COMPETITION COMMISSION OF INDIA

Fair Competition
For Greater Good

(Combination Registration No. C-2015/08/300)

17.09.2015

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

- **HeidelbergCement AG**

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

CORAM:

Mr. Ashok Chawla
Chairperson

Mr. S.L. Bunker
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. M. S. Sahoo
Member

Mr. G.P. Mittal
Member

Legal Representative: M/s Khaitan & Co., LLP

1. On 24.08.2015, 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 HeidelbergCement AG ("**Heidelberg**" **or** "**Acquirer**") pursuant to execution of a Share Purchase Agreement ("**SPA**") between Heidelberg and Italmobiliare S.p.A on 28.07.2015. The proposed combination involves acquisition by Heidelberg, of 45 percent shareholding of Italcementi S.p.A ("**ISPA**"), held by Italmobiliare S.p.A. (Hereinafter Heidelberg and ISPA are referred to as the "**Parties**"). Further, in pursuance to the proposed combination, Heidelberg would file a public offer for buying outstanding shares of ISPA from public in order to acquire

approximately 98.89 percent shareholding in ISPA, while ISPA would continue to hold around 1.1 percent shares.

2. 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**"), the Parties, at the time of filing of notice, were required to provide certain information/document(s). The Parties filed their reply on 28.08.2015. The Parties also submitted certain additional information on 03.09.2015.

3. Heidelberg is a global producer of cement and other construction material (such as ready mix concrete), aggregates, asphalt, etc. It is incorporated and organized under the laws of Germany. Heidelberg is present in India through its two subsidiaries, namely, HeidelbergCement India Limited ("**HCIL**") and Cochin Cements Limited ("**CCL**"). It has a cement production capacity of around 5.5 MTPA (on an all India basis) through its cement plants located in the states of Madhya Pradesh, Uttar Pradesh, Karnataka and Kerala. In India, Heidelberg, through its subsidiaries, manufactures and sells clinker and different varieties of grey cement such as pozzolona portland cement ("**PPC**") and portland slag cement ("**PSC**"), apart from trading of coal, petcoke and gypsum.

4. ISPA is also global producer of cement and other construction material (such as ready mix concrete), aggregates, asphalt, etc. It is incorporated and organized under the laws of Italy. It is present in India through its subsidiary, namely, Zuari Cement Limited ("**Zuari**"). It has 3 operational plants located in the states of Telangana, Andhra Pradesh and Tamil Nadu. Further, there are two plants at different stages of development in Karnataka and Maharashtra, giving it an operational production capacity of around 6 MTPA and capacity under development of around 4.1 MTPA in India. In India, ISPA, through its subsidiary manufactures and sells clinker and different varieties of grey cement such as ordinary portland cement ("**OPC**"), PPC and PSC, apart from trading cement products and building material like AAC blocks, admixtures etc.

5. It is noted that there are two varieties of cement, i.e., grey cement and white cement. Within the category of grey cement, there are different variants of cement such as OPC, PPC, PSC etc. As stated in the notice, the Parties do not manufacture white cement. The Commission, in its earlier decisions[1], has noted that different varieties of grey cement are considered to be largely interchangeable, whereas white cement constitutes a different market. Therefore, the relevant product market in the proposed combination is defined as the market for grey cement.

6. As regards the relevant geographic market, the Commission in its earlier decisions[2], 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 distinct relevant geographic markets from the point of view of competition assessment. Further, 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.

7. The Commission noted that there are overlaps in the operations of the Parties in Southern India. The Commission 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

[1] C-2013/10/135 - Ultratech Cement Limited/Jaypee Cement Corporation Limited; C-2014/07/190 – Holcim Limited/Lafarge S.A.
[2] Ibid

markets that may be defined, the Commission decided that 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.

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

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