



14.02.2017

**Notice given by Rajasthan Marudhara Gramin Bank and State Bank of Bikaner  
and Jaipur**

**Order under Section 43A of the Competition Act, 2002 (“Act”)**

**Introduction**

1. The Competition Commission of India (“**Commission**”), in its meeting held on 12.01.2015, took suo motu cognizance of amalgamation of Marudhara Gramin Bank (“**MGB**”) (sponsored by State Bank of Bikaner and Jaipur (“**SBBJ**”)) and Mewar Aanchalik Gramin Bank (“**MAGB**”) (sponsored by ICICI Bank (“**ICICI**”)) into Rajasthan Marudhara Gramin Bank (“**RMGB**”) and designation of SBBJ as the sole sponsor bank of RMGB (“**Combination**”). The Combination came into effect from 01.04.2014 vide a Gazette of India Notification dated 01.04.2014 issued by the Department of Financial Services, Ministry of Finance, Government of India under sub-section (1) of Section 23A of the Regional Rural Banks Act, 1976 (“**RRB Act**”) (“**Notification**”).
2. In order to ascertain notifiability of the Combination, the Commission, vide letters dated 20.03.2015 and 20.05.2015, directed RMGB to provide details of assets and turnover of MGB and MAGB for the financial years 2013-14 and 2014-15. The details were filed by RMGB vide its letter dated 28.05.2015.
3. The Commission considered the details of assets and turnover as filed by RMGB and other facts on record relating to the Combination in its meeting held on 04.08.2015 and decided that the Combination meets the thresholds prescribed under Section 5 of the Act and is therefore notifiable. Accordingly, vide letter dated 26.08.2015, RMGB and SBBJ (hereinafter collectively referred to as the “**Parties**”), were directed under sub-section (1) of Section 20 of the Competition Act, 2002 (“**Act**”) read with Regulation 8 of the



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Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) (“**Combination Regulations**”) to jointly file a notice in respect of the Combination.

4. On 08.10.2015, the Parties, in compliance of the directions of the Commission, filed a notice in relation to the Combination. However, as the same was not complete, the Commission decided to invalidate the same. The Parties, subsequently, filed a fresh notice on 24.02.2016 in this regard.
5. On 06.06.2016, the Commission considered and assessed the Combination and approved the same under sub-section (1) of Section 31 of the Act.

**Proceedings under Section 43A of the Act**

6. In its meeting held on 06.06.2016, the Commission observed that in terms of sub-section (2) of Section 6 of the Act, an enterprise, which proposes to enter into a combination, is required to give a notice to the Commission, disclosing the details of the proposed combination, within thirty days of execution of any agreement or other document for acquisition. Further, as per sub-section (2A) of Section 6 of the Act, no combination shall come into effect until 210 days have passed from the day on which the notice has been given to the Commission under sub-section (2) of Section 6 of the Act or the Commission has passed orders under Section 31 of the Act, whichever is earlier.
7. Considering the facts on record, the Commission noted that the Parties not only failed to notify the Combination in terms of sub-section (2) of Section 6 of the Act within the time stipulated under the provisions of the Act but also consummated the same before the expiry of statutory timelines as provided in sub-section (2A) of Section 6 of the Act. Accordingly, the Commission decided to initiate proceedings against the Parties under Section 43A of the Act.



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8. A show cause notice, under Section 43A of the Act read with Regulation 48 of the Competition Commission of India (General) Regulations, 2009 (“**General Regulations**”), was issued to the Parties on 15.06.2016, to explain, in writing, within 15 days of the receipt of such communication, as to why penalty, in terms of Section 43A of the Act, should not be imposed on the Parties for failure to file a notice in respect of the Combination and consummating the same before expiry of statutory timelines, under sub-section (2) of Section 6 read with sub-section (2A) of Section 6 of the Act (“**SCN**”). The Parties filed its response to the SCN with the Commission on 14.07.2016 (“**Response to SCN**”), after seeking extension of time.
9. In its meeting held on 09.08.2016, the Commission considered the Response to SCN and decided to grant an oral hearing to the Parties. The authorized representative of the Parties was heard on 14.02.2017. The Commission noted that, *vide* its written and oral submissions, the Parties, *inter alia*, made the following submissions:
  - 9.1. That the decision in respect of Combination was taken by Government of India, Ministry of Finance, Department of Financial Services (“**DFS**”) after consultation with the National Bank for Agriculture and Rural Development (“**NABARD**”), Government of Rajasthan, and the sponsor banks in exercise of its powers under sub-section (1) of Section 23A of the RRB Act and the same did not involve any decision making on the part of the Parties. It was further submitted that since the decision was taken in exercise of statutory powers of the Government, it could not have been considered as “failure to notify” in terms of section 43A of the Act.
  - 9.2. That the Combination is in public interest and has been effected with the view to provide better customer service by having better infrastructure, computerisation, experience workforce etc. and has not resulted in any appreciable adverse effect on Competition.
  - 9.3. That there has been no change of control in the ownership of either the RMGB or the sponsor bank before or after the amalgamation. The control continued to vest with the Central Government, State Government and the Sponsor Bank in the ratio of their shareholding i.e., 50:15:35.



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- 9.4. That the Parties are government undertakings providing banking services to the farmers in rural areas of Rajasthan and thereby contribute to the economic development of the poor farmers in the state.
- 9.5. That there was no *mala fide* intention of either RMGB or SBBJ to evade the compliance of the provisions of the Act and this is the first case where a presumed violation of the provisions of the Act has been alleged on either RMGB or SBBJ. It was further stated that the Parties have given their full cooperation during the Commission's inquiry under sub-section (1) of Section 20 of the Act.
10. With respect to the above submissions of the Parties, the Commission observed as under:
- 10.1. As regards the submissions of the Parties that the decision in respect of the Combination was taken under Section 23A of the RRB Act and it could not be considered as "failure to notify" in terms of section 43A of the Act, the Commission observed that as the mergers/amalgamations under Section 23A of the RRB Act are not exempt from the application of provisions of Section 5 of the Act, the submissions of the Parties in this regard are not tenable. As per the Act, it is the duty of the enterprise, who or which proposes to enter into combination to give notice to the Commission within 30 days of approval of the proposal relating to amalgamation. Therefore, the fact of decision of amalgamation being taken by the Central Government does not obliterate the Parties from their responsibility to notify the amalgamation to the Commission.
- 10.2. As regards notifiability of change in sponsor bank of the merged entity, the Commission observed that sponsor bank exercises control over the affairs of the RRB and therefore exit of sponsor bank of MAGB i.e. ICICI and acquisition of sole sponsorship of RMGB by SBBJ tantamount to change in control which implies that the same is also notifiable.
- 10.3. The Commission, however, noted that the structure of a Combination is unique to the extent in as much as the decision in respect of the same was taken by the Central



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Government (and not only by the Parties) and that the Combination was effected immediately subsequent to the issuance of the Notification.

11. In view of the foregoing, the Commission observed that the failure to file the Combination and consummating a part of the Combination before the approval of the same by the Commission attracts penalty under Section 43A of the Act. Section 43A of the Act reads as: *“If any person or enterprise who fails to give notice to the Commission under sub section(2) of section 6, the Commission shall impose on such person or enterprise a penalty which may extend to one percent of the total turnover or the assets, whichever is higher, of such a combination.”*
12. While determining the quantum of penalty, the Commission, considered the specificities of the case regarding the combination being effectuated immediately upon issuance of Notification and explanation given by the Parties and deemed it appropriate to impose a penalty of INR 1,00,000/- (INR One lakh only) on the Parties. The Parties shall pay the penalty within sixty (60) days from the date of receipt of this order.
13. The Secretary is directed to communicate to the Parties accordingly.