

COMPETITION COMMISSION OF INDIA

9th April, 2013

Combination Registration No. C-2013/03/113

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

1. On 14th March, 2013, 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**”) filed by Larsen and Toubro Limited (hereinafter referred to as “**L&T**”). The said notice was given to the Commission pursuant to the execution of a Share Purchase Agreement between L&T and Komatsu Asia Pacific Pte. Limited (hereinafter referred to as “**KAP**”) on 4th March 2013.
2. The proposed combination involves acquisition by L&T of all shares held by KAP in L&T Komatsu Limited (hereinafter referred to as “**LTK**”), a 50:50 joint venture company of L&T and KAP, so that post-combination L&T would hold 100 percent shareholding in LTK. Accordingly, post-combination, LTK would cease to be a joint venture and would come under the sole control of L&T. The proposed combination would, therefore, result in a transfer from joint control to sole control in LTK.
3. The proposed combination falls under Section 5 of the Act.
4. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011, on 19th March, 2013, L&T was informed of certain defects and incomplete information in the notice, and was asked to remove the defects and furnish the required information/document(s) to the Commission by 25th March, 2013. The required information and reply was accordingly filed by L&T on 25th March, 2013.
5. L&T, a company incorporated in India, is a technology, engineering, construction and manufacturing company with global operations, having presence in a number of key sectors. It is also engaged in the manufacture and sale of construction equipment in India. It has been stated in the notice that L&T started manufacturing hydraulic excavators in 1974. In 1998, it entered into an association with Komatsu Limited, Japan (hereinafter referred to as “**Komatsu**”), by way of a joint venture agreement, dated January 27, 1998 with KAP. While L&T’s manufacturing business unit of hydraulic excavators was transferred to LTK, the marketing of such equipment(s) remained with L&T. Currently, L&T does not manufacture any hydraulic excavator models except through LTK, and only provides marketing, distribution and after sales support services like value added maintenance contracts, for the range of hydraulic excavators being manufactured by LTK.

6. KAP, a wholly owned subsidiary of Komatsu, established under the laws of Singapore, is engaged in the business of construction and mining equipment and forklift trucks. Komatsu is a corporation organized under the laws of Japan and is engaged in the business of construction and mining equipments in addition to other businesses such as industrial machinery and vehicles, logistics, electronics and other solutions-based operations.
7. It has been stated in the notice that the joint venture partners in LTK, with a view to focus on their respective core strengths, have decided to terminate the joint venture and have agreed that L&T shall buy the entire shareholding held by KAP in LTK, so that post-combination LTK will become a 100 percent owned subsidiary of L&T. Komatsu has decided to establish its own manufacturing base in India and not manufacture products in India through the joint venture.
8. As stated, LTK, a company incorporated in India, is engaged in the business of manufacturing hydraulic excavators, also known as track-type or crawler excavators, used in the construction and mining sectors. As per the details provided in the notice, the number of hydraulic excavators sold by LTK during the period April, 2011 to March, 2012 constituted around 23 percent of the total hydraulic excavators sold in India. The other major manufacturers of hydraulic excavators in India include Telcon (Hitachi), Hyundai, Volvo, BEML, JCB India, Caterpillar India Ltd., etc. As stated in the notice, LTK manufactures hydraulic excavators, primarily using the technology provided by Komatsu, along with certain models of hydraulic excavators using its own in-house technology. Further, as per the estimates given in the notice, in the financial year 2012-13, more than 99% of the hydraulic excavators would be manufactured using Komatsu's technology. LTK sells its products in India only through L&T.
9. As per the information provided in the notice and other documents on record, pursuant to the acquisition by L&T of the entire shareholding of KAP in LTK, the technology licensed to LTK by Komatsu would be returned to Komatsu. However, as stated in the notice, in order to meet the Indian market requirements and till Komatsu establishes its own manufacturing facilities in India, L&T and Komatsu could also enter into certain transition arrangements, under which LTK or its successor company would provide contract manufacturing services to Komatsu India Private Limited (hereinafter referred to as "KIPL"), which is a 100 percent subsidiary of Komatsu in India, for some of the products to be produced by KIPL, for a period ranging between 3 to 4 years. Further, it is proposed that KIPL shall be appointing L&T to market and sell the products of KIPL and Komatsu, in India, under the marketing arrangements similar to those which exist currently and would also provide after sales support and services like value added maintenance contracts to the construction and hydraulic equipment(s) to be manufactured by KIPL.

10. Given that prior to the proposed combination, LTK manufactured most of the hydraulic excavators using the Komatsu technology and only a few using its own technology, and that L&T was only providing marketing and after sales services for hydraulic excavators to LTK and did not manufacture hydraulic excavators except through LTK, the exit of Komatsu from LTK, consequent to the proposed combination, is not likely to raise any competition concern.
11. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination, 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.
12. This approval is without prejudice to any other legal/statutory obligations as applicable.
13. This order shall stand revoked if, at any time, the information provided to the Commission is found to be incorrect.
14. The Secretary is directed to communicate to L&T accordingly.