



17.08.2016

Notice u/s 6 (2) of the Competition Act, 2002 jointly given by Gerdau S.A., Sumitomo Corporation and The Japan Steel Works Ltd

CORAM:

Mr. S. L. Bunker
Member

Mr. Augustine Peter
Member

Mr. U.C. Nahta
Member

Mr. M. S. Sahoo
Member

Legal Representatives of the parties: M/s Agram Legal Consultants

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

1. On 30.06.2016, 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**”) given by Gerdau S.A. (“**Gerdau**”), Sumitomo Corporation (“**SC**”) and The Japan Steel Works Limited (“**JSW**”) (Hereinafter Gerdau, SC and JSW are collectively referred to as the “**Parties**”). The said notice was given pursuant to the Investment Agreement dated 06.06.2016, entered into by and between the Parties.
2. The proposed combination envisages setting up of a joint venture company (“**JVC**”) in Brazil, which will primarily be engaged in the business of manufacturing and sale of rolling mill rolls (“**RMRs**”), main shafts for wind turbines; and rings for wind turbines (“**Proposed Combination**”).
3. The Parties have submitted that proposed combination is a new joint venture, with Gerdau, a party to the Proposed Combination contributing certain assets to the JVC. Accordingly, as per the sub-regulation (9) of Regulation 5 of the Competition Commission of India



(Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”) the value of assets and turnover of the Gerdau shall be considered for the notification thresholds prescribed under the Act.

4. The Commission noted that Gerdau, SC and JSW had earlier filed a notice on 26.02.2016 with regard to the Proposed Combination pursuant to the board resolution passed by Gerdau. The Proposed Combination was considered by the Commission in its ordinary meeting held on 10.05.2016. The Commission, in this meeting, observed that the board resolution passed by Gerdau does not create a binding obligation on the part of SC and JSW with respect to the formation of joint venture and therefore the same does not amount to an “agreement” or a “binding document” for the purpose of the Proposed Combination as required under sub-section (2) of Section (6) of the Act read with sub-regulation (8) of Regulation (5) of the Combination regulation to trigger the filing requirement. Accordingly, the Commission decided that the notice be treated as not valid for not being in conformity with sub regulation (1) and sub-regulation (2A) of Regulation 14 of the Combination Regulations. The Parties were directed to file a fresh notice with complete information as required in terms of the provisions of the Act. Pursuant to the directions of the Commission, a fresh notice under sub-section (2) of Section 6 of the Act was filed by the Parties on 30.06.2016 after execution of the Investment Agreement.
5. Gerdau, a company organized and existing under the laws of Brazil, is listed on the New York, Sao Paulo, and Madrid stock exchanges. It is engaged in production and commercialization of steel products and has industrial operations in 14 countries throughout America, Europe and Asia with a combined installed capacity of more than 26 million metric tonnes per annum (“**MTPA**”). It is also involved in production of flat steel and iron ore and recycling of scrap metal into steel. Gerdau has one subsidiary in India, viz., Gerdau Steel India Limited (“**Gerdau India**”). Gerdau India has crude steel production capacity of 2.5 lakh tonnes and rolled steel production capacity of 3 lakh tonnes focusing on automotive, defence, railways and related industries.
6. SC, a company organized and existing under the laws of Japan, is listed on Tokyo, Nagoya and Fukuoka Stock Exchanges. SC is a full-service trading company, which conducts its business through five industry based business segments viz., “Metal Products”, “Transportation and Construction Systems”, “Environment and Infrastructure”, “Media, Network, Lifestyle Related Goods and Services” and “Mineral Resources, Energy, Chemical and Electronics”. SC has two subsidiaries in India i.e. Sumitomo Corporation India Private Limited (“**Sumitomo India**”) and



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India Steel Summit Private Limited (“**India Steel**”). Sumitomo India is engaged in sales of a variety of products and services relating to metal, automobile, mineral resource, chemical and agriculture etc. India Steel is engaged in the business of steel service centre, manufacturing and trading of steel and manufacturing and trading of auto components in India.

7. JSW, a company organized and existing under the laws of Japan, is listed on Tokyo, and Nagoya Stock Exchanges. It operates in three segments; viz., steel and energy products, industrial machinery products, and real estate and other businesses. The Steel and Energy Products segment includes steel castings and forgings, steel plates, pressure vessels and steel structures. The Industrial Machinery Products segment includes injection moulding machines, film and sheet machinery, blow moulding machines, magnesium injection moulding machines, waste treatment equipment, extruders and pelletizers. The Real Estate and other Businesses segment includes regional development. JSW has one subsidiary in India i.e. JSW India Private Limited (“**JSW India**”). JSW India’s main business in India include: (a) sales support, service, upgrading and supply of parts of injection moulding machines, (b) sales support and supply of parts of extruder, pelletizer and other industrial machines, (c) procurement of parts and materials.
8. As stated by the Parties, JVC will be mainly involved in business of RMRs, main shafts for wind turbines and rings for wind turbines. The Commission noted that while, Gerdau and SC have insignificant presence in India, JSW does not have any presence either in RMRs or in business of main shafts for wind turbines. The Commission also observed that none of the Parties i.e. Gerdau, SC or JSW are engaged in the business of rings for bearings of wind turbines globally and in India. Thus, considering the current and potential state of operations, the Proposed Combination is not likely to cause any appreciable adverse effect on competition (“**AAEC**”) in any of the possible relevant market that could be delineated and therefore the exact delineation of the relevant market may be left open.
9. As regards vertical relationships, the Commission noted that there are no significant vertical relationships between Gerdau, SC and JSW which are likely to have AAEC in India in any of the relevant market(s).
10. Considering the facts on record, 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



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Combination is not likely to have AAEC 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.

11. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
12. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
13. The Secretary is directed to communicate to the Parties accordingly.