

COMPETITION COMMISSION OF INDIA

8th January, 2013

Combination Registration No.: C-2012/11/88

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

Proposed Combination

1. On 1st November, 2012, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) given by GSPC Distribution Networks Limited (hereinafter referred to as “**GDNL**” or “**Acquirer**”) and Gujarat Gas Company Limited (hereinafter referred to as “**GGCL**”) (hereinafter GDNL and GGCL are collectively referred to as the “**parties to the combination**”).
2. The notice relates to the proposed acquisition of 65.12 per cent of the equity share capital of GGCL by GDNL pursuant to the execution of a Share Purchase Agreement on 3rd October, 2012 between BG Asia Pacific Holdings Pte. Limited (hereinafter referred to as “**BG Asia Pacific**”), GDNL and BG Energy Holdings Limited.
3. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 7th November, 2012, the Acquirer was required to remove defects/provide certain information/document(s). The response from the Acquirer was received on 23rd November, 2012. In terms of Regulation 19 of the Combination Regulations, vide letters dated 4th December, 2012 and 14th December, 2012, the Acquirer was required to furnish additional information/document(s). The complete response from the Acquirer was received on 31st December, 2012.
4. The proposed combination falls under Section 5(a) of the Act.

Parties related to the Proposed Combination

5. GDNL, a company incorporated under the provisions of the Companies Act, 1956, is a wholly-owned subsidiary of GSPC Gas Company Limited (hereinafter referred to as “**GSPC Gas**”). It has been stated in the notice that the main object of GDNL includes sale, purchase, supply, distribution, transportation of and trading in natural gas in the form of Compressed Natural Gas (hereinafter referred to as “**CNG**”) and Piped Natural Gas (hereinafter referred to as “**PNG**”). It is also stated in the notice that GDNL, being a recently incorporated company, is currently not engaged in any business activity.

6. GSPC Gas, the holding company of GDNL, is a company incorporated under the provisions of the Companies Act, 1956. Gujarat State Petroleum Corporation Limited (hereinafter referred to as “GSPC”) and Gujarat State Petronet Limited (hereinafter referred to as “GSPL”) are the promoters of GSPC Gas and hold 98.56 per cent of the equity share capital of GSPC Gas. It has been stated in the notice that GSPC Gas is engaged in the business of distribution of natural gas to customers in the form of CNG and PNG via its City Gas Distribution (hereinafter referred to as “CGD”) network in ten districts in the state of Gujarat, namely, Rajkot, Surendranagar, Kheda, Valsad, Navsari, Surat (only in Hazira), Bharuch (only in Dahej), Panchmahal, Anand and Gandhinagar.
7. GSPL, a listed company incorporated under the provisions of the Companies Act, 1956, is promoted by GSPC. GSPL, which is engaged in the business of development and operation of natural gas transmission pipelines, is presently stated to own and operate a network of 2,065 km for the transmission of natural gas in the state of Gujarat.
8. GSPC, a company incorporated under the provisions of the Companies Act, 1956, is the ultimate holding company of the GSPC Group, which, inter-alia, includes GDNL, GSPC Gas and GSPL. The Government of Gujarat holds 87.42 per cent of the equity share capital of GSPC. GSPC is stated to have presence across the entire energy value chain including oil and gas exploration, development & production, gas trading, gas transmission & distribution and power generation. Further, GSPC is stated to have 64 exploration & production blocks of which 53 blocks are in India and 11 blocks are outside India.
9. GGCL, a subsidiary of BG Asia Pacific, is a listed company incorporated under the provisions of the Companies Act, 1956. BG Asia Pacific is an indirect wholly-owned subsidiary of BG Energy Holdings Limited, which in turn is wholly owned by BG Group Plc. It has been stated in the notice that GGCL is primarily engaged in the distribution of natural gas in the form of PNG and CNG spread over a geographic area of 8,979 square km in three districts in the state of Gujarat, namely, Surat (excluding Hazira), Bharuch (excluding Dahej) and parts of Tapi in south Gujarat. Further, GGCL is also stated to operate a 73.2 km transmission pipeline network from Hazira to Ankleshwar in the state of Gujarat. As per the information provided in the notice, the Petroleum and Natural Gas Regulatory Board (hereinafter referred to as “PNGRB”) has granted GGCL’s CGD network exclusivity of twenty five years which is valid up to 31st March, 2014 and three years marketing exclusivity (from the purview of common carrier or contract carrier¹) commencing from November, 2012. BG Group plc, the ultimate holding company of the BG Group, is stated to be engaged in the businesses of exploration, development,

¹ A common carrier system implies that the capacity in a natural gas pipeline, over and above the entity’s own requirement and capacity allocated on a contract carrier basis shall be available to any other entity subject to the latter entering into a contract for transporting volume of natural gas normally for a period of less than one year.

A contract carrier system implies that the capacity in a natural gas pipeline, over and above the entity’s own requirements, shall be available to any other entity subject to the latter entering into a firm contract for transportation of a volume of natural gas for a period of minimum one year. [Source: PNGRB (Guiding Principles for Declaring or Authorizing Natural Gas Pipeline as Common Carrier or Contract Carrier) Regulations, 2009.]

production and marketing of hydrocarbons with a focus on natural gas; development of Liquefied Natural Gas (hereinafter referred to as “LNG”), facilities for import and export along with purchase, shipping and sale of LNG and Re-gasified Natural Gas (hereinafter referred to as “R-LNG”); and transmission and distribution of natural gas.

Sector involved in the Proposed Combination and the Relevant Market

10. The proposed combination pertains to the natural gas sector in India. Natural gas refers to gas² obtained from bore-holes and consisting primarily of hydrocarbons and includes (i) gas in liquid state, namely, liquefied natural gas and degasified liquefied natural gas, (ii) compressed natural gas, (iii) gas imported through transnational pipe lines, including CNG or LNG, (iv) gas recovered from gas hydrates as natural gas, (v) methane obtained from coal seams, namely, coal bed methane, but does not include helium occurring in association with such hydrocarbons. Generally, the natural gas sector comprises (a) Exploration and Production (“E&P”) of natural gas; (b) transmission of natural gas; and (c) distribution of natural gas. E&P of natural gas includes gathering, conditioning and processing of raw natural gas from the earth into saleable and useful energy forms. In addition to domestic production, natural gas is also sourced by importing LNG and converting it to R-LNG. Transmission of natural gas is the process of transportation of natural gas from the processing plant or the LNG import terminal to either a bulk consumer such as a fertilizer or power plant or to a CGD operator for onward distribution. Distribution of natural gas is the process of delivering natural gas from the transmission network to the end-consumers in the form of PNG and CNG through CGD network.
11. From the details provided in the notice, it is observed that GSPC Group is, *inter-alia*, engaged in the business of E&P, transmission of natural gas and distribution of natural gas in the state of Gujarat. GGCL, the enterprise whose shares are being acquired, is primarily engaged in distribution of natural gas and also operates a transmission pipeline network in the state of Gujarat. As GGCL is not engaged in the business of E&P of natural gas, the market for the transmission and distribution of natural gas in the state of Gujarat is considered as the relevant market for the purpose of assessment of the proposed combination.
12. The natural gas sector in India is governed by the provisions of the Petroleum and Natural Gas Regulatory Board Act, 2006 (hereinafter referred to as the “**PNGRB Act**”) and the regulations issued thereunder. The object of the PNGRB Act is to regulate refining, processing, storage, transportation, distribution, marketing and sale of petroleum, petroleum products and natural gas excluding production of crude oil and natural gas so as to protect the interests of consumers and the entities engaged in the specified activities relating to petroleum, petroleum products & natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products & natural gas in all parts of the country and to promote competitive markets and for

² Section 2(za) of the PNGRB Act, 2006

matters connected therewith or incidental thereto. Under the provisions of the PNGRB Act, PNGRB has been entrusted with various functions to protect the interest of consumers by fostering fair trade and competition; authorize entities to lay, build, operate or expand a common carrier or contract carrier and city or local natural gas distribution network; to regulate the access to common carrier or contract carrier, to regulate transportation rates for common carrier or contract carrier & access to city or local natural gas distribution network; to monitor prices & transportation rates and take corrective measures/action to prevent restrictive trade practices.

13. The PNGRB (Guiding Principles for Declaring or Authorizing Natural Gas Pipeline as Common Carrier or Contract Carrier) Regulations, 2009 envisages the concept of natural monopoly in the transportation of natural gas in view of its capital intensiveness, safety factors and for protecting consumer's interests which are best served by promoting competition and avoiding infructuous investments by optimum utilization of infrastructure of natural gas pipelines. PNGRB has also issued various other regulations from time to time governing the distribution of natural gas such as PNGRB (Exclusivity for City or Local Natural Gas Distribution Network) Regulations, 2008, which, inter-alia, provides for exclusivity to an entity for laying, building or expanding of CGD network for a period of twenty five years and three/five years exclusivity to a CGD network from the purview of common or contract carrier subject to the conditions prescribed under this regulation.

Assessment of the Proposed Combination

14. The assessment of the proposed combination is carried out in relation to the businesses, in which both GGCL as well as the GSPC Group are engaged, i.e. the market for the transmission and distribution of natural gas in the state of Gujarat.
15. As regards the market for transmission of natural gas in the state of Gujarat, it is observed that GGCL has only 73.2 km transmission pipeline, which is primarily being used for supplying gas to its own CGD network, whereas, GSPL operates 2,065 km transmission pipeline network on an open access basis and provides access to various customers in the state of Gujarat. Further, as per the publicly available information, as on 30th November, 2011, the capacity utilisation of GSPL's transmission pipelines was only 44 per cent and therefore, sufficient pipeline capacity was available on GSPL network for utilisation by the third parties on an open access basis. The policy for Development of Natural Gas Pipelines and City or Local Natural Gas Distribution Networks dated 20th December, 2006, notified by the Ministry of Petroleum and Natural Gas, Government of India, provides that the authorization for gas pipeline would be granted to an entity only if the design pipeline capacity is at least 33 per cent more than the capacity requirements of the concerned entity plus the firmed up contracted capacity (termed as total capacity) and this extra capacity would be available for use on common carrier basis by any third party on an open access and non-discriminatory basis at transportation rates

laid down by the PNGRB. Moreover, the regulations issued by the PNGRB namely, PNGRB (Guiding Principles for Declaring or Authorizing Natural Gas Pipeline as Common Carrier or Contract Carrier) Regulations, 2009, PNGRB (Access Code for Common Carrier or Contract Carrier Natural Gas Pipelines) Regulations, 2008 and PNGRB (Determination of Natural Gas Pipeline Tariff) Regulation, 2008 not only regulate access by a third party entity to common carrier on non-discriminatory basis but also determine transportation tariff. In view of the foregoing, the proposed combination is not likely to raise any adverse effect on competition in the market for transmission of natural gas in the state of Gujarat.

16. As regards the market for the distribution of natural gas in the state of Gujarat, it is observed that the CGD entities have monopoly in their respective geographical areas by virtue of the exclusivity granted under the PNGRB Act and the regulations issued thereunder. However, post-exclusivity, that CGD entity would be under an obligation to allow third party access on a non-discriminatory basis to any entity in its CGD network at network tariff determined by the PNGRB, as specified in the relevant regulations. Further, PNGRB (Access Code for City or Local Natural Gas Distribution Networks) Regulations, 2011 provides that the capacity in a CGD network for open access on cumulative basis shall be 20 per cent of the capacity of the CGD network or the quantity of the gas flowing in the CGD network, whichever is higher. It is observed that both GSPC Gas and GGCL, which are engaged in the distribution of natural gas in the state of Gujarat, operate in different geographical areas. In view of the foregoing, the proposed combination is not likely to raise any adverse effect on competition in the market for the distribution of natural gas in the state of Gujarat.
17. The Acquirer, vide its letters dated 28th December, 2012 and 4th January, 2013 has given an undertaking under Regulation 19 of the Combination Regulations that it will review the contracts entered into between GGCL and its customers to ensure that such contracts are in compliance with the provisions of the Competition Act, 2002, the PNGRB Act and the regulations issued thereunder and submit a compliance report to the Commission within six months after consummation of the proposed combination. The Acquirer has also undertaken in its letter dated 28th December, 2012 that it will comply with the provisions of the PNGRB Act and the regulations issued thereunder from time to time.

Conclusion

18. Considering the facts on record and the details provided in the notice, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.

19. This approval is without prejudice to any other legal/statutory obligations as applicable.
20. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.
21. The Secretary is directed to communicate to the Acquirer accordingly.