COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2018/05/575)

Dated: 21.08.2018

Notice under Section 6 (2) of the Competition Act, 2002 given by UltraTech Cement Limited

CORAM:

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: M/s Trilegal

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

1. On 31.05.2018, the Competition Commission of India ("**Commission**") received a notice ("**Notice**") of a proposed combination under Section 6(2) of the Competition Act, 2002 ("**Act**") given by UltraTech Cement Limited ("**Ultratech / Acquirer**").

2. Under the proposed combination, Ultratech proposes to acquire cement assets of Century Textiles and Industries Limited ("**Century**") having a total cement capacity of 14.60 million tonnes per annum ("**MTPA**") ("**Proposed Combination**"). The said cement plants are situated in the states of Madhya Pradesh, Maharashtra, Chhattisgarh and West Bengal ("**Target Assets**"). The Notice was filed with the Commission pursuant to the execution of the Implementation Agreement by and between Ultratech and Century on 21.05.2018 ("**IA**") (hereinafter Ultratech and Century are collectively referred to as the "**Parties**").

3. In terms of Regulation 14 of the Combination Regulations, vide letter dated 13.06.2018, the Acquirer was required to provide certain information/document(s) latest by 18.06.2018. Ultratech filed its response on 02.07.2018 after seeking extension of time. Letter under Regulation 14 in continuation to Parties' reply was issued on 13.07.2018 and the Parties were directed to provide information / documents by 20.07.2018. Ultratech submitted its reply on 30.07.2018 after seeking extension of time.

4. Ultratech is a listed public limited cement manufacturing company. It is a subsidiary of Grasim Industries Limited, a company of the Aditya Birla conglomerate. As submitted, the Aditya Birla conglomerate denotes a number of companies in which Mr. Kumar Mangalam Birla along with his family ("**KM Family**"), directly or indirectly holds a minimum of 10 percent shares. Ultratech currently has a cement production capacity of around 86.70 MTPA (on an all India basis) through its cement plants located across India[1]. It manufactures and sells grey cement, white cement, ready mix concrete, and other building products.

5. Century is a listed public limited company stated to be a part of the B. K. Birla Group. It is engaged, *inter alia*, in manufacturing and sale of grey cement. As submitted, B. K. Birla Group denotes Mr. B. K. Birla and his family ("**BK Family**"). Century currently, has a cement production capacity of around 14.60 MTPA (on an all India basis) through its cement plants located across India. Further, as stated, apart from Century, the B. K. Birla Group is active in cement sector through its other group companies *viz.*, Kesoram Industries Limited ("**Kesoram**") and Mangalam Cement Limited ("**Mangalam**").

6. 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 Target Assets are not involved in

[1] Additionally, UltraTech had sought and received approval from the Commission for acquisition of 100% of the equity shares of Binani Cement Limited ("**Binani**"). Binani had an installed capacity of 6.25 MTPA in Rajasthan. As submitted by the Acquirer, the proposed acquisition has not yet been completed. However, for the purposes of competition analysis, the installed capacity of Binani has also been considered.

manufacture of white cement. The Commission, in its earlier decisions[2], 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 for the purposes of assessment of the Proposed Combination is defined as the market for grey cement.

7. As regards the relevant geographic market, the Commission in its earlier decisions[3], 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. The Commission has also used the EH Test for delineating relevant geographic market(s) for the purpose of assessment of combinations in cement sector. For the purposes of the EH Test, the Commission has been using the inter-state cement dispatch data for the year 2011-12[4].

8. The Commission noted that there are overlaps in the presence of the Parties in terms of production plants in the states of Maharashtra, Madhya Pradesh, Chhattisgarh and West Bengal.

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[2] C-2013/10/135 - Ultratech/Jaypee; C-2014/07/190 – Holcim Limited/Lafarge S.A; C-2015/02/246 – Ultratech/Jaypee; C-2015/08/300 - HeidelbergCement AG**;** C-2016/04/394 – Ultratech/Jaypee and others

[3] Ibid

[4] No data is available for subsequent periods. The Cement Manufacturers Association ("**CMA**") last published the interstate cement dispatch data for the year 2011-12. As the CMA data does not include the numbers related to ACC Limited ("**ACC**") and Ambuja Cements Limited ("**Ambuja**"), the Commission uses the dispatch data along with numbers of ACC and Ambuja obtained separately in an earlier case.

9. As regards the overlaps in Maharashtra, the Commission observed that Maharashtra forms part of relevant geographic market comprising the states of Karnataka and Andhra Pradesh (including Telengana). The Commission had delineated the market in the aforesaid terms in an earlier case where overlapping plants were located in Andhra Pradesh[5]. As per the EH Test, same relevant market is delineated with Maharashtra as the base state. The LIFO/LOFI thresholds for the area comprising the aforesaid three states were 11 percent and 18 percent respectively. Based on this analysis, the Commission decided that the relevant geographic market for the overlaps in Maharashtra may be defined in terms of area comprised by the states of Andhra Pradesh (including Telengana), Karnataka and Maharashtra ("**MH Relevant Market**").

10. As regards the overlaps in Madhya Pradesh, the Commission in an earlier case[6] had observed that the relevant geographic market needs to be expanded to include Uttar Pradesh, Rajasthan, Haryana and Delhi. The LIFO/LOFI thresholds for the area comprising the aforesaid five states were 8 percent and 18 percent respectively. Based on the same, the Commission decided that the relevant geographic market for the overlaps in Madhya Pradesh may be defined in terms of area comprised by the states of Madhya Pradesh, Uttar Pradesh, Rajasthan, Haryana and Delhi ("**MP Relevant Market**").

11. As regards the overlaps in Chhattisgarh and West Bengal, the Commission in an earlier case[7] had observed that Chhattisgarh and West Bengal form part of relevant geographic market which also includes the states of Bihar, Jharkhand and Odisha. The LIFO/LOFI thresholds for the area comprising the aforesaid five states were 18 percent and 6 percent respectively. Based on the same, the Commission decided that the relevant geographic market for the overlaps in Chhattisgarh and West Bengal may be defined in terms of area comprised by the states of Chhattisgarh, West Bengal, Bihar, Jharkhand and Odisha ("**CG/WB Relevant Market**").

[5] C-2016/04/394 – Ultratech/Jaypee
[6] Ibid
[7] C-2014/07/190 – Lafarge/Holcim

12. The Commission observed that there is cross shareholding between two families viz., BK Family and KM Family in certain entities and it had also issued an Order under Section 44 of the Act in an earlier case against Ultratech for failure to provide information in respect of such shareholdings. The Acquirer has submitted that in spite of the aforesaid cross shareholdings, BK Birla led companies do not exercise any form of control over Ultratech or Grasim and similarly, the Aditya Birla conglomerate does not exercise any control over Century or Kesoram or any other companies forming part of the B. K. Birla group. The Commission assessed the Proposed Combination duly considering the potential impact of the cross shareholdings in Kesoram and Mangalam and decided to leave the question of any control of KM Family over Kesoram and Mangalam open as the extent of presence of Kesoram and Mangalam in relevant market(s) is not likely to have a significant impact on the findings on appreciable adverse effect on competition ("**AAEC**").

MH Relevant Market

13. The Commission considered the market structure and observed that the market is fragmented with presence of more than 30 companies. The post Proposed Combination CR 4 of the MH Relevant market is estimated to be around 46 percent. The Commission considered the market shares and HHI in terms of the installed capacity likely to be in operation in near future. It is observed that in terms of installed capacity, the pre-combination market share of Ultratech in the MH Relevant Market is around 16 percent and that of identified cement plants (forming part of Target Assets) is around 4 percent, thus resulting in a market share of around 20 percent, post combination. Accordingly, pre-combination HHI of around 634 will increase to post combination HHI of around 754, with change in HHI of 120. The said post-combination HHI and change in HHI is considered as insignificant to raise any concerns of AAEC. Kesoram has around 4 percent market share in terms of installed capacity and consideration of the same is not likely to result in any significant change in concentration and consequently findings on AAEC. Based on the aforesaid, the Commission decided that the Proposed Combination is not likely to result in an AAEC in the MH Relevant Market.

MP Relevant Market

14. The Commission considered the market structure and observed that the market is fragmented with presence of around 15 companies with post Proposed Combination CR 4 of around 61 percent. It is noted that in terms of installed capacity, the pre-combination market share of Ultratech in the MP Relevant Market is around 25 percent and that of identified cement plants (forming part of Target Assets) is around 3 percent, thus resulting in a market share of around 28 percent, post combination. Accordingly, pre-combination HHI of around 1243 will increase to post combination HHI of around 1407, with change in HHI of 164. It is observed that the post-combination HHI and change in HHI is insignificant to raise any concerns of AAEC. Mangalam has around 3 percent market share in terms of installed capacity and consideration of the same is not likely to result in any significant change in concentration and consequently findings on AAEC. Based on the aforesaid, the Commission decided that the Proposed Combination is not likely to result in an AAEC in the MP Relevant Market.

CG/WB Relevant Market

15. The Commission considered the market structure and observed that the market is concentrated with presence of around 15 companies but post Proposed Combination CR 4 of around 68 percent. It is observed that in terms of installed capacity, the pre-combination market share of Ultratech in the CG/WB Relevant Market is around 16 percent and that of identified cement plants (forming part of Target Assets) is around 6 percent, thus resulting in a market share of around 22 percent, post combination. Accordingly, pre-combination HHI of around 1286 will increase to post combination HHI of around 1472, with change in HHI of 186. It is observed that the post-combination HHI and change in HHI is insignificant to raise any concerns of AAEC. As per information available on record, Kesoram and Mangalam do not have any installed capacities in CG/WB Relevant Market. Based on the aforesaid, the Commission decided that the Proposed Combination is not likely to result in an AAEC in the CG/WB Relevant Market.

16. Considering the facts on record and 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 AAEC in India and therefore, 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.