



18.02.2016

Notice u/s 6 (2) of the Competition Act, 2002 given by Hindustan Colas Private Limited

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

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S.L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G.P. Mittal
Member

Legal Representatives: M/s Verus Advocates

Introduction

1. On 21.08.2015, 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 Hindustan Colas Private Limited (“**Hindustan Colas**”/“**Acquirer**”). The said notice was given to the Commission pursuant to execution of a Sale and Purchase Agreement (“**SPA**”) between Hindustan Colas and Shell India Markets Private Limited (“**SIMPL**”) on 23.07.2015 (hereinafter Hindustan Colas and SIMPL are collectively referred to as the “**Parties**”).



2. The proposed combination involves acquisition by Hindustan Colas of the Bitumen Business Plant of SIMPL located in Uluberia district of West Bengal, which is engaged in manufacturing of bitumen emulsion and modified bitumen products (“**Proposed Combination**”).
3. While filing the notice, the Acquirer submitted an undertaking under Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”) to provide certain information at the earliest; the same was filed on 28.08.2015. Further, in terms of Regulation 14 of the Combination Regulations, vide letters dated 17.09.2015, 24.09.2015, 08.10.2015 and 30.10.2015, the Acquirer was required to provide certain information/document(s). The Acquirer submitted the replies to the aforementioned letters in due course.
4. The Commission, in its meeting held on 24.11.2015 decided to seek information in terms of sub-regulation (3) of Regulation 19 of the Combination Regulations from certain competitors of the Parties (“**Third Parties**”). Vide letters dated 02.12.2015, the Third Parties were asked to provide details, with regard, *inter-alia*, to business models, state of competition, substitutability of bitumen, bitumen emulsions and modified bitumen products etc. Their responses were received accordingly (“**Regulation 19(3) Responses**”).
5. Vide letter dated 02.12.2015, the Acquirer requested the Commission to grant a personal hearing in the matter. The Commission considered the request of the Acquirer and granted a hearing on 12.01.2016. Pursuant to the hearing by the Commission, the Acquirer provided certain additional information/document(s) on 28.01.2016.

Parties to the Combination

6. Hindustan Colas is a 50:50 joint venture company of Hindustan Petroleum Corporation Limited (“**HPCL**”) and Colas S.A., France. Hindustan Colas is engaged in the manufacture and marketing of bitumen emulsions, modified bitumen and other value added bituminous products.
7. **SIMPL** is a wholly owned subsidiary of Shell Gas B.V. and sells fuel, lubricants and bitumen across India. It also runs a research and development centre and finance back-office in India which assists various Shell entities and joint ventures across the globe.



Competition Assessment

8. As stated above, the Proposed Combination involves acquisition by Hindustan Colas of the Bitumen Business Plant of SIMPL located in Uluberia district of West Bengal, which is engaged in manufacturing of bitumen emulsion and modified bitumen products. In this regard, the Commission noted that there are horizontal overlaps in the operations of the parties in bitumen emulsions and modified bitumen products. Further, one of the venture partners of Hindustan Colas, i.e. HPCL, operates in the market for bitumen, which is used in manufacturing of bitumen emulsions and modified bitumen products. Thus, apart from the aforesaid horizontal overlaps, the Commission noted and considered the vertical relationship arising from presence of HPCL in bitumen business.

Relevant Product Markets

9. The Parties had initially stated that bitumen (asphalt) and bitumen emulsions are used for similar purpose, i.e. construction and maintenance of roads. It was further stated bitumen emulsion is used for road construction and maintenance, water proofing, soil stabilization, and in many other special circumstances where cold application of bitumen is desirable. As regards modified bitumen products, it was stated that these are improved forms of bitumen and there is no essential difference in the ultimate application between bitumen and modified bitumen products. It was submitted that bitumen is used in place of modified bitumen products for manufacturing of roads in certain cases, where high performance is not required.
10. On the issue of substitutability between bitumen, bitumen emulsions and modified bitumen products, comments were invited from the Third Parties. Most of the Regulation 19(3) Responses indicated that bitumen, bitumen emulsions and modified bitumen products may constitute separate markets in terms of demand and supply side substitutability. As part of its submissions dated 28.01.2016, the Acquirer submitted that while bitumen emulsions are mainly used as a binder material in bituminous pavements for tack coat and prime coat applications in base and sub-base layers, modified bitumen products are used in road surface (wearing course) which is in direct contact with traffic.
11. The Commission, after considering the Regulation 19(3) Responses and submissions of the Acquirer dated 28.01.2016, decided that for the purpose of competition assessment of the



Proposed Combination, bitumen, bitumen emulsions and modified bitumen products may be considered as separate markets.

Relevant Geographic Market

12. Both Hindustan Colas and SIMPL have their manufacturing plants in the state of West Bengal. The Parties submitted that supplies from these plants are made to the states of Bihar, Chhattisgarh, West Bengal, Assam, Odisha, Jharkhand, Meghalaya, Mizoram, and Arunachal Pradesh. Accordingly the Parties submitted that the relevant geographic market for the purpose of competition assessment includes the aforementioned states in the Eastern and North-Eastern India.
13. The Commission observed that the Parties had included all the areas to which they have made any dispatches from their plants located in West Bengal which may not necessarily be reflective of the competitive constraints. The Commission accordingly decided to seek comments of the Third Parties on this issue. The Commission, considering the nature of industry, location of manufacturing plants, location of source of raw material (i.e. bitumen) and the responses received from the Acquirer and the Third Parties decided that the relevant geographic market may be defined as the area comprising of the states of Bihar, Chhattisgarh, West Bengal, Assam, Odisha, Jharkhand, Meghalaya, Mizoram, and Arunachal Pradesh.

Relevant market

14. Accordingly, the relevant markets for the purpose of assessment of the Proposed Combination are defined as (a) the market for bitumen emulsions in the area comprised by the states of Bihar, Chhattisgarh, West Bengal, Assam, Odisha, Jharkhand, Meghalaya, Mizoram, and Arunachal Pradesh; and (b) modified bitumen products in the area comprised by the states of Bihar, Chhattisgarh, West Bengal, Assam, Odisha, Jharkhand, Meghalaya, Mizoram, and Arunachal Pradesh.

Assessment of AAEC

15. The Commission considered the market share of the Parties in both the relevant markets in terms of installed capacity. The table below shows the market share ranges of the Parties in India based on the information provided by the Parties.



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Table 1: Market share of the Parties

Market segment	Range of market share of Hindustan Colas (Percentage)	Range of market share of SIMPL (Percentage)	Range of combined market share of the Parties (Percentage)
Bitumen emulsions	5-10	10-15	15-25
Modified bitumen products	5-10	5-10	10-20

Source: Information given by the Parties

Apart from the market shares, the Commission also took into account other factors laid down in sub-section (4) of Section 20 of the Act for the assessment of the Proposed Combination as detailed in the ensuing paragraphs.

16. The Commission noted that as per the information given by the Acquirer, there are a number of suppliers of bitumen emulsions and modified bitumen products such as Indian Oil Corporation Limited (“**IOCL**”), SAPCO Bitumen Company Limited, Bitchem Asphalt Technologies etc. in the relevant markets.

17. As regards the countervailing buyer power of the customers of the Parties, the Commission noted the submissions of the Acquirer that the end customers of their products are private and public entities engaged in road construction such as Public Works Departments, Border Roads Organization, NCC Limited etc. who place orders on lowest rate basis through a formal/informal bidding process and would be expected to have considerable countervailing buyer power.

18. As regards the entry conditions, the Acquirer submitted that production of bitumen emulsions and modified bitumen products does not involve any technological, cost or regulatory barriers. It has been stated that the technical specifications are as per standards prescribed by Bureau of Indian Standards and are easily achievable. Further, the Parties submitted that as per circular issued by National Highway Authority of India dated 27.04.2010, it has been decided that clause which restricts the participation of refineries only shall not be allowed in the specifications implying that all suppliers of modified bitumen who fulfil the requisite technical specifications can participate in tenders.



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19. As regards the likelihood of any vertical foreclosure arising from the vertical relationship of HPCL and Hindustan Colas, the Commission noted that the Proposed Combination does not seem to cause any change in market dynamics of the already existing relationship of HPCL and Hindustan Colas. Further, the Commission noted that the market for bitumen is led by IOCL with the estimated market share exceeding 60 percent in the market for bitumen in the area comprised by the states of Bihar, Chhattisgarh, West Bengal, Assam, Odisha, Jharkhand, Meghalaya, Mizoram, and Arunachal Pradesh and hence it is unlikely that the Proposed Combination would result in vertical foreclosure.
20. 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.
21. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
22. The Secretary is directed to communicate to the Acquirer accordingly.