



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



20.05.2020

**Notice under Section 6 (2) of the Competition Act, 2002 filed by Nuvoco Vistas Corporation Limited**

**CORAM:**

Mr. Ashok Kumar Gupta  
Chairperson

Ms. Sangeeta Verma  
Member

Mr. Bhagwant Singh Bishnoi  
Member

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

1. On 09.03.2020, the Competition Commission of India (**Commission**) received a notice filed by Nuvoco Vistas Corporation Limited (**NVCL/ Acquirer**) under Section 6(2) of the Competition Act, 2002 (**Act**). The proposed combination has been filed pursuant to execution of Share Purchase Agreement (**SPA**) dated 06.02.2020, entered inter alia, between NVCL, and Emami Cement Limited (**ECL/ Target**).
2. The proposed combination pertains to the acquisition by NVCL of 100% of the total issued and paid up share capital of ECL, on a fully diluted basis (**Proposed Combination**). Hereinafter, NVCL and ECL are collectively referred to as "**Parties**".
3. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**), vide email dated 03.04.2020, the Commission sought



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



certain information(s)/ clarification(s); responses to the same were received from the Parties on 24.04.2020, and 08.05.2020 (**Response**), after seeking extension of time. Further, certain information(s)/ clarification(s) in relation to Response necessary for the purpose of assessment of the Proposed Combination were sought; response to these was received on 15.05.2020.

**PARTIES TO THE COMBINATION**

4. NVCL, a public limited company incorporated in India, is a part of Nirma promoter group company. It is stated to be engaged in the businesses of manufacturing and sale of varieties of grey cement including Portland Pozzolana Cement (**PPC**), Portland Slag Cement (**PSC**) and Ordinary Portland cement (**OPC**). It is also engaged in the manufacture and sale of ready-mix concrete (**RMC**) and certain other value-added products like construction chemicals, wall putty, and cover blocks *etc.* It has cement manufacturing facilities operational in the states of Chhattisgarh (**CG**), Jharkhand (**JH**), West Bengal (**WB**), Rajasthan (**RJ**) and Haryana (**HR**). It also has a contract manufacturing facility in Chunar (Mirzapur, UP) mainly for its institutional customers.
5. ECL, a public company incorporated in India, is a part of the Emami group. It is stated to be engaged in the manufacturing and sale of varieties of grey cement including PPC, PSC, OPC and plain cement concrete i.e. composite cement. ECL is a cement manufacturer predominantly operating in eastern region of India with cement facilities in the states of WB, CG, Bihar (**BI**) and Odisha (**OD**) and has an installed capacity / nameplate capacity of 8.30 MTPA.

**IDENTIFIATION OF OVERLAPS, RELEVANT MARKET AND COMPETITION ASSESSMENT**

6. As stated above, the Parties are *inter alia*, involved in manufacture and sale of cement in India. With regard to vertical relationship, Parties clarified that vertical integration is fundamental to the grey cement industry and is imperative for its operations. It is stated that clinker is one of the most essential input materials for the manufacturing of grey cement. It is common industry practice for grey cement manufacturers to produce clinker



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



internally for their captive consumption. However, certain cement manufacturers tend to engage in the sale of surplus clinker to other cement manufacturers in order to effectively utilize their clinker production that was not used for captive consumption. Further, it is stated that it is standard practice for ready-mix concrete manufacturers to source grey cement as input both from in-house facilities and third-party manufacturers. NVCL sources grey cement from ECL for its production of ready-mix concrete.

7. In this regard, it is submitted in the notice that ECL engages in the sale of surplus clinker to other cement manufacturers, due to surplus production and low capacity utilization of ECL, in order to effectively utilize their clinker production that was not used for captive consumption. It is also stated that ECL does not supply / sell any clinker to NVCL. ECL is also currently engaged in the sale of insignificant amounts of Ground Granulated Blast Furnace Slag, and plain cement concrete i.e. composite cement.

**Relevant Market**

8. As per the Act, the examination of the likelihood of a combination resulting in an AAEC is undertaken in context of a relevant market. Further, as per Section 2(r) of the Act, relevant market is defined as,

*“the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets”.*

9. Accordingly, the competitive effects of the proposed combination were analyzed by delineating the relevant market in terms of relevant product market and relevant geographic market. The markets were defined in a manner that would include the relevant constraints on the behavior of firms.

**Relevant Product Market**

10. As per Section 2(t) of the Act, the relevant product market is defined as,

*“a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use”.*



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



11. In order to define the relevant product market, the Commission in past cases pertaining to cement sector had observed the extent of demand side substitutability between various types of cement, viz., grey cement and white cement and between different varieties of grey cement, viz., ordinary portland cement, portland pozzolana cement, portland blast furnace slag cement, rapid hardening portland cement, *etc.* The Commission also observed that white cement and grey cement differ in terms of their physical characteristics and intended use and therefore, constitute separate relevant product markets, and that different varieties of grey cement are considered largely interchangeable. In the instant case, it is stated in the notice that neither of the Parties to the Proposed Combination produce white cement. Accordingly, for the purpose of the Proposed Combination, the assessment is carried out for the market for grey cement.

**Segmentation based on sale of cement through trade and non-trade mode**

12. Based on the submissions, it is noted that cement is typically distributed through two channels i.e., the non-trade and trade segments. In the non-trade segment, bulk quantities of the cement is supplied for infrastructure projects. The consumers are large construction companies including real estate developers, infrastructure companies, builders, etc. and government entities, etc. These sales are directly negotiated contracts involving sales of large volumes of cement. Given that these institutional consumers purchase large volumes and have significant market strength, they can exert significant countervailing buyer power over cement manufacturers. In trade segment, bagged products are sold to individuals for personal use in homes and smaller structures. The consumers are individuals who purchase small quantities of cement from stockists and dealers who lack countervailing buyer power.
13. The Commission further observed that, between cement sold through trade and non-trade segments, there may be differences in terms of various parameters such as prices, overhead costs, transportation, nature of purchasers, minimum order quantity requirements etc. Therefore, assessment is carried out for the markets of grey cement sold through trade segment, through non-trade segment, and in the overall market.



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



**Relevant Geographic Market**

14. As per Section 2(s) of the Act, the relevant geographic market is defined as,  
  
*“a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas”.*
15. The Commission in its decisional practice had noted that cement being a bulk commodity, involves significant transportation costs, and therefore the consumption of cement is generally centered around the production clusters, which are located in the vicinity of limestone resources. From the perspective of demand and supply, these self-contained areas, having homogeneous conditions of competition, constitute the relevant geographic market from the point of view of the competition assessment.
16. It is submitted in the notice that while the cement industry is sub-divided into five regions (North, Central, East, West and South), this segmentation is not appropriate for the definition of the relevant geographic market because states belonging to two different regions may be closer than some state within the region due to overlapping of the boundaries of these states, resulting in inter-regional trade of cement.
17. Further, the Commission in its decisional practice, had preferred to define the relevant geographic market in the cement sector by conducting either (i) a catchment area test, or (ii) the Elzinga Hogarty Test (“**EH Test**”).
18. It had 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 behavior of the Parties. The Commission has also used the EH Test for delineating relevant geographic market(s) for



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



the purpose of assessment of combinations in cement sector.

19. As stated above, NVCL has cement manufacturing facilities in the following states of: (i) Chhattisgarh, (ii) Jharkhand, (iii) West Bengal, (iv) Rajasthan and (v) Haryana. Separately, ECL has cement manufacturing plants in the states of: (i) West Bengal, (ii) Chhattisgarh, (iii) Bihar and (iv) Odisha. Accordingly, it is submitted that West Bengal and Chhattisgarh are the only overlapping states in which both NVCL and ECL have cement manufacturing facilities. The Commission in an earlier case<sup>1</sup> had observed that Chhattisgarh and West Bengal form part of relevant geographic market which also includes the states of Bihar, Jharkhand and Odisha. Based on the same, the relevant geographic market for the overlaps in Chhattisgarh and West Bengal may be identified in terms of area comprising the states of Chhattisgarh, West Bengal, Bihar, Jharkhand and Odisha, or subsets of these respective states. The combination of states where the LIFO<sup>2</sup> or LOFI<sup>3</sup> is greater than 25%, indicating significant trade flows from and into the market, are not considered for further assessment.
20. However, the exact definition of relevant product or geographic market has been left open as the transaction is not likely to create competition concern in India irrespective of the manner in which the market is defined.

**Assessment of Appreciable Adverse Effect on Competition**

21. *Level of concentration:* As is generally accepted, market concentration is a useful indicator of the likely competitive effects of a combination and Herfindahl Hirschman Index (“**HHI**”) is one of the indices used to assess the level of market concentration and the changes in the concentration due to a combination. The markets as delineated above were therefore, analyzed on the basis of the post-combination value of HHI and the change in HHI pursuant to the proposed combination. The Commission also considered the market shares of the Parties and presence of the other players.

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<sup>1</sup> C-2014/07/190 – Lafarge/Holcim

<sup>2</sup> Little In from Outside – percentage of consumption not produced locally in the selected geographic area

<sup>3</sup> Little Out from Inside – percentage of production not consumed locally in the selected geographic area



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



22. *Constraints exerted by competitors:* It is also stated that the market in Eastern India is moderately concentrated with presence of some major players such as Holcim, Ultratech, Dalmia, Shree Cement etc., who will continue to exert competitive constraints on combined entity post the Proposed Combination.
23. In trade segment, non-trade segment, as well as overall market, the change in market concentration Delta-HHI in terms of sales volume is not significant to cause competition concerns in any of the plausible combination of the five states CG, BI, JH, OD and WB, in which the LIFO and LOFI are less than 25%.
24. In the broader overall market comprising the five states CG-BI-JH-OD-WB, where both the LIFO and LOFI are less than 10%, the post-combination market share of the parties is less than 20% in terms of both installed capacity and sales volume. In terms of sales volume, the pre-combination market share of NVCL in the Relevant Market is [10-15] % and that of ECL is [5-10] %, thus resulting in a market share of around [15-20] %, post combination. In addition to this, post-combination HHI and delta HHI are less than 2000 and 250 respectively in terms of both sales volume and installed capacity.
25. It is observed that the post-combination HHI and change in HHI is insignificant to raise any concerns of AAEC and there are other players present such as Shree Cement, Holcim, Ultratech and Dalmia operating in each state to pose competitive constraints on the combined entity. Based on the aforesaid analysis, the Commission decided that the Proposed Combination is not likely to result in an AAEC in any of the above discussed markets.
26. With regard to vertical relationships, it is submitted that ECL supplied NVCL negligible amount of grey cement of the total volume of grey cement sold by ECL in FY 2018-19. The revenue generated by ECL from the sale of grey cement to other grey cement manufacturers is insignificant when compared to the total revenue earned by ECL from the sale of grey cement in the trade and non-trade segments. It is further submitted that the major proportion of grey cement used by NVCL to produce ready-mix concrete is sourced from its own production. It is also submitted that ECL sells a negligible amount of clinker to third party manufacturers and the revenue generated by ECL from



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/03/734)



- the sale of clinker to third party manufacturers is insignificant when compared to the total revenue earned by ECL. Moreover, ECL does not supply / sell clinker to NVCL. Therefore, the Proposed Combination is not likely to cause any foreclosure concerns.
27. 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 based on the 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.
  28. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
  29. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
  30. The Secretary is directed to communicate to the Acquirer accordingly.