

COMPETITION COMMISSION OF INDIA

14th February, 2012

Combination Registration No.: C-2012/01/26

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

1. On January 27, 2012, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice under sub section (2) Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”), of the proposed combination, from The Tata Power Company Limited (hereinafter referred to as “**TPCL**”).
2. The notice was filed pursuant to a Share Purchase Agreement executed on December 27, 2011 between TPCL, Tata BP Solar India Limited (hereinafter referred to as “**TBSL**”) and BP Alternative Energy Holdings Limited (hereinafter referred to as “**BP Holdings**”) for further acquisition by TPCL of the 51 per cent of the equity share capital of TBSL held by BP Holdings. It has been stated in the notice that in the event any other securities are issued by TBSL to BP Holdings on account of commercial and/or regulatory exigency, TPCL would acquire, as a part of the proposed combination, such other securities also from BP Holdings.
3. TBSL is a public unlisted company incorporated on November 27, 1989 under the provisions of the Indian Companies Act, 1956. It is engaged in the business of design, development, manufacture, marketing and after sales service of solar cells, solar modules, solar power generating systems, solar power heating systems, engineering, procurement and construction (hereinafter referred to as “**EPC**”), operation and maintenance of solar power plants. TBSL has a cell manufacturing capacity of 84 MW per year and module manufacturing capacity of 125 MW per year and it directly markets its products in India as well as in



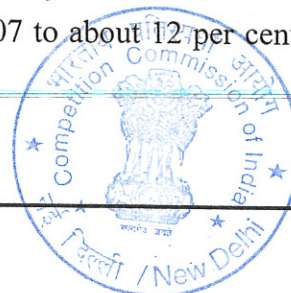
various other countries including those belonging to the SAARC region. TBSL was originally established as a joint venture company pursuant to the joint venture agreement dated June 11, 1989 executed between Tata Exports Limited (now known as Tata International Limited) and BP (Solar) India Holdings Limited in which Tata International held 60 per cent and BP (Solar) India Holdings Limited held the remaining 40 per cent. Thereafter, the holding of BP (Solar) India Holdings Limited in TBSL was increased to 51 per cent and the shareholding of Tata International along with its affiliates was reduced to 49 per cent. Consequent to internal restructuring, the said 49 per cent stake held by Tata International and its affiliates was eventually transferred to TPCL and the 51 per cent stake held by BP (Solar) India Holdings Limited was transferred to BP Holdings. Currently, TPCL already holds 49 per cent of the equity share capital of TBSL and after the completion of the proposed further acquisition by TPCL of the 51 per cent of entire issued, subscribed and paid up share capital of TBSL from BP Holdings, TPCL will own 100 per cent of the entire equity share capital and other securities, if any, of TBSL.

4. TPCL is a company incorporated on September 18, 1919 under the provisions of the Indian Companies Act, 1913 (now regulated by the Companies Act, 1956) and its equity shares are listed on the Bombay Stock Exchange and the National Stock Exchange. TPCL is engaged in the business of generation, transmission, distribution and trading of power. As of December 31, 2011, TPCL has an installed power generation capacity of 3031 MW on a standalone basis and over 3797 MW on a consolidated basis by using thermal, hydro, geothermal, wind and solar energy.
5. The proposed combination falls under Section 5(a) of the Act.
6. As per the report of Central Electricity Authority (hereinafter referred to as "CEA"), as of November, 2011, the power sector in India has an installed generation capacity of 185496.62 MW of which the thermal power plants account for around 65 per cent, hydroelectric plants account for around 21 per cent, nuclear power plants account for 2.6 per cent and the rest i.e. around 10 per cent is accounted for by renewable energy including the solar power plants. Further, currently, the solar energy produced in India is less than 1 per cent of the total



energy demand, however, the recent technological advancement coupled with the government initiative in tapping solar energy presents an opportunity to bridge the gap in energy shortfall. It is to recognize the potential of solar energy that the government has also launched a national solar mission with plans to generate 1 GW of solar power by the year 2013, an additional 3 GW of solar power by the year 2017, and 20 GW of solar power by the year 2022. The mission inter alia provides for solar power purchase obligation mandated for power utilities, payment security mechanism, ensure availability of adequate funds etc. It has been stated in the notice that the increase in the stake of TPCL in TBSL is a result of TPCL's plans to expand in the rapidly growing energy sector in India.

7. It is observed from the information provided in the notice that TPCL is engaged in the business of generation, transmission, distribution and trading of power including solar power in India, whereas, TBSL is engaged in the business of manufacturing products which are used to convert solar energy into electrical energy and in establishment of solar power plants which includes providing operations and maintenance services for the same. Further, TBSL does not sell power nor does it have any legal rights in the power generated by the solar power plants which are erected and commissioned by it and is not engaged in the business of generation, transmission, distribution and trading of power including solar power in India. Further, TPCL does not have any direct or indirect control in any other enterprise which is engaged in business similar to TBSL. TPCL and TBSL are therefore, not engaged in production, supply, distribution, storage, sale or trade of identical or similar goods or provision of services. Further, as provided in the notice, the solar power generated through grid and non-grid system in the year 2011 was 574 MW, out of which a total of 71 MW solar power was generated using TBSL's solar power plants. Further, out of the total 71 MW solar power generated using TBSL's commissioned solar power plants, around 17 MW solar power was generated by TPCL which was ultimately routed by TPCL through grid system. Therefore, the 17 MW solar power generated by TPCL using TBSL's commissioned solar power plant amounts to only 24 per cent of the total solar power generated using TBSL's commissioned solar power plants and is less than one per cent of the total power generated by TPCL. Further as observed from the notice, due to increased demand of solar power coupled with entry of large players in this business, the share of TBSL in the total generation of solar energy has decreased from over 30 per cent in the year 2007 to about 12 per cent in the



year 2011. It is also observed that there are other prominent players in India in the business of manufacturing solar power modules and other related equipments which are used to convert solar energy into electrical energy and establishment of solar power plants including providing operations and maintenance services for the same. Therefore, though TPCL and TBSL are engaged at different stages or levels of the production chain in different markets of generation of electrical power including solar power and manufacturing products which are used to convert solar energy into electrical energy in solar power plants, their individual or combined share in the respective markets is not substantial.

8. Further, it is also observed from the information provided in the notice and other documents on record that in the business of manufacturing solar power modules and other related equipments there are other players present namely Moser Baer India Limited, Lanco Solar Private Limited, Photon Energy Systems Private Limited, EMMVEE Solar Systems Private Limited and Mahindra Solar One Private Limited etc. of which Moser Baer India Limited has a current production capacity of 170MW crystalline cells, 150 MW crystalline modules and 50 MW thin films and Lanco Solar Private Limited is also in the process of setting up manufacturing facilities for poly silicon (1250MT), wafer (80MW) and modules (50MW).
9. Based on the facts on record and the details provided in the notice filed under sub-section (2) of Section 6, it is observed that TPCL and TBSL are not engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of services. Their individual or combined share in the respective markets involving engagement at different stages or levels of the production chain is also not substantial. In view of the foregoing, the proposed acquisition of further 51 per cent of the equity share capital of TBSL and other securities, if any, by TPCL is not likely to create any adverse competition concern.
10. 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.

11. This approval is without prejudice to any other legal/statutory obligations as applicable.
12. This order shall stand revoked if, at any time, the information provided by TPCL and TBSL is found to be incorrect.
13. The Secretary is directed to communicate to TPCL accordingly.



Certified True Copy

[Handwritten Signature]
23.02.2012

BHUPENDRA SINGH
Deputy Director (FA)
Competition Commission of India
Government of India
New Delhi