals.[8]

Further, funds of up to INR 7200 million (USD 120 Million) were pushed down to TCISIL by subscription to 3,60,00,000 equity shares, each of face value INR 10/- of TCISIL by TCIL at INR 200/- per share (ie. at a premium of INR 190/-).[9]

STRUCTURE



FUNDING



B. Deal Structure

The Deal was structured in a multi-layered manner involving the following steps:

i. SPA

On February 7, 2014, TCIL, TCISIL entered into the SPA with the Sellers to purchase a minimum of 11,592,846 Equity Shares ("**Minimum Shares**"), amounting to 12.83% of the Emerging Share Capital, at the rate of INR 98/- per share ("**Purchase Price**"). The SPA also gave the Acquirer the right to purchase another 6,414,831 Equity Shares, amounting to 6.80% of the Emerging Share Capital ("**Top-up Shares**") at the Purchase Price. Under the SPA, the Acquirer had the option to purchase the Top-up Shares or such lesser amount of shares, as required to bring the shareholding of the Acquirer to 74.9% of the Emerging Share Capital on the date of completion post the completion of Open Offer and acquisition under the SSA and SPA.

Thus under the SPA, TCIL and TCISIL had the right to purchase up to 19.94% of the Emerging Share Capital.

TCISIL purchased 6,414,831 equity shares, amounting to 6.80% of the Emerging Share Capital on April 29, 2014 through a block deal on BSE.[10] It further purchased 11,863,334 Equity Shares, amounting to 13.14% of the Emerging Share Capital

7. http://www.thehindu.com/business/Industry/cci-imposes-fine-on-thomas-cook-sterling-holidays/article6158129.ece
8. http://icra.in/Files/Reports/Rationale/Thomas%20Cook_r_11042014.pdf
9. http://www.thomascook.in/tcportal/downloads/ThomasCookIndiaLimitedAnnualReport2013includingnotice.pdf
10. Letter of offer dated May 27, 2014.

on September 03, 2014 through an off-market purchase.[11]

Some of the key terms of the SPA were:

i. Inter alia the following pre-conditions must have been met for completion under the SPA:
   a. Attaining required regulatory approvals; and
   b. The requisite shareholder majority and requisite creditor majority of Sterling having approved the Scheme.
ii. Creation of an escrow mechanism for the Purchase Shares and the consideration for the Purchase Shares;
iii. If the Offer Price was increased, the Purchase price would also be increased to the same extent;
iv. The Sellers have undertaken a non-solicitation obligation for a period of two years from the date of completion in relation to officers, directors, and employees of Sterling, and clients, customers, and distributors of Sterling; and
v. The rights of the Sellers to nominate three persons to be appointed as 'independent directors' by the Board shall fall away and cease to have effect upon completion of the SPA.

ii. SSA

On February 7, 2014, TCIL, TCISIL and Sterling entered into the SSA wherein it was agreed that TCISIL shall subscribe to 20,650,000 Equity Shares which would amount to 22.86% of the Emerging Share Capital. On March 14, 2014, Sterling allotted the 20,650,000 Equity Shares under the SSA.

Some of the key pre-conditions to the allotment under the SSA were:

i. the warranties of Sterling being true and correct;
ii. Sterling not having breached its covenants under the SSA;
iii. receipt of 'in-principle' approval from the stock exchanges where the equity shares of Sterling are listed with respect to listing and trading of the subscription;
iv. approval of the CCI;
v. approval of the shareholders of Sterling for the issue and allotment of the shares;
vi. receipt of a certificate from the statutory auditors of Sterling pursuant to the provisions of Chapter VII of the ICDR Regulations; and
vii. receipt of consent from certain current lenders of Sterling.

iii. Open Offer

TCIL's purchase and subscription to Equity Shares of Sterling triggered the requirement to make a mandatory open offer under the Takeover Code.[12] Accordingly, TCISIL along with TCIL and PAC-2 made an open offer to purchase up to 26% of the Emerging Share Capital (23,486,264 Equity Shares) at the rate of INR 98 per share (**"Open Offer"**).

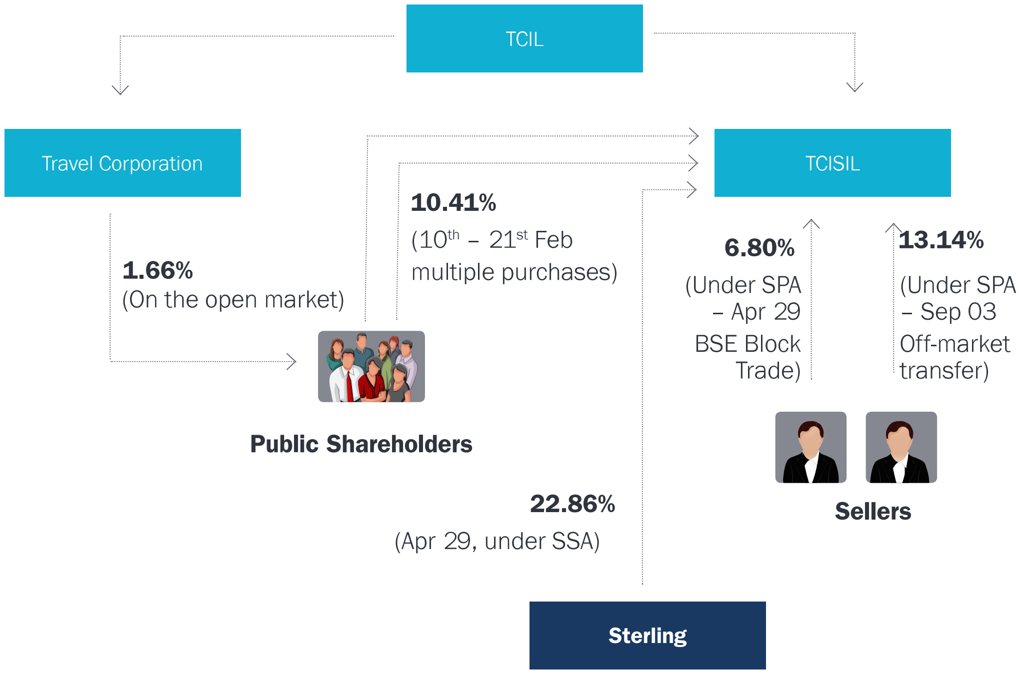
However, TCISIL was able to acquire only 10,209 Equity Shares amounting to 0.01% of the Emerging Share Capital.

iv. Market Purchases

TCISIL and TCIL did not acquire any shares of Sterling prior to the date of Public Announcement. However, TCISIL acquired Equity Shares of Sterling multiple times through purchases on the open market (**"Open Market Purchases"**) between February 10, 2014 and February 21, 2014, aggregating to 9,401,191 Equity Shares or 10.41% of Emerging Share Capital.

Further, PAC 2 acquired 1,500,000 Equity Shares of Sterling or 1.66% of the Emerging Share Capital, through an off-market purchase on February 14, 2014.

11. http://www.bseindia.com/stock-share-price/stockreach_sast.aspx?scripcode=523363&expandable=2
12. For more information regarding this, refer section on Legal and Regulatory Considerations below.



v. Scheme

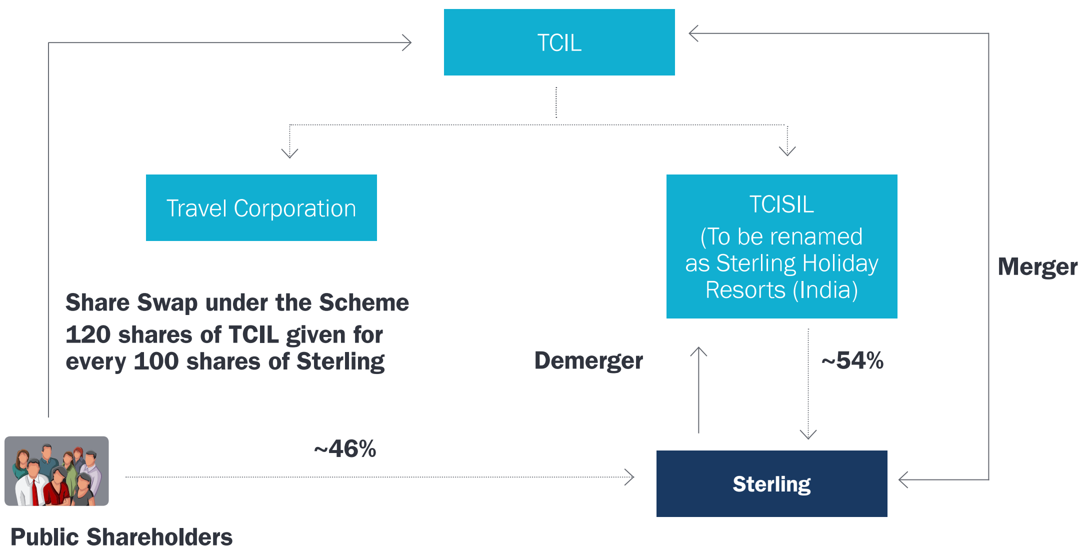
On February 7, 2014, the board of directors of all the three companies, i.e. Sterling, TCIL and TCISIL approved the Scheme pursuant to which it was agreed that:

i. the entire business division and undertaking of Sterling engaged in time share and resort business shall be transferred, by way of a demerger, from Sterling to TCISIL; and

ii. Sterling with its residual business shall be merged into TCIL.

The shareholders of Sterling would be issued 116 equity shares of TCIL for every 100 shares of Sterling as consideration for the demerger; and 4 equity shares of TCIL for every 100 equity shares of Sterling held by them as consideration for the merger.

Thus the total swap ratio arrived at was that a 120 shares of TCIL would be issued for every 100 Equity Shares of Sterling. As of this date, the Scheme has been filed by TCIL and TCISIL before the Bombay High Court; and by Sterling before Madras High Court. The Bombay High Court has passed an order approving the Scheme; however, the petition before the Madras High Court is still pending.



4. Commercial Considerations

I. What drove TCIL to this acquisition?

In 2012, Fairfax acquired around 77% of the shareholding in TCIL. TCIL has seen aggressive expansion and investment since then. In February 2013, the company acquired a controlling stake in IKYA Human Capital Solutions Limited (“**IKYA**”). IKYA is involved in human resources services, facilities management, skill development and food and hospitality services.[13] In February 2014, the company announced the merger of TCIL and Sterling.

Fairfax in its annual report for the year 2013-14 mentioned that TCIL will be an investment vehicle for investment by Fairfax in India and will not be up for sale. Mr. Prem Watsa, Chairman of Fairfax in an interview said that their investment into the TCIL is a strategic investment, he said that, *“We invested in Thomas Cook with a view that its future cash flow can be used to purchase further investments in India in the future. Thomas Cook will look for companies run by great management teams that are good clean businesses, run for the long term.”*[14]

According to the World Economic Forum’s Travel and Tourism Competitiveness Report 2013, India ranks 11th in the Asia-Pacific region and 65th globally out of 140 economies ranked on Travel and Tourism Competitiveness Index. India has been witnessing steady growth in its travel and tourism sector over the past few years. Total tourist visits have increased at a rate of 16.3 % per annum from 577 Million tourists in 2008[15] to 1057 Million tourists in 2012.[16]

‘The Spectrum of Leisure Real Estate Products in India’ a report published by the Group RCI-Cushman and Wakefield Hospitality Report[17] in 2009 said that Vacation Ownership (or timeshare) was a nascent concept in India then and it had a potential to grow at approximately 16% per annum from 2006 to 2015, which will be facilitated by the supply growth of approximately 12% per annum over the same period.

An article published in 2012, noted that the Vacation Ownership / Timeshare sector witnessed a growth of 18% during 2008-2012 period.[18]

The healthy growth projections quoted in the above mentioned reports seems to have consistently met by the companies operating in the Vacation Ownership sector. Further, the Vacation Ownership players have been enthused by the new government’s focus on building the tourism industry in India, and with economic sentiment on the upswing, the industry is expecting a boost in the growth of vacation ownership sales.[19]

II. Why did TCIL choose to invest in Sterling?

Fairbridge’s and consequently TCIL’s choice to acquire Sterling appears to have been based on the following reasons:

A. Key Management Personnel

One of the most compelling reasons for TCIL to acquire Sterling was Mr. Ramesh Ramanathan, the CEO of Sterling. Mr. Ramanathan, a veteran in the Vacation Ownership space, first joined the company in 1991 and helped in developing its business for the next six years. After this period, he spent 13 years at Mahindra Holidays (a prime competitor to Sterling). Up on his return to the Company in 2009 the Company saw a drastic turn-around from it otherwise bleak looking business future. The 2013 Fairfax annual report recently stated that, *“It is fair to say that Ramesh created the time share resort industry in India. Sterling went through some difficult times in the interim and Ramesh rejoined the company in 2011. He has already turned the company around and we expect significant growth in the future.”*[20]

B. Vertical integration

Both the companies operate in the same sector with each of them having a large travel oriented customer base. Further, industry experts believe that this

13. http://articles.economictimes.indiatimes.com/2013-02-06/news/36949804_1_fairbridge-capital-madhavan-menon-thomas-cook-plc
14. http://businesstoday.intoday.in/story/thomas-cook-india-transformation-new-owner/1/203043.html
15. India Tourism Statistics 2008, Ministry of Tourism
16. http://tourism.gov.in/writereaddata/CMSPagePicture/file/marketresearch/New/2012%20Data.pdf
17. http://www.hospitalitybizindia.com/pdfs/analysis/GRCI_Cushman_report.pdf
18. http://www.livemint.com/Companies/vCWawHHAAtcZHThJFTmvIK/Vacation-ownership-sees-small-hotels-resorts-entering-indus.html
19. http://archive.financialexpress.com/news/time-for-timeshare/1275877/0
20. 2013 Fairfax Annual Report, Available at http://www.fairfax.ca/files/Final%202013%20Annual%20Report%20from%20Printers_v001_x9wa46.pdf

could also be a move towards vertical integration. TCIL as a travel services company can start offering the hospitality options to its customers as currently provided by Sterling on standalone basis, thus helping them to plan their holidays better.

C. Sterling's debt free model and potential asset growth

Sterling has been generating positive cash flows, and it is expected that Sterling's revenue for the year ending March 2014 will be of approximately INR 1560 million(USD 26 Million), with a breakeven free cash flow. Thus, to that extent, it can be expected that Thomas Cook will not be required to further fund Sterling's operation and management cost.

In addition to the developed property in form of existing resorts, Sterling also owns 150 acre of the undeveloped land with huge development potential and TCIL's acquisition price INR 8400 million (approximately USD140 Million) is excluding the value of the unutilized land.

Further a report recently published lays down the sector specific advantages for investing in Vacation Ownership. Report says that, *"For one, its a debt-free model, as customers pay for 25 years of holidays upfront. The funds raised from the sale of vacation ownership membership plans are used for the expansion of the resort and the holiday destination network, expanding inventory to bring in more members. Second, vacation ownership companies see better year-round resort occupancies, as members tend to holiday more to utilise their membership fully."*[21]

III. Why was such a complex structure chosen?

The acquisition involved a four stage process (more specifically detailed in the " Structure of the Deal" portion of this Lab) covering a share subscription, share purchase, open offer, and merger and demerger, having the ultimate effect of merging Sterling into the Thomas Cook group. Below are the possible reasons for undertaking each step of the Deal instead of a simple merger and demerger.

A. Share Purchase and Allotment

The share purchase under the SPA, and share subscription under the SSA may have been undertaken keeping in mind the following considerations:

i. providing a lucrative exit for the Sellers at INR 98/- per Equity Share;

ii. Curbing the dilution of TCIL's promoter's shareholding upon merger (since TCIL would already hold that many more shares in Sterling pre-merger); and

iii. To gain control over the Merger / Demerger process and ease the grant of Court approval for the same. An intra-group restructuring would be subject to much less scrutiny than the merger of two entirely separate public listed companies.

Lastly, the apparently defining consideration to the acquisition of shares prior to the Merger / Demerger is TCIL's intention to not distribute its share capital to large institutional investors (who held over 40% of Sterling[22]) in order to continue to use TCIL as an investment vehicle in India.

B. Merger / Dermerger

In addition to the preferential allotment and acquisition of shares TCIL opted to proceed with the Merger / Demerger, despite already holding a promoter stake of 54.88% of the Emerging Share Capital. The reasons for this could be the want to privatize the timeshare entity allowing TCIL to deal with it and its assets more flexibly.

Further the choice to proceed with the Scheme and effect both a merger and demerger allows the group the following benefits:

i. Retains the name, and consequently the goodwill of both entities;

ii. Allows for management, and growth of Sterling undertaking as a separate unit; and

iii. Transfers the asset heavy undertaking into TCISIL, allowing TCIL to remain asset light, and well poised as an investment vehicle.\

There also appears to be an active choice on the part of TCIL to keep Sterling as a separate unit, retaining its name and management under the leadership of Mr. Ramanathan. Though even after the merger of TCIL and Sterling, Sterling's business could have been operated as a separate department / undertaking within TCIL, this split structure allows Sterling and TCIL to retain their respective names, and goodwill connected to the same.

Lastly, as detailed in the Section on the Tax Considerations of the Deal (*infra*), the merger and demerger was also a tax efficient means of carrying

21. http://archive.financialexpress.com/news/time-for-timeshare/1275877/0
22. Shareholding of Sterling as of December, 2013

out the transfer of the numerous heavy assets of the Sterling to TCISIL.

IV. What are the benefits for Sterling and its institutional investors?

The business of Sterling tremendously benefits from the Deal, having become a debt free company with a clean slate, and having retained much of its own identity and management. With the backing of TCIL and the Fairfax group behind it, which should be able to provide it with sufficient funding for future projects and growth, Sterling is now well placed to take on the growing hotel and timeshare markets. [23]

The institutional investors were provided with an exit at a price that was 5% higher than the average market price at the time of signing the SPA.

The greatest winners in the scheme of the Deal appear to be the investors/shareholders of Sterling who retained their shares beyond the Open Offer. Soon after the Open Offer closed the market price of Sterling shares shot-up, and even touched 200% of the Offer Price in the months that followed. A number of these shareholders and investors, have opted to liquidate their holding at this higher price than wait to be allotted TCIL shares under the Consolidated Scheme. BSE has in fact recorded 5 block trades from September to December including trades by Bay Capital.

23. http://www.indiahospitalityreview.com/news/debt-free-sterling-holidays-plans-expand/12819

5. Legal and Regulatory Considerations

I. Did the Deal require any regulatory approvals?

A. FIPB Approval

Under the FDI Policy, 100% foreign direct investment ("**FDI**") is allowed in case of resorts, hotels under the automatic route i.e. without prior approval either of the Government or the Reserve Bank of India, and there are no other restrictions on FDI in the hotel and tourism.[24]Thus, even though TCIL is a foreign owned company, and offshore funding was brought in for the Deal, FIPB approval was not be required for the Deal.

However, as part of the Deal, TCISIL will also acquire large amounts of undeveloped immovable property. Active steps towards developing this immovable property *towards hotels or resorts* will have to be taken by TCIL soon, so as to not appear to be dealing in real estate, which is heavily restricted and regulated under the FDI Policy.

B. Competition Commission Approval

Under the Competition Act any person or enterprise proposing to enter into a combination transaction must provide notice of the same to the CCI, who will then approve the transaction if it is found to not have an adverse effect on competition in the country.[25]

The Parties provided the CCI with notice on February 14, 2014 of the Merger/Demerger proposed and disclosed (though claimed exempt) the SPA, SA, proposed Open Offer, and the purchase of shares of Sterling on the open market (amounting to 9.93%) carried between Feb 10, 2014 and Feb 12, 2014.

The CCI granted its approval to the Merger/ Demerger on March 5, 2014.[26]It found that the Deal would not have an adverse impact on competition in the relevant market which was found to be hotel and travel related services. This was based on the fact that the business of hotel services across India is relatively fragmented and there are various channels for availing the hotel services, along with the presence of a large number of big players in the market.

C. SEBI Approval

Pursuant to Clause 24(f) of the Listing Agreement all listed companies must file any scheme of merger/ amalgamation proposed to be filed before any Court or Tribunal under Sections 391-394 of the Companies Act with a the Stock Exchange for its approval.

The draft Scheme was filed on with NSE on March 29, 2014. SEBI however returned the scheme to the Parties because as on March 29, 2014 the details of shareholding were not yet crystalized in light of the pending Open Offer, and completion of the SPA, which was likely to change the shareholding.

On July 26, 2014 a revised Consolidated Scheme was finally approved by the market regulator.

II. What was the price discovery mechanism under each leg of the Deal and was it in compliance with law?

A. Preferential Issue of Shares

Because Sterling is a Listed Company, the norms under the ICDR had to be followed in determining the price of the allotment of fresh equity shares ("**Allotment Price**"). Regulation 76 of the ICDR lays down that in the case where the equity share of a company have been listed on a recognized stock exchange for more than 26 weeks, the Allotment price shall be not less than the higher of these two:

i. The average of the weekly high and low of the volume weighted average price of the related equity shares quoted on the recognised stock exchange during the twenty six weeks preceding the relevant date; or

ii. The average of the weekly high and low of the volume weighted average prices of the related equity shares quoted on a recognised stock exchange during the two weeks preceding the relevant date.In the Allotment Price of INR 90.49 was reached in compliance with paragraph (i) above.

24. Paragraph 6.2.11 of the Foreign Direct Investment Policy of India, 2014
25. Section 6(2) Competition Act, 2002
26. Combination Registration No. C-2014/02/153, available at http://www.cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-02-153.pdf

B. Open Offer under the Takeover Code

For any open offer under the Takeover code, the price offered for any shares to be tendered (**"Offer Price"**) must be reached based on a valuation process. As per Regulation 8 of the Takeover Code, the Offer Price had to be no lower than the highest of the following:

i. The highest negotiated price per share under the SSA or SPA

ii. The volume weighted average price paid by the Acquirer and PACs during the 52 weeks immediately preceding the Public Announcement

iii. The highest price paid for any acquisition by the Acquirer/PAC in the 26 weeks preceding the date of the Public announcement.

iv. The volume weighted average market price of the Equity Shares of Sterling for a period of 60 trading days immediately preceding the date of the Public Announcement as traded on BSE.

Since the Purchase Price of INR 98/- was the highest of the above, this was the Offer Price under the Open Offer.

C. Share Swap under the Consolidated Scheme

In conformity with SEBI circular dated February 4, 2013 the scheme and valuation of the share swap must have been approved by the Company's Audit Committee taking in to consideration a Valuation Report from an independent chartered accountant.

III. Is the non-solicitation clause in the SPA enforceable in India?

A non-solicitation clause prevents a person from indulging in a business with company's employees or customers against the interest of the company. Although non-compete clauses may be considered unenforceable if such clauses are in restraint of trade as per Section 27 of Contract Act, usually non-solicitation clauses are enforceable in India on a case to case basis.

IV. Why did the Competition Commission fine them INR 10 Million?

Although approval for the Deal was granted, the CCI found that the Open Market Purchases, which were a part of the Deal, were consummated prior to providing notice to the CCI. This was found to be in contravention of the Competition Act and thus a penalty of INR 1,00,00,000/- was imposed on the Parties.

The CCI's order was based on the finding that the Open Market Purchases between the 10th and 12th of February were inherently related to the Scheme and other acquisitions and could not be viewed isolated from the entire acquisition. It was further clarified that the test for determining a composite combination is either inter-dependence or inter-connection of transactions. In this case the Open Market Purchases were found to be inter-connected to the other transactions. Because Section 6(2) requires an acquirer to give the CCI notice of the proposed transactions, and the Open Market Purchases had been consummated before notice was provided to the CCI, these transactions were found to be in violation of the provision.

V. Why did the Acquirers make an Open Offer on May 23, 2014, and could it have been avoided?

As per Regulation 3(1) of the Takeover Code, an acquirer together with persons acting in concert cannot acquire shares or voting rights in a target company which would entitle them to exercise 25% or more of voting rights in such target company without making a public announcement of an open offer. Further, Regulation 4 of the Takeover Code states that irrespective of any acquisition of shares or voting rights, if the acquirer directly or indirectly acquires control over a target company, then it must make a public announcement of an open offer for the acquisition of shares from the public shareholders.

As per the Takeover Code, such open offer must be at least for 26% of the total share capital of the target company calculated as of the tenth date from the closure of the tendering period and after factoring all potential increases contemplated during the offer period.

The SPA and SSA wherein the Acquirers contemplated an acquisition of approximately 42.8% of the Emerging Share Capital of Sterling triggered the open offer obligation under Regulations 3(1) and 4 of the Takeover Code.

The Open Offer could have been avoided if the acquisition was structured entirely through a scheme of merger or demerger sanctioned by the Court, as such acquisitions are exempt under Regulation 10(1)(d) of the Takeover Code.

VI. How was TCIL able to consummate the preferential share allotment and parts of the share purchase during the Open Offer?

Under Regulation 22 of the Takeover Code if an acquirer deposits in an escrow account a cash amount equal to 100% of the consideration payable under the open offer, assuming full acceptance of the offer, the acquirer may after the expiry of 21 days from the date of the detailed public statement, complete or consummate the acquisition of shares contemplated.

The Deal being well funded, allowed the acquirers to deposit in the escrow account (under Regulation 17) a cash amount equal to 100% of the consideration possibly payable under the Open Offer assuming full acceptance of the offer. Because of this, the Acquirers were able to exercise rights with respect to the shares allotted/acquired under the SPA and SSA with effect from March 31, 2014.

VII. What other approvals did the parties require?

A. Preferential Issue of Shares

Because Sterling is a listed company, as mandated under Regulation 72 of the ICDR, the shareholders of Sterling had to pass a special resolution, approving the preferential allotment.

B. Scheme

In order to proceed with the Scheme Sterling, TCIL, and TCISIL would all have required the consent of 75% of their the total shareholders and every class of shareholders, as well as the consent of 75% of all creditors and every class of creditors.

Further, the Scheme will require the sanction of the relevant Company Court(s) in order to come into effect.

All three Companies have procured the consents of their respective shareholders and creditors. The Consolidated Scheme has also already received the sanction of the Bombay High Court, but a petition for the sanction of from the Madras High Court is still pending.

Further, under SEBI Circulars dated February 4, 2013 and May 21, 2013, the consent of two thirds of the public shareholders:

i. if under the scheme of arrangement / amalgamation additional shares are allotted to promoter/promoter group; or

ii. the scheme of arrangement involves the listed company and any other entity involving the promoter/promoter group; or

iii. the parent listed company has acquired the equity shares of the subsidiary, by paying consideration in cash or kind in the past to any the shareholders (promoter/promoter group) of the subsidiary and thereafter the same subsidiary is merged with the parent listed company under the scheme.

Because out the subscription to Equity Shares and share purchases (under the SPA and otherwise), as on the date of filing the merger, TCISIL held approximately 54% of Sterling. Thus both the merger and the demerger involved an arrangement with Sterling's promoter group, and thus required half of the public shareholders consent. [27]

27. SEBI Circular CIR/DIL/8/2013 dated May 21, 2013

6. Tax Considerations

I. What are the Tax Implications of the Deal?

A. Stage 1: Share Purchase under the SPA

Any capital gains from the sale of shares would be subject to tax under the Income Tax Act, 1961 (**"ITA"**) unless the shares sold can be classified as a long-term capital asset (ie. it was held for more than 1 years preceding its sale), and the transaction through which it is sold is chargeable to securities transaction tax (**"STT"**) which is levied by the stock exchange at the time of transfer.

Under the SPA a portion of the shares amounting to approximately 13.14% of Emerging Share Capital were sold off the market. Thus any gains arising from the sale of these shares would be taxed at 10% (exclusive of surcharge and education cess).

All other shares purchased under the SPA are likely to be exempt from taxation, provided they were held by the sellers for 3 years preceding the sale.

B. Stage 2: Share Subscription

Since the issuance of shares is by way of a preferential allotment there will be no incidence of tax on the Parties

C. Stage 3: Open Offer and Open Market Purchases

The public shareholders of Sterling, who tendered their shares in the Open Offer, would be subjected to capital gains tax on the sale of the Equity Shares held by them in Sterling, respectively. If the public shareholder held shares for a period of 12 months or less, it would be taxable as short term capital gains, while if shares were held for a period longer than 12 months, it shall be taxable as long term capital gains.

The public shareholders who sold their shares in open market will be exempt from tax on long term capital gains tax and will be subject to tax on short term capital gains.

D. Stage 4: Merger and Demerger

While any income from the sale of an asset or undertaking is usually subject to taxation, the ITA under Section 47 exempts any transfer from the amalgamating company/ demerged company to the amalgamated/resulting company by way of a scheme of amalgamation or demerger. In order to avail of this exemption scheme must meet the requirements of an amalgamation / demerger, as under the ITA.

Merger: In order to qualify as an amalgamation under the ITA the following conditions have to be met:

- All the property and liabilities of amalgamating company must become the property and liabilities of the amalgamated company by virtue of the amalgamation.
- The shareholders holding not less than 75% in value of shares in the amalgamating company (apart from the shares already held by the amalgamating company) must be shareholder in the amalgamated company.

Additionally, in order to be for the transfer to be tax neutral for the shareholders of the amalgamating entity, the only consideration that can be received by him is the allotment of shares in the amalgamated entity.

Demerger: In order to qualify as a demerger under the ITA inter alia the following conditions have to be met:

- All the property and liabilities of demerged company must become the property and liabilities of the resulting company by virtue of the amalgamation.
- The shareholders holding not less than 75% in value of shares in the demerged company (apart from the shares already held by the resulting company) must be shareholders in the resulting company.
- The resulting company must issue, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis.

Both the Merger and the Demerger under the Scheme were structured to meet the conditions required under the ITA to avail of the exemption. With respect to the Demerger, under the scheme

both TCIL and TCISIL have been specifically listed as the "*resulting company*" (which is allowed under the ITA) so that they may jointly meet the requirement that 75% of all the other shareholders of Sterling (apart from TCIL) before the demerger will be shareholders in the resulting company. Thus both the Merger and Demerger were tax neutral schemes, exempting Sterling and the existing shareholders of Sterling from any taxation.

7. Epilogue

The Deal is representative of both the bold strides seen, and to be seen from the Fairfax Group in investing in India, and a renewed vigor in the timeshare sector. The Fairfax group having now shown their defined structure appears to be hungry for what the Indian market promises and has to offer, and we can anticipate more investment moves and acquisitions from it.

The Deal was a win-win for all parties involved. The Fairfax group adds another feather to its cap, and exponentially increases its footprint in the travel and tourism sector in India; while Sterling gets a debt-free clean slate. With the financial backing of the Fairfax group, Sterling can also target more aggressive growth and faster development of its properties across the country.

Having even provided for a relatively lucrative exit option to public and institutional shareholders, it is fair to say that the Deal results in more holidaying for everyone!

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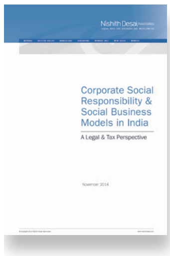

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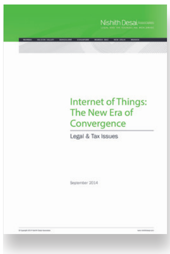

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