COMPETITION COMMISSION OF INDIA

Fair Competition
For Greater Good

(Combination Registration No. C-2015/02/246)

10.04.2015

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 17.02.2015, 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 ("Act"), filed by UltraTech Cement Limited ("**Ultratech**" **or** "**Acquirer**") pursuant to execution of an Implementation Agreement ("**IA**"), between Ultratech and Jaiprakash Associates Limited ("**JAL**"), on 23.01.2015. (Hereinafter Ultratech and JAL are referred to as the "**Parties**").

2. The proposed combination relates to transfer of business, assets and operations of two cement plants (including captive power plants), located at Bela and Sidhi in Madhya Pradesh ("**Target Assets**"), owned by JAL to Ultratech, on a going concern and on a slump exchange basis, through a scheme of arrangement under Section 391 to Section 394 of the Companies Act, 1956. As per the information provided in the notice and other details available on record, both the Bela and the Sidhi plants are integrated units with grinding capacities of 2.6 million tonnes per annum ("**MTPA**") and 2.3 MTPA respectively.

3. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as "**Combination Regulations**"), vide letters dated 25.02.2015 and 18.03.2015, the Parties were required to provide information/document(s) latest by 03.03.2015 and 23.03.2015 respectively. The Parties filed their reply to the two aforesaid letters on 10.03.2015 and 31.03.2015 respectively after seeking extension.

4. Ultratech is a listed, public limited cement manufacturing company of the Aditya Birla Group. It currently has a cement production capacity of around 60 MTPA (on an all

India basis) through its cement plants located across India. Ultratech manufactures and sells grey cement, white cement, ready mix concrete, and other building products.

5. JAL is a listed, public limited flagship company of Jaypee Group. It is engaged, *inter alia*, in manufacturing and marketing of different varieties of grey cement in various states across India. It currently has a cement production capacity of around 31 MTPA (on an all India basis) through its cement plants located across India.

6. There are two varieties of cement, i.e., grey cement and white cement. Within the grey cement, there are different varieties of cement. As stated in the notice, JAL does not manufacture white cement. The Commission in its earlier decisions has noted that different varieties of grey cement are considered to be largely interchangeable, whereas the white cement constitutes a different market. Therefore, the relevant product market in the proposed combination is defined as the market for grey cement.

7. As regards the relevant geographic market, the Commission in its earlier decisions has noted that cement being a bulk commodity, involves significant transportation costs and, therefore, the consumption of cement is generally centred around production clusters. From the perspective of demand and supply, these self-contained areas, having homogeneous conditions of competition, constitute the relevant geographic market from the point of view of competition assessment. Competition authorities generally use the Elzinga Hogarty Test ("**EH Test**") and catchment area analysis to determine the relevant geographic market. It has also been noted by the Commission in relation to the application of the EH Test that regardless of the choice of the threshold level for the purpose of the EH Test and catchment area tests, there should be sufficient cause in terms of the competitive constraints for inclusion of an additional state/area in the relevant geographic market. The said tests should be applied in a manner that ensures that the market definition thus arrived at reflects the most relevant constraints on the behaviour of the Parties. The Parties, on the basis of the EH Test, submitted that the relevant geographic market for the proposed combination would constitute the states of Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, Delhi, Haryana and Punjab. However, the Commission noted that the definition given by the Parties is too wide and does not reflect the relevant competition

constraints. The Commission, therefore, applied the EH Test to identify the areas forming part of the relevant geographic market. As the competition assessment undertaken by the Commission revealed that the proposed combination is not likely to cause any appreciable adverse effect or Competition ("**AAEC**") in any of the potential relevant markets that may be defined, the Commission decided that the question pertaining to the exact delineation of the relevant geographic market may be left open with respect to the proposed combination.

8. Considering the facts on record and the details provided in the notice given under sub-section (2) of section 6 of the Act and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act. This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.

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

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

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