Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2013/10/135)

20.12.2013

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

- Ultratech Cement Limited

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

1. On 07.10.2013, 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 Ultratech Cement Limited (hereinafter referred to as "**Ultratech**" or the "**Acquirer**"). The notice was given pursuant to the execution of an Implementation Agreement between Ultratech and Jaypee Cement Corporation Limited (hereinafter referred to as the "**Target**") on 11.09.2013 (hereinafter, the Acquirer and the Target are collectively referred to as the "**Parties**").

2. In terms of Regulation 14, sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 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 15.10.2013, the Acquirer was required to remove certain defects in the notice and provide additional information/document(s) by 22.10.2013. The response was received from the Parties on 14.11.2013, after extension of time as sought by the Acquirer. However, it was noted that the information submitted by the Acquirer was incomplete and therefore, vide letter dated 19.11.2013, the Acquirer was asked to furnish the complete information/documents by 26.11.2013. Further, vide another letter dated 14.11.2013, the Acquirer was asked to provide certain additional information under sub- regulation (4) of

Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations. The response from the Parties was received on 02.12.2013 after extension of time as sought by the Acquirer. Parties have further, submitted certain additional information on 06.12.2013.

3. In terms of Section 36 of the Act read with regulation 19 (3) of the Combination regulations, the Commission has sought certain information from Ambuja Cements Limited, ABG Cement Limited (hereinafter referred to as the "**ABG Cement**") and Lafarge India Private Limited (hereinafter referred to as the "**Lafarge**") relating to their cement plants in Gujarat and Rajasthan.

4. As per the information given in the notice, the proposed combination relates to the acquisition of the assets, liabilities and operations of the cement unit of the Target at Gujarat comprising, among other things, an integrated cement plant at Sewagram, including mining leases, limestone reserves, captive power plant, desalination plant, manufacturing unit for production of laminated polypropylene bags, jetty facilities, contracts, depots, marketing offices and grinding unit at Wanakbori (hereinafter referred to as the "**Target Assets**") located in Gujarat, by the Acquirer.

5. It has been stated in the notice that Parties intend that the Target Assets be transferred by way of a court sanctioned scheme of demerger under Section 391 to 394 of the Companies Act, 1956, in consideration of which, equity shares to the extent of less than 1 per cent of the Acquirer will be issued in favour of the equity and preference shareholders of the Target.

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

7. It has been stated in the notice that the Acquirer is a public listed company and is a subsidiary of Grasim Industries Limited. The Acquirer is engaged in the business of manufacture and sale of cement and readymix concrete (RMC) throughout India. The Acquirer is primarily engaged in the

manufacture of cement through 11 integrated plants, one white cement plant, one wall care putty plant, one clinkerization plant, 15 grinding units, two bulk and four coastal terminals and 102 RMC plants, spanning India, UAE, Sri Lanka, Bahrain and Bangladesh. Products manufactured by the Acquirer primarily include grey cement, white cement, RMC, Clinker, etc.

8. The Target is stated to be a public limited company wholly owned by Jaiprakash Associates Limited (hereinafter referred to as "**JAL**"). As per the information given in the notice, JAL through its various subsidiaries including the Target is engaged in manufacture and marketing of different varieties of cement in various States across India. However, the proposed combination relates only to the acquisition of Target Assets by the Acquirer from the Target i.e. cement manufacturing plant and grinding unit located in Sewagram (Kutch) and Wanakbori, Gujarat, respectively, having a combined capacity of 4.8 MTPA.

9. It has been stated in the notice that while the Acquirer manufactures both the white cement and the grey cement; the Target, including the Target Assets manufactures only grey cement and is not engaged in the manufacture of white cement. Further, within grey cement there are various forms of cement, including Ordinary Portland Cement (OPC), Portland Pozzolana Cement (PPC), Portland Blast Furnace Slag Cement (PBFSC), Rapid Hardening Portland Cement, etc. However, these different varieties of grey cement are considered to be largely interchangeable whereas white cement constitutes a different market. As already stated, Target Assets manufactures only grey cement whereas Acquirer manufactures both white as well as grey cement, therefore there is no overlap between the Acquirer and the Target Assets w.r.t. the white cement. However, w.r.t. grey cement there is an overlap between the Acquirer and the Target Assets, and therefore, the assessment of the proposed combination will be based on the market for grey cement only.

10. As per the information given in the notice, cement is considered to be a homogenous product with a low shelf life as it tends to absorb moisture and therefore, it cannot be transported over long distances. It is observed that both the cement plants to be acquired by the Acquirer are located in Gujarat and are supplying majority of the cement produced by them in Gujarat only. Therefore, the cement plants located in Gujarat and adjoining states, which are catering to significant proportion of total consumption of cement in Gujarat, may be considered for the purpose of the assessment of the proposed combination.

11. Alternatively, as cement cannot be transported over long distances therefore, a catchment area analysis, based on shipment of cement, may also be used for determination of geographic market. On this basis, it is observed that, after factoring efficiencies and transport costs, it might be feasible for cement plants within the states of Gujarat and parts of Rajasthan, Maharashtra and Madhya Pradesh to dispatch their output to the catchment areas of Sewagram and Wanakbori plants of the Target. The geographic market may be further be extended beyond the catchment area as the demand and supply conditions may result in shipment of cement from anywhere in India, if economically viable. However, considering the facts and the circumstances of the case, the Commission deems it appropriate to leave the exact delineation of geographic market open because under any alternative and "reasonable" market definition, the proposed combination is not likely to raise any appreciable adverse effect on competition. For e.g. if the geographic market is considered to be the States of Gujarat, Rajasthan and Madhya Pradesh, the Acquirer's market share in terms of installed capacity changes from 20.05 per cent to 25.37 per cent. The competitive assessment of the proposed combination on one such "reasonable" and narrower market i.e. market consisting of cement plants located in Gujarat and adjoining states, which are catering to significant proportion of total consumption of cement in Gujarat, is detailed in following paragraphs.

12. It is observed from the information given in the notice and other information available on record that during the year 2010-11, 80 per cent of total cement consumption in Gujarat was produced by the cement plants located within Gujarat, 17 per cent was supplied by the cement plants located in Rajasthan and remaining 3 per cent was supplied by cement plants located in other states. There were very minor changes in these values during the year 2011-12 as 79 per cent of total cement consumption in Gujarat was produced by the cement plants located within Gujarat, 18 per cent was supplied by the cement plants located in Rajasthan and remaining 3 per cent was supplied by cement plants located in other states. Thus, cement plants located in Rajasthan, which are supplying nearly 1/5th of the total cement consumption in Gujarat, are exercising significant competitive constraints on cement manufacturers in Gujarat.

13. It is further observed that, on the basis of installed capacity of the cement plants located in Gujarat and parts of Rajasthan which are supplying cement in Gujarat, the market share of the Acquirer and the Target Assets is approximately 25 per cent and 11 per cent respectively (for the year 2011-12). Accordingly, post combination the market share of the Acquirer will become 36 per cent approximately on such basis (for the year 2011-12). Further, on the basis of total production of cement by the cement plants located in Gujarat and parts of Rajasthan which are supplying cement in Gujarat, the market share of the Acquirer and the Target Assets is approximately 23 per cent and 8 per cent respectively (for the year 2011-12). Accordingly, post combination the market share of the Acquirer will become 31 per cent approximately on such basis (for the year 2011-12).

14. Entry of new firms is generally considered to counterbalance any attempt by the merging parties or their competitors to profit from the potential reduction in competition brought about by the merger. The new entrant, if of sufficient size, effectively disciplines the existing market participants, as size of the new entrant does matter in the markets characterised by few players. It is observed that there are likely to be new entrants in the cement

sector in the state of Gujarat and Rajasthan. It was stated by the Acquirer that ABG Cement and Lafarge are setting up cement plants in the state of Gujarat and Rajasthan respectively. In response to the communication of the Commission under Section 36 of the Act read with regulation 19 (3) of the Combination regulations, ABG Cement have submitted that the installed capacity of their cement plants is 6 MTPA, out of which plant capacity up to 2 MTPA has been commissioned and balance capacity of the plant is expected to be commissioned by September, 2014. Similarly, the information provided by Lafarge on their website and their response shows that they have expanded the capacity of their cement plant in Chittorgarh, Rajasthan from 1.6 MTPA to 2.6 MTPA. This has been commissioned in September, 2013. The entry of ABG Cement in Gujarat and expansion by Lafarge in Rajasthan will increase the number and effectiveness of competitors in the market.

15. It is also observed from the information given in the notice that during the year 2012-13, the capacity utilization rate of the Target Assets was 65 per cent approximately (54 per cent in the first quarter of financial year 2013-14) whereas average effective capacity utilization, over the last four years, of cement plants of Acquirer in the state of Gujarat has been around 95 per cent. It has been submitted by the Acquirer that it intends to introduce and utilise its processes and core competence to increase the capacity utilization of the Target Assets thereby increasing overall economic efficiency in production and increase the overall quantity of cement in the market for grey cement. It has also been stated that the location of the Target Assets will reduce lead time to customers.

16. The Commission considered the notice in its meeting held on 20.12.2013 and after considering the facts on record, the details provided in the notice by the Parties 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.

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

18. This order shall stand revoked if, at any time, the information provided by the Acquirer and the Target is found to be incorrect.

19. The Secretary is directed to communicate to the Acquirer accordingly.

Sd/-
(Ashok Chawla)
Chairman

Sd/-
(Geeta Gouri)
Member

Sd/-
(M. L. Tayal)
Member

Sd/-
(S. N. Dhingra)
Member

Sd/-
(S. L. Bunker)
Member