सत्यमेव जयते

Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2013/07/126)

06.11.2013

Notice u/s 6 (2) of the Competition Act, 2002 given by:

- Mitsubishi Heavy Industries, Ltd.; and
- Hitachi, Ltd.

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

1. On 10th July, 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**"), given by Mitsubishi Heavy Industries, Ltd. (hereinafter referred to as "**MHI**") and Hitachi, Ltd (hereinafter referred to as "**HL**") (hereinafter MHI and HL are collectively referred to as the "**parties to the combination**"). The notice was given pursuant to the Joint Venture Agreement and Business Integration Agreement, which were executed on 11th June 2013, (hereinafter, both these agreements are collectively referred to as "**Agreements**") between MHI and HL.

2. 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 the "**Combination Regulations**"), vide letter dated 16th July, 2013, the parties to the combination were required to remove certain defects and provide information /document(s) in relation to the notice by 24th July, 2013. However, the parties to the combination submitted their response on 7th August, 2013 after seeking extension of time. Further, the parties to the combination also filed an additional response in continuation of, and to supplement the previous response, on 12th August, 2013. Thereafter, in

terms of sub- regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, on 16th August, 2013, the parties to the combination were required to furnish certain additional information / document(s) by 26th August, 2013. However, the parties to the combination submitted their response on 11th September, 2013 after seeking extension of time. It was noted that the information submitted by the parties to the combination was incomplete and therefore, vide letter dated 16th September, 2013, the parties to the combination were asked to furnish the complete information / documents by 23rd September, 2013. In this regard, parties to the combination submitted their response on 9th October, 2013 after seeking extension of time. On 22nd October, 2013, the parties to the Combination were further asked to provide certain additional information under sub- regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, and their response in this regard was received on 5th November 2013 after seeking extension of time.

3. As per the information given in the notice, MHI is a listed company, incorporated in Japan and is engaged in various businesses in many countries. In India, MHI operates through Mitsubishi Heavy Industries India Private Ltd and other entities, to actively pursue businesses in areas including steel structure, power plants, environmental equipment, industrial & general machinery, printing machinery, plastic processing machinery, machine tools, chemical plants, diesel engines and air - conditioning systems.

4. Further, HL is stated to be a listed company, incorporated in Japan and is engaged in various businesses in many countries. In India, HL operates through a number of subsidiaries, and sells a wide range of products ranging from power and industrial systems, industrial components & equipment, air conditioning & refrigeration equipment to international procurement of software, materials and components.

5. The proposed combination relates to the integration of the businesses of MHI and HL (operating worldwide including India) in the fields of 'thermal power generation system'; 'geothermal power system'; 'environmental equipment'; and 'fuel cells', by transferring their respective businesses in these fields to a newly incorporated joint venture entity, in which MHI and HL will hold equity interest in the ratio of 65:35 and which will be jointly controlled by MHI and HL (hereinafter referred to as the "**Global JV**"), in terms of the Agreements. However, in relation to India, it has been stated in the notice that the parties to the combination are not, directly or indirectly, involved in geothermal power system and fuel cells businesses in India and therefore, the thermal power generation system and environmental equipment businesses of MHI and HL will be integrated in India pursuant to the proposed combination.

6. The proposed combination falls under Section 5(a) of the Act.

7. As stated in the notice, the thermal power generation system business entails manufacturing and sales of various equipments that constitute the thermal power generation systems along with the design, procurement, construction and maintenance incidental to thereof. The equipments that constitute the core of the thermal power generation system, consist of Boilers; Turbines (gas turbine, steam turbine); and Generators, which are commonly referred to as BTG equipments. It has been stated in the notice that the environmental equipments are primarily used in the thermal power system business to control the impact on the environment. On the basis of the information available in the public domain and also provided by the parties to the combination, it is observed that the BTG equipments may be further sub-divided into two broad categories i.e. subcritical and supercritical equipments, based on the technology used in their manufacturing process. The supercritical equipments lead to improved plant efficiency by way of reducing fuel consumption and reduced emissions. As a result, there is a

trend of demand shift from subcritical to supercritical BTG equipments. In this regard, it is noted from the 12th Five Year Plan documents that for the 13th Five Year Plan, all coal-fired capacity addition are planned to be through supercritical units. In this context, it is observed that most of the manufacturers of the BTG equipment in India have the capacity to manufacture subcritical as well as supercritical equipments. It has also been mentioned by the parties to the combination that the same manufacturing plant can be used for manufacturing both the subcritical and supercritical boilers, without any significant switching cost. In view of the foregoing, for the purpose of the assessment of the proposed combination, the relevant market for the BTG equipment in India has been considered as a whole without any distinction between the subcritical and supercritical equipments.

8. As per the information given in the notice, in India, MHI carries out the business of thermal power generation system through its two joint ventures with Larsen & Toubro Limited i.e. L&T-MHI Turbine Generators Private Limited (hereinafter referred to as "**LMT**") and L&T-MHI Boilers Private Limited (hereinafter referred to as "**LMB**"), in which MHI holds 39 per cent and 49 per cent equity interest respectively. It has been stated in the notice that LMT is engaged in the business of steam turbines, whereas LMB is engaged in the business of manufacturing boilers, in India. As per the publicly available information, both LMB and LMT have manufacturing facilities in India.

9. HL carries out its business of thermal power generation equipment in India through its two joint ventures with BGR Energy Systems Ltd. i.e. BGR Turbines Company Private Ltd. (hereinafter referred to as "**BGR Turbines**") and BGR Boilers Private Ltd. (hereinafter referred to as "**BGR Boilers**") in which HL, directly or indirectly, holds 26 per cent and 30 per cent equity interest respectively. It has been stated in the notice that BGR Turbines is engaged in the business of steam turbines, whereas BGR Boilers

is engaged in the business of boilers, in India. HL provides technology and knowhow to these joint ventures. As per the publicly available information, both these joint ventures are in the process of setting up a manufacturing unit in India.

10. With respect to gas turbines business of parties to the combination in India, it has been stated in the notice that HL does not have any joint ventures or subsidiaries which manufacture gas turbines in India. HL sells gas turbines to the local contractors, who procure relevant components of gas turbines and construct gas turbines plants for the petroleum and petrochemical companies in India which need their own power generation facilities. Further, MHI is stated to have no sales of gas turbines in India for last many years. MHI has established a subsidiary in India, in September 2011 in order to conduct its gas turbine business in India. However, it has not executed any gas turbine project in India to date.

11. As already stated, BTG equipments constitute the core of the thermal power generation system. The assessment of the proposed combination is, therefore, based on the market of BTG equipments in India. In this regard, it is observed from the "Indian Electrical Equipment Industry Mission Plan 2012-2022" of the Ministry of Heavy Industries & Public Enterprises, the 12th Five Year Plan Documents of the Government of India and research reports published by independent agencies, that on the supply side, many national as well as international companies have either already setup or are in the process of setting up BTG equipments manufacturing plants in India. As per these documents, the present total manufacturing capacity of BTG equipment in India is about 25 Gigawatt (GW) per annum which is expected to increase to about 35-40 GW per annum over the next 2 to 3 years, once these manufacturing units commence production. On the demand side, it is observed that the likely demand for the BTG equipments is generally derived from the power generation capacity additions plans of the

Government of India as laid down through its Five Year Plans. On the basis of the planned power generation capacity additions under the 12th and 13th Five Year Plans and the "Indian Electrical Equipment Industry Mission Plan 2012-2022" of the Ministry of Heavy Industries & Public Enterprises, it is observed that there is significant overcapacity in the domestic BTG manufacturing sector which is likely to increase further over the next 2 to 3 years. This is irrespective of the fact that some of the planned capacity addition would also be through nuclear and hydro power plants. It is expected that the resultant overcapacity will translate into competition between the existing players as the competitors are likely to have spare capacity.

12. It is further observed that the private power generating companies constitute a significant part of the total demand of the BTG equipments in India. These private power generating companies are free to import BTG equipments generally, except for the Ultra Mega Power Projects, from other countries, especially from China and Korea, as against the Central and the State power generating companies who are required to procure the BTG equipments for the super critical projects from the suppliers having indigenous manufacturing facilities, as per the directives of the concerned authorities issued from time to time. Therefore, as regards the market for the BTG equipment required by private power generating companies is concerned, it is observed that competition from the imported equipments also poses a major competitive constraint to the domestic BTG equipment manufacturers.

13. It is also observed that the parties to the combination have submitted data related to the market shares of MHI and HL in the market of BTG equipments, through their respective joint ventures in India. It has been mentioned by the parties to the combination that the market share data is based on the report of McCoy, which has been compiled on the basis of the

manufacturer's self-report at the time when the orders are received by the manufacturers. It is observed from the given data that combined market share of the parties to the combination in the market for BTG equipments, through their respective joint ventures in India, is less than seven per cent and is considered to be insignificant to raise any competition concern. It is further noted that Bharat Heavy Electricals limited (BHEL), a public sector undertaking, is a significant player in the BTG equipments market, both in terms of the equipments supplied and the installed manufacturing capacity and therefore, poses significant competitive constraint in the market.

14. It is also observed that on the basis of the total domestic manufacturing capacity for the BTG equipments in India, including those plants which are likely to be operational over the next 2 to 3 years, the combined market share of MHI and HL, through their respective joint ventures in India, would be around 20 per cent. However, in light of the factors as discussed above, i.e. presence of overcapacity in the domestic BTG manufacturing sector as well as the competitive constraint posed by other significant players in the market including imports, it is considered that the proposed combination is not likely to raise any appreciable adverse effect on competition.

15. The Commission considered the notice in its meeting held on 22nd October, 2013 and 6th November, 2013 and after considering the facts on record, the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination on the basis of the factors stated in sub-section (4) of Section 20 of the Act, it 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.

16. This approval is without prejudice to any other legal/statutory obligations as applicable.

17. This order shall stand revoked if, at any time, the information provided by the parties to the combination is found to be incorrect.

18. The Secretary is directed to communicate to the parties to the combination accordingly.

(Ashok Chawla)
Chairman

(Geeta Gouri)
Member

(Anurag Goel)
Member

(M.L.Tayal)
Member

(S.N. Dhingra)
Member

(S.L. Bunker)
Member