



31.01.2019

**Notice u/s 6 (2) of the Competition Act, 2002 given by Power Finance  
Corporation Limited**

**CORAM:**

Mr. Ashok Kumar Gupta  
Chairperson

Mr. U. C. Nahta  
Member

Ms. Sangeeta Verma  
Member

**Legal Representatives of the parties:** M/s L&L Partners

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

**Introduction**

1. On 09.01.2019, the Competition Commission of India (“**Commission**”) received a notice under Section 6(2) of the Competition Act, 2002 (“**Act**”) filed by Power Finance Corporation Limited (“**PFC**” / “**Acquirer**”) relating to proposed acquisition of around 52.63 percent equity stake along with management control in REC Limited (“**REC**” / “**Target**”) (“**Proposed Combination**”).
2. The notice of the Proposed Combination was given pursuant to the decision of the Cabinet Committee on Economic Affairs dated 06.12.2018 granting in-principle approval for strategic sale of the Government of India’s (“**GoI**”) 52.63 percent shareholding in REC to PFC along



with a resolution dated 20.12.2018 passed by the Board of Directors of PFC granting an in-principle approval to the Proposed Combination.

### Parties to the Proposed Combination

3. PFC, listed on the National Stock Exchange of India Limited (“NSE”) and BSE Limited (“BSE”), is a central public sector enterprise established as a part of GoI’s initiative to enhance funding to power projects in India. In 1990, it was declared as a Public Financial Institution (“PFI”), under Section 4A of the Companies Act, 1956 and since 2010, it is registered as a NBFC – Infrastructure Finance Company with the Reserve Bank of India (“RBI”).
4. PFC, directly or through its subsidiaries, provides a comprehensive range of financial products and related advisory and other services from project conceptualities to the post-commissioning stage for their clients in the power sector, including for generation, transmission and distribution projects as well as for related renovation and modernization projects. PFC is also designated as a Nodal Agency for various schemes of GoI in the power sector *viz.*:
  - (i) Ultra Mega Power Projects (“UMPPs”): In 2005-06, the Ministry of Power (“MoP”) launched an initiative to facilitate the development of UMPPs each having a capacity of about 4000 MW each, at both the coal pitheads and coastal locations aimed at delivering power at competitive cost to consumers by achieving economies of the scale. As a designated Nodal Agency, PFC incorporates Special Purpose Vehicles (SPVs) for each UMPP to undertake the bidding process on behalf of the power procuring (beneficiary) States. The purpose of the SPVs is to carry out the bid process management and, obtain various clearances/consents for the projects so that the same are transferred, along with the SPV, to the successful bidder, who is selected through the tariff based International Competitive Bidding (ICB) in accordance with the "Guidelines for determination of tariff by bidding process for procurement of power by distribution licensees", issued by MoP, Govt of India, as amended from time to time;



- (ii) Restructured Accelerated Power Development and Reforms Program (“R-APDRP”) / Integrated Power Development Scheme (“IPDS”): The MoP launched R-APDRP Scheme in 2008 with the objectives of, *inter alia*, establishment of baseline data and reduction of Aggregate Technical & Commercial (“AT&C”) losses through strengthening & up-gradation of Sub Transmission and Distribution network. As a designated Nodal Agency, PFC operationalises the programme and acts as a single window service. PFC receives a fee as well as the reimbursement of expenditure in implementation of the programme as per the norms to be decided by the R-APDRP Steering Committee. In 2014, the MoP notified IPDS with focus on *inter alia*, strengthening of sub-transmission and distribution networks in the urban areas, metering of distribution transformers / feeders / consumers in the urban areas and IT enablement of distribution sector and strengthening of distribution network under R-APDRP. The approved outlay for R-APDRP were carried forward to IPDS. As a designated Nodal Agency, PFC works for operationalization and implementation of the scheme under the overall guidance of MoP by performing functions such as coordination with stakeholders including MoP, Monitoring Committee, Central Electricity Authority and Utilities, monitoring physical and financial progress of the projects including quality of works, operating a separate Bank account (IPDS Account) for release of funds by MoP and for onward release to the beneficiary Utilities /State Governments, administering the grant component *etc*; and
- (iii) Independent Transmission Projects (“ITPs”): MoP has initiated Tariff Based Competitive Bidding Process for development and strengthening of Transmission system through private sector participation. The objective of this initiative is to develop transmission capacities in India and to bring in potential investors after developing such projects to a stage having preliminary survey work, identification of route, preparation of survey report, initiation of process of land acquisition, initiation of process of seeking forest clearance, if required and to conduct bidding process etc. PFC Consulting Limited (“PFCCL”), a wholly owned subsidiary of PFC, has been nominated as 'Bid Process Coordinator' by MoP for the development of ITPs.



5. REC, listed on the NSE and BSE, is also a central public sector enterprise established as a part of GoI's initiative to provide fund and non-fund based support for the development of Indian power sector. Since 2010, it is registered as a NBFC – Infrastructure Finance Company with the RBI.
6. REC is engaged in financing projects/schemes of power generation, transmission, distribution, rural electrification, system improvement, renovation and modernization of power plants in both public and private sector. REC is also designated as a Nodal Agency for various schemes of GoI in the power sector *viz.*;
  - (i) Pradhan Mantri Sahaj Bijli Har Ghar Yojna (“SAUBHAGYA”): In 2017, SAUBHAGYA Scheme was launched with an objective of providing free electricity connections to all households in rural areas and poor families in urban areas. As a designated Nodal Agency, REC is mandated to perform various functions starting from receiving letter of intent from eligible entities to participate in the scheme, techno-economic appraisal of Detailed Project Reports (“DPRs”) prepared by eligible entities, coordination of communication campaigns at national level, monitoring of projects, receipt of grant support from MoP and subsequent release of the same to utilities *etc.*
  - (ii) Deendayal Upadhyaya Gram Jyoti Yojna (“DDUGJY”): The Government of India has launched DDUGJY for rural electrification and nominated REC to function as Nodal Agency for implementation of the scheme;
  - (iii) National Electricity Fund (“NEF”): Government of India has approved the NEF (Interest Subsidy) Scheme to promote the capital investment in the distribution sector by providing interest subsidy, linked with reform measures, on the loans taken by public and private power utilities for various capital works under Distribution projects. As a designated Nodal Agency, REC, *inter alia*, performs the functions of appointment of independent evaluators for evaluation of pre-eligibility conditions and eligibility criteria, yearly appraisal of proposals, verification of the interest subsidy claims of the borrowers, obtaining approval of the Steering Committee for sanction of



proposals and payment of interest subsidy to eligible borrower/utility, receipt of interest subsidy annually from the GoI, maintenance of separate bank account, and disbursement of funds to the borrower from time to time.

7. During the course of review of the Proposed Combination by the Commission, the Acquirer submitted certain additional information *vide* emails on 15.01.2019, 17.01.2019, 21.01.2019, 24.01.2019 and 30.01.2019.

#### **Assessment of common shareholdings of the Parties in certain enterprises**

8. The Commission noted that PFC and REC have common shareholding in certain entities *viz.*, Energy Efficiency Services Limited (“EESL”), Shree Maheshwar Hydel Power Corporation Limited (“SMHPCL”) and NHPC Limited (“NHPC”). As submitted, there are no overlaps in the activities of EESL with PFC/REC. As regards SMHPCL, it is noted that it is currently classified as NPA and has limited capacity under implementation. The total installed capacity of NHPC Constitutes an insignificant part of the total installed capacity in India. Considering above, the Commission observed that the aforesaid common shareholdings of the Parties in EESL, SMHPCL and NHPC is not likely to cause any appreciable adverse effect on competition in any market in India.

#### **Relevant Markets**

9. Based on the information provided by the Parties, the activities of the Parties overlap in two product segments *viz.*, (i) provision of credit for power sector in India; and (ii) provision of consultancy services in the power sector in India.
10. As regards delineation of relevant market in relation to the activities of the Parties involving provision of credit for power sector in India, the Parties submitted that the relevant product market may be defined in terms of a broader market for deployment of credit for industry; or in narrow terms of market for provision of credit for infrastructure sector in India; or in further narrower terms of market for the provision of credit for the power sector in India. The Commission observed that the market definitions in terms of deployment of credit for industry and deployment of credit for infrastructure sector are very broad and do not seem to represent



the effective market constraints. The market for provision of credit for the power sector in India may also be further classified based on varied criteria such as instrument of financing, type of loan products, nature of power project viz., generation, transmission or distribution etc. The Commission assessed the Proposed Combination in the market for provision of credit disbursement for the power sector while leaving the exact delineation of relevant market as open as the Proposed Combination, for the reasons detailed in ensuing paragraphs, is not likely to cause an appreciable adverse effect on competition in any of the possible alternative relevant markets that could be delineated.

11. As regard the overlaps in relation to provision of consultancy services, the Commission assessed the Proposed Combination in the market for provision of consultancy services for the power sector in India, while again leaving the exact delineation of the relevant market as open.

### **Competition Assessment**

#### *Market for provision of credit disbursement for the power sector in India*

12. At the outset, the Commission considered it appropriate to examine the specificities in terms of mandate and functioning of the Parties. The Commission noted the submissions of the Parties that they have been established as an integral part of and to play a dedicated and strategic role in the GoI initiatives for the development of power sector in India. The Parties further submitted that both PFC and REC work closely with the GoI, state governments and power sector utilities, other power sector intermediaries and private sector clients for the development and implementation of policies and structural and procedural reforms for the power sector in India. In support of the submissions on the aspect of close working with the government entities in power sector, the Parties submitted that more than 80 percent of their loan assets reflect the lending to government players engaged in power sector. Accordingly, considering the aforesaid, the Parties would have to continue to deliver on their mandate even after the Proposed Combination.
13. The Parties submitted market share estimates in terms of gross loan assets as on 30.09.2018. However, the Commission was of the view that the same does not provide a fair indication of



current competition dynamics considering that gross loan assets represent cumulative lending figures encompassing a significant past period. In this regard, the Commission observed that the borrowers avail funds either by directly approaching the lenders or by way of a bid process. The bidding data for recent years may be considered as reflective of the present competition dynamics. Accordingly, the Parties were asked to provide relevant bidding data. As regards the bidding process, it was observed that the lenders may participate in the bid on an independent basis or as a part of consortia. The Parties provided details of bidding data in respect of bids submitted by PFC since April 2016. Based on the data submitted by the Parties, it is observed that the combined market share of the Parties duly considering winning bids in which the Parties participated individually or jointly excluding projects where the consortia also included banks does not appear to be significant and reflects the presence of constraints from other players in power finance sector, especially banks.

14. The Commission is of the opinion that due to the aforesaid specificities of the case as regards the mandate and role of the Parties, the Proposed Combination is not likely to result in any appreciable adverse effect on competition regardless of their market presence. Notwithstanding the same, as stated above, even the bidding data reflects the presence of constraints from other players in power finance sector, especially banks. Accordingly, the Commission is of the opinion that the Proposed Combination is not likely to cause any appreciable adverse effect on competition in market for provision of credit disbursement for the power sector in India or any other plausible markets that may be delineated.

*Market for provision of consultancy services for the power sector in India*

15. As regards the market for provision of consultancy services for the power sector in India, based on the market share estimates given by the Parties, it appears that the Proposed Combination is not likely to result in any significant change in competition dynamics considering that the combined market share of the Parties is estimated to be less than 10 percent and the market is characterized by presence of significant competitors viz., WAPCOS, Tata Consulting Engineers Limited and others.



**COMPETITION COMMISSION OF INDIA**  
**(Combination Registration No. C-2019/01/628)**



*Fair Competition  
For Greater Good*

16. Considering the facts on record and the details provided in the notice given under Section 6(2) of the Act and assessment of the Proposed Combination on the basis of factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India in any of the relevant market(s) and therefore, the Commission hereby approves the same under Section 31(1) of the Act.
  
17. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
  
18. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
  
19. The Secretary is directed to communicate to the Acquirer accordingly.