COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/10/322)

**18.02.2016**

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

- JK Tyre & Industries Limited and J.K. Asia Pacific (S) Pte Ltd.

**<u>Order under Section 31(1) of the Competition Act, 2002</u>**

**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 Shardul Amarchand Mangaldas & Co., New Delhi

**Introduction**

1. On 12.10.2015, 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 JK Tyre & Industries Limited ("**JK Tyre**") and J.K. Asia Pacific (S) Pte Ltd**.** ("**JKAPL**"), a subsidiary of JK Tyre (hereinafter JK Tyre and JKAPL are collectively referred to as the "**Acquirers**"). The said notice was given to the Commission pursuant to the execution of a binding term sheet ("**Binding Term Sheet**") entered into between JK Tyre, JKAPL, Cavendish Industries Limited ("**CIL**"/ "**Target**") and Kesoram Industries

Limited ("**KIL**"/ "**Seller**") on 12.09.2015 (hereinafter JK Tyre, JKAPL, CIL and KIL are collectively referred to as the "**Parties**"). Subsequently, the Parties executed a Share Purchase Agreement ("**SPA**") on 28.10.2015 in this regard.

2. The proposed combination relates to acquisition of 100% of the issued share capital of CIL by the Acquirers (either directly or through one or more associate/group companies) ("**Proposed Combination**").

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 letter dated 30.10.2015, the Acquirers were required to provide certain information/document(s) by 05.11.2015. The Acquirers submitted their response on 18.11.2015, after seeking extension. However, it was noticed that the said response was incomplete; therefore, another letter dated 01.12.2015 was issued to Acquirers to file complete response by 08.12.2015. The Acquirers submitted their response on 11.12.2015 after seeking extension, which was also incomplete.

4. Vide letters dated 22.12.2015, the Commission sought certain information under sub-regulation (3) of Regulation 19 of Combination Regulations from certain competitors of the Parties ("**Competitors**"), Original Equipment Manufacturers ("**OEMs**") and All India Tyre Dealers Federation ("**AITDF**") (hereinafter Competitors, OEMs and AITDF are collectively referred to as the "**Third Parties**"). The Third Parties were required to provide details, *inter-alia* with regard to relevant product market, state of competition, responses to which were received.

5. In view of the responses received from Third Parties, another letter dated 25.01.2016 was issued to the Acquirers to provide complete information sought in the letter dated 01.12.2015, which was provided on due date. Apart from various responses, the Acquirers filed certain additional voluntary submissions on 30.11.2015 and 16.02.2016.

**Parties to the Combination**

6. JK Tyre, a listed company incorporated under the Companies Act, 1956, is engaged in manufacturing of tyres for various vehicles such as trucks and buses, passenger cars, Light Commercial Vehicles ("**LCVs**")/Small Commercial Vehicles ("**SCVs**"), farm vehicles, industrial and speciality vehicles and off the road ("**OTR**") tyres. It has six tyre manufacturing plants located in India (3 plants in Karnataka and 1 plant each in Madhya Pradesh, Rajasthan and Tamil Nadu) and three plants located in Mexico.

7. JKAPL is a wholly owned subsidiary of JK Asia Pacific Ltd (Hong Kong) which, in turn, is a wholly owned subsidiary of JK Tyre. JKAPL is stated to be an investment vehicle and not engaged in the manufacture or supply of any products in India.

8. CIL, incorporated under the Companies Act, 2013, is a subsidiary of KIL. CIL is engaged in manufacturing of tyres for various vehicles such as trucks and buses, LCVs/SCVs, farm vehicles and two-wheelers. It operates a tyre manufacturing plant located at Laksar, Uttarakhand ("**Laksar Tyre Undertaking**"). As stated in the notice, Laksar Tyre Undertaking was transferred to CIL by KIL as a going concern on a slump sale basis pursuant to a Business Transfer Agreement dated 26.03.2015.

9. KIL, a listed company incorporated under the Companies Act, 1956, is primarily engaged in manufacturing of tyres, cement and rayon. As regards its tyre operations, it has two plants located in India (one plant each in Odisha and Uttarakhand). Post-combination, as stated in the notice, KIL will continue to be present in all tyre segments it currently operates in.

**Competition Assessment**

*Relevant Product Market*

10. The Commission observed that the Proposed Combination pertains to tyre industry in India. The Commission noted that for the purpose of competition assessment, tyre market can be classified/sub-classified in various narrower markets based on demand and supply side substitutability. Accordingly, the Commission noted the following classification of tyres:

    i. *Classification on the basis of type of vehicles*: The Commission noted that there is no demand side substitutability between tyres for different vehicle segments (i.e. between tyres for trucks, buses, LCVs etc.) or even the tyres for different vehicles forming part of the same vehicle segment (different types/models of LCVs etc.). However, as regards supply side substitutability, the Commission observed that the manufacturers can easily substitute between manufacturing of tyres for different vehicles forming part of the same vehicle segment (by making minor adjustments in the machine software and using different moulds) and further in certain cases between different vehicle segments also (such as between truck/bus tyres and between LCVs/SCVs).

    ii. *Classification on the basis of type of technology used in manufacturing of tyres:* The Commission noted that based on technology, tyres can be classified into two types - radial tyres and bias tyres. Bias tyres are the traditional tyres and radial tyres are new generation tyres. It is noted that radial tyres have longer tread life, better steering control, lower rolling resistance and its prices are 25-30% higher than bias tyres. The Commission observed that there is limited demand side substitutability between bias and radial tyres despite similar end use, primarily because of differences in characteristics and prices between the two types of tyres. Further, the Commission observed that the manufacturing of radial and bias tyres requires different equipment and material which limits the supply side substitutability between the two.

    iii. *Classification based on type of customers:* The Commission noted that tyres are sold to two categories of customers viz., (i) OEMs and (ii) customers in replacement segment. The Commission observed that there is no demand side substitutability between the two types of customers owing to different competition conditions on account of differences in nature/volume of demand, methodology of procurement, countervailing buyer power, etc.

11. In accordance with various classifications and sub-classifications noted above and overlaps between the activities of the Acquirers and the Target, the Commission delineated following relevant product markets for the purposes of competition assessment of the Proposed Combination:

i. Market for truck and bus bias tyres sold to OEMs ("**TBB OEMs**")
ii. Market for truck and bus bias tyres sold to replacement customers ("**TBB Replacement**")
iii. Market for truck and bus radial tyres sold to OEMs ("**TBR OEMs**")
iv. Market for truck and bus radial tyres sold to replacement customers ("**TBR Replacement**")
v. Market for bias tyres for LCVs/SCVs sold to OEMs ("**LCVs/SCVs OEMs**")
vi. Market for bias tyres for LCVs/SCVs sold to replacement customers ("**LCVs/SCVs Replacement**")
vii. Market for farm bias tyres sold to OEMs ("**Farm Bias OEMs**")
viii. Market for farm bias tyres sold to replacement customers ("**Farm Bias Replacement**")

*Relevant Geographic Market*

12. As regards relevant geographic market, the Acquirers submitted that it comprises of the whole of India. In support of their definition of relevant geographic market, the Acquirers have submitted, *inter-alia*, that there is free movement of tyres across India and there are no significant differences in sales tax across states. The Acquirers further stated that their products are available all over India through various dealers and they follow uniform price list across the country. In view of above, the Commission is of the view that the relevant geographic market may be defined as India.

**Assessment of AAEC concerns**

*TBB OEMs*

13. *Market shares:* It is observed that the pre-combination market share of the Acquirers in the TBB OEMs market in India is in the range of 30-35 percent and that of CIL is in the range of 5-10 percent, thus resulting in a market share in the range of 40-45 percent, post combination.

14. *Constraints exerted by competitors:* The competitors of the Acquirers include tyre manufacturers such as Apollo (30-35 percent), CEAT (10-15 percent) and MRF (10-15 percent) with significant market shares. Based on responses of various OEMs, the Commission noted that they are in a position to impose considerable competitive constraints on the Acquirers post-combination.

15. *Countervailing buying power:* The Commission noted that as per the information given in the notice and confirmed by OEMs (in response to letters issued under sub-regulation (3) of Regulation 19 of the Combination Regulations), OEMs engage in multi-sourcing from various tyre manufacturers. From the data supplied by different OEMs, the Commission observes that the proportion of tyres procured from different manufacturers varies substantially from year to year.

16. *Impact of radialisation:* It is noted from the responses received from Competitors that the share of bias tyres in Truck/Bus OEM market is declining due to the increasing preference for radial tyres. The data obtained from OEMs shows that while procurement of radial tyres is growing rapidly, growth in bias tyres is either negative or considerably slower. As such, it is noted that, in a declining bias tyre market, any attempt to raise prices seems to be unlikely.

17. In view of the constraints exerted by the Competitors, countervailing buyer power with OEMs, the trend of radialisation, the Commission is of the opinion that the Proposed Combination is not likely to give rise to AAEC in the TBB OEMs market in India.

*TBB Replacement*

18. *Market shares:* It is observed that the pre-combination market share of the Acquirers in the TBB Replacement market in India is in the range of 15-20 percent and that of CIL is in the range of 10-15 percent, thus resulting in a market share in the range of 25-30 percent, post combination.

19. *Constraints exerted by competitors:* The competitors of the Acquirers include tyre manufacturers such as Apollo (25-30 percent), MRF (25-30 percent) CEAT (10-15 percent) and with significant market shares, who are in a position to impose considerable competitive constraints on the Acquirers, post-combination.

20. *Countervailing buying power:* The Commission noted that some of the customers in this segment are the State Road Transport Corporations ("**SRTCs**") and large truck/bus fleet owners. As per the information given in the notice and that obtained in response to letters issued under sub-regulation (3) of Regulation 19 of the Combination Regulations, it is noted that these customers exercise some countervailing buyer power in the procurement process. The Commission noted that the tyre manufactures sell tyres to multi-brand dealers who can substitute one brand for another and end consumers have the option of choosing across brands from dealer stores.

21. *Impact of radialisation:* The Commission noted that the trend of radialisation applies to this segment as well and as such, it is noted that any attempt to raise prices seems to be unlikely.

22. In view of the constraints exerted by the Competitors, presence of countervailing buyer power and the trend of radialisation, the Commission is of the opinion that the Proposed Combination is not likely to have an AAEC in the TBB Replacement market in India.

*TBR OEMs*

23. The Commission considered the market shares of the Acquirers and Target in the TBR OEMs market. It was noted that in this market, while the Acquirer's market share is in the range of 35 to 40 percent, CIL's market share ranges from 0 to 5

percent. The Commission noted that apart from existence of countervailing buying power with OEMs, the incremental market shares are insignificant to give rise to AAEC in this segment. Further, this segment is characterised by significant competitors including Apollo (35-40 percent) and MRF (15-20 percent) which would be in a position to impose considerable competitive constraints on the Acquirers post-combination

*TBR Replacement*

24. *Market shares:* It is observed that the pre-combination market share of the Acquirers in the TBR Replacement market in India is in the range of 25-30 percent and that of CIL is in the range of 5-10 percent, thus resulting in a market share in the range of 35-40 percent, post combination.

25. *Constraints exerted by competitors:* The competitors of the Acquirers include tyre manufacturers such as Apollo (10-15 percent), MRF (5-10 percent) and Bridgestone (5-10 percent) which would be in a position to impose considerable competitive constraints on the Acquirers post-combination.

26. *Countervailing buying power:* The Commission noted that as was the case with TBB Replacement market, customers of the Acquirers such as SRTCs and fleet operators may exercise some countervailing buyer power in the procurement process. The Commission noted that the tyre manufactures sell tyres to multi-brand dealers who may substitute one brand for another and end consumers have the option of choosing across brands from dealer stores.

27. *Impact of imports in this segment:* The Commission noted that there are significant imports in this segment - more than 20 percent of total sales in this segment which can potentially exert competitive constraints on the Acquirers. As per information available in public domain, tyre imports have adversely affected the Indian tyre industry particularly in TBR segment. It may also be noted that the Competitors, in their responses submitted under sub-regulation (3) of Regulation 19 of Combination Regulations also confirm the same. The Acquirers have also submitted that TBR tyre imports in India have grown by over 150% during the period 2013-14 to 2015-16.

28. Accordingly, the Commission noted that in view of the constraints exerted by the Competitors, presence of countervailing buyer power, and the extent of imports, the Proposed Combination is not likely to give an AAEC in the TBR Replacement market in India.

*LCVs/SCVs Bias OEMs*

29. *Market shares:* It is observed that the pre-combination market share of the Acquirers in the LCVs/SCVs OEMs market in India is in the range of 15 to 20 percent and that of CIL is in the range of 0-5 percent, thus resulting in a market share in the range of 20-25 percent, post combination.

30. *Constraints exerted by competitors:* The competitors of the Acquirers include tyre manufacturers such as MRF (30-35 percent) Apollo (20-25 percent), CEAT (20-25 percent) which would be in a position to impose significant competitive constraints on the Acquirers post-combination.

31. *Countervailing buying power:* The Commission noted that as per the information given in the notice and confirmed by OEMs in response to letters issued under sub-regulation (3) of Regulation 19 of the Combination Regulations, OEMs engage in multi-sourcing from various tyre manufacturers. Based on the responses of OEMs, tyre brand preferences of different OEMs are different for procurement of LCV/SCV Bias tyres, which points towards existence of countervailing buying power. Thus, based on presence of Competitors, procurement models of OEMs, it seems that the OEMs do possess countervailing buying power.

32. The Commission noted that in view of the constraints exerted by the competitors, countervailing buyer power with OEMs and insignificant incremental market shares, the Proposed Combination is not likely to give rise to AAEC in the LCVs/SCVs OEMs market in India.

*LCVs/SCVs Bias Replacement*

33. *Market shares:* It is observed that the pre-combination market share of the Acquirers in the LCVs/SCVs Bias Replacement in India is in the range of 25-30

[redacted]

percent and that of CIL is in the range of 0-5 percent, thus resulting in a market share in the range of 25-30 percent, post combination.

34. *Constraints exerted by competitors:* The competitors of the Acquirers include significant tyre manufacturers such as MRF (35-40 percent), Apollo (20-25 percent) and CEAT (5-10 percent), which would be in a position to impose significant competitive constraints on the Acquirers post-combination.

35. The Commission noted that in view of the constraints exerted by the Competitors and the insignificant incremental market shares, the Proposed Combination is not likely to have an AAEC in the LCVs/SCVs Bias Replacement market in India.

*Farm Bias OEMs*

36. The Commission considered the market shares of the Acquirers and Target in the Farm Bias OEMs market. It was noted that in this market, the Acquirer and the Target both have an insignificant presence with the Acquirer's market share ranging from 5 to 10 percent and the Target's market share ranging from 0 to 5 percent. The Commission noted that the combined market shares as well as incremental market shares are insignificant to give rise to AAEC. Further, this market is characterised by larger competitors including Goodyear (35-40 percent), MRF (30-35 percent) and Apollo (15-20 percent), which would be in a position to impose significant competitive constraints on the Acquirers, post-combination.

*Farm Bias Replacement*

37. *Market share:* It is observed that the pre-combination market share of the Acquirers in the Farm Bias Replacement market in India is in the range of 15-20 percent and that of CIL is in the range of 10-15 percent, thus resulting in a market share in the range of 25-30 percent, post combination.

38. *Constraints exerted by competitors:* The competitors of the Acquirers include significant tyre manufacturers such as MRF (25-30 percent), Goodyear (10-15

percent) and CEAT (10-15 percent) which would be in a position to impose significant competitive constraints on the Acquirers post-combination.

39. The Commission noted that in view of the constraints exerted by competitors, the Proposed Combination is not likely to have an AAEC in this market in India.

40. 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.

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

42. The Secretary is directed to communicate to the Acquirers accordingly.