



01.09.2015

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

- EMC Limited,

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

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. M.S. Sahoo
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal representative: M/s Khaitan & Co. LLP

1. On 14th July 2015, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Act given by EMC Limited (“**EMC**”), pursuant to signing of an Investment Agreement (“**IA**”) with McNally Bharat Engineering Company Limited (“**MBECL**” or **Target**) and the



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/07/293)



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Promoter group¹ of MBECL on 30th June 2015. (EMC and MBECL are hereinafter together referred to as “**Parties**”).

2. The Proposed combination relates to acquisition of 19.77 percent shareholding of MBECL by EMC. It has been stated in the notice that the said agreement also triggers an open offer under the provisions of the Securities Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“**Takeover code**”). EMC along with WMCL (one of the Promoter group companies of MBECL), are required to jointly make an open offer to the public shareholders of MBECL to acquire up to 26 percent of the shares in MBECL. According to the Acquirer, post the subscription of shares by EMC and the acquisition of the shares in the open offer, MBECL will be under the joint control of EMC and the Promoter group.
3. In this regard, it is observed that MKN Investment Private Limited (“**MKN**”), a promoter group company of EMC, subscribed 12.32% of the share capital of MBECL in the month of March 2015.
4. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) vide letter dated 3rd August 2015, Acquirer was required to remove certain defects and provide information/document(s). Acquirer submitted information on 12th August 2015 after seeking an extension of four days.
5. EMC is a public company, engaged in providing services relating to turnkey solutions/equipment for Transmission & Distribution (“**T & D**”) including supply of substations, electrical automation and electrification for power plants, cement plants etc. EMC offers turnkey solutions inclusive of design, engineering, erection, testing and commissioning including auxiliary sub-systems such as lighting and illumination and fire protection systems for transmission, distribution and railway infrastructure.

¹ According to Acquirer, Promoter group of MBECL includes following entities: McLeod Russel India Limited (“**MRIL**”), Williamson Magor & Co. Limited (“**WMCL**”), Babcock Borsig Limited (“**BBL**”), Williamson Financial Services Limited (“**WFSL**”), Kilburn Engineering Limited (“**KEL**”), Bishnauth Investments Limited (“**BIL**”), Amritanshu Khaitan



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6. MBECL is a public company listed on Bombay Stock Exchange ('BSE') and National Stock Exchange ('NSE') and is engaged in the activities *inter alia*, relating to the steel plant building sector, equipment for the aluminum industry, lead and zinc processing, manufacture and supply of port equipment, civil construction, supply of substations of capacity up to 400 KV etc.
7. In the light of information provided by the Acquirer and other documents on record, it is observed that the Parties have horizontal overlaps in the activity of supplying substations of capacity up to 400 KV, a sub-segment of the broader T&D equipment market. The Acquirer has submitted that in the activity of supplying substations of capacity up to 400 KV, the market share of EMC is in the range of 5-10 percent and the market share of MBECL is only 0-5 percent. It is further stated that there are large number of other players such as L&T Ltd. (30-35 percent), Alstom T&D India Ltd. (25-30 percent), ABB India Ltd. (12.5-15 percent), Siemens (12.5-15 percent) and KEC International Ltd. (10-15 percent), active in the supply of substations.
8. As already stated, while EMC is engaged in supplying product and services in the entire T & D sector, the MBECL is engaged only in the supply of substations up to 400 KV, which is one of the sub-segments in the broader T & D equipment segment. In this regard, it is observed that the insignificant market share of EMC ranging 0 to 5 percent in the overall T & D sector, rules out the possibility of any vertical foreclosure.
9. 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 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 any proceedings under Section 43A of the Act.
10. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.



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