COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2016/04/394)

Dated: 04.08.2016

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

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Dr. M. S. Sahoo
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: M/s AZB & Partners

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

1. On 29.04.2016, the Competition Commission of India ("**Commission**") received a Notice of a proposed combination under sub-section (2) of Section 6 of the Competition Act, 2002 ("**Act**") given by UltraTech Cement Limited ("**Ultratech / Acquirer**").

2. Under the proposed combination, UltraTech proposes to acquire the undertakings of Jaiprakash Associates Limited ("**JAL**") and its subsidiary Jaypee Cement Corporation Limited ("**JCCL**") that are engaged in sale of cement manufactured at

identified cement plants (including integrated units and grinding units) having a total cement capacity of 21.2 million tonnes per annum ("**MTPA**"). The said cement plants are situated in the States of Madhya Pradesh, Uttar Pradesh, Himachal Pradesh, Uttarakhand and Andhra Pradesh. The Notice was filed with the Commission pursuant to the execution of the Master Implementation Agreement by and between Ultratech, JAL, JCCL and JAL Promoter Group on 31.03.2016 ("**MIA**") (Ultratech, JAL and JCCL are collectively referred to as the "**Parties**").

3. The Parties made certain amendments to the MIA by entering into an Amendment Agreement on 04.07.2016 and submitted the same to the Commission under Regulation 16 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("**Combination Regulations**"). It also submitted the Scheme of Arrangement in relation to the proposed combination along with the aforesaid Amendment Agreement. The Commission considered and took on record the submissions of the Acquirer.

4. In terms of Regulation 14 of the Combination Regulations, vide letter dated 13.05.2016, the Acquirer was required to provide certain information/document(s) latest by 20.05.2016. It filed part response on 01.07.2016 and final response on 24.07.2016, after seeking extension of time under sub-regulation (5) of Regulation 14 of the Combination Regulations.

5. 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, it currently has a cement production capacity of around 66 MTPA (on an all India basis) through its cement plants located across India. It manufactures and sells grey cement, white cement, ready mix concrete, and other building products.

6. JAL is a listed, public limited flagship company of Jaypee Group. It is engaged, *inter alia*, in manufacturing and sale of different varieties of grey cement. As submitted, it, currently, has a cement production capacity of around 35 MTPA (on an all India basis) through its cement plants located across India.

7. JCCL is a public limited company and is a wholly owned subsidiary of JAL. It is engaged in manufacture of clinker, grey cement, etc.

8. As stated above, the Parties are primarily engaged in manufacture and sale of cement. In order to define the relevant product market, the Commission considered the extent of demand side substitutability between various types of cements, 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. It observed that white cement and grey cement differ in terms of their physical characteristics and intended uses and, therefore, constitute separate relevant product markets. It further observed that different varieties of grey cement are largely substitutable and, therefore, market for grey cement is the relevant product market for the purpose of competition assessment of the proposed combination.

9. The Commission observed that based on the location of identified cement plants forming part of the proposed combination, there are overlaps between the Parties in the markets for grey cement in the states of Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Uttarakhand and Himachal Pradesh. Accordingly, it delineated relevant geographic markets for the purpose of assessment of the proposed combination by using the ElzingaHogarty Test ("**EH Test**").

10. The Commission noted that the Acquirers' submissions on the relevant geographic market are based on the EH Test at 90 percent threshold based on inter-state trade flows of cement for the year 2011-12. The Acquirer, in its submissions, defined the following relevant geographic markets for the aforesaid overlapping states:

   i. For the overlaps in Andhra Pradesh, the Acquirer defined the relevant geographic market as the area comprising the states of Andhra Pradesh, Karnataka, Kerala, Maharashtra and Tamil Nadu;
   ii. For the overlaps in Madhya Pradesh and Uttar Pradesh, the Acquirer defined the relevant geographic market as the area comprising the states of Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, Haryana, Delhi and Punjab;

iii. For the overlaps in Himachal Pradesh, the Acquirer defined the relevant geographic market as the area comprising the states of Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, Haryana, Delhi and Punjab; and

iv. For the overlaps in Uttarakhand, the Acquirer defined the relevant geographic market as the area comprising the states of Uttarakhand, Madhya Pradesh, Uttar Pradesh, Bihar, Rajasthan, Haryana, Delhi and Punjab.

11. With regard to the relevant geographic markets delineated by the Acquirer, the Commission noted that the markets delineated are too wide and do not reflect most relevant competition constraints. The Acquirer has continued to expand the relevant geographic market till a particular level of Little In From Outside (LIFO) / Little Outside From In (LOFI) thresholds, i.e., 90 percent have been met and in the process, arrived at a very wide market definition. In this regard, the Commission noted that regardless of the choice of the threshold level for the purpose of 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 most relevant constraints on the behaviour of the Parties. The inclusion of a new state that does not itself trade substantially with other states included in the relevant market can widen the market definition to include those states with which only such newly added state trades substantially. Such chains of substitution may have the impact of widening of relevant market without reflecting effective competitive constraints.

12. The Commission, therefore, independently applied the EH Test to identify the areas forming part of the relevant geographic markets. However, in order to account for the limitations of the test and specific nature of this industry in India, due consideration was given not only to the LIFO/LOFI thresholds, but also to the nature of the change in these thresholds with each successive addition of a state. This helped the Commission to ascertain whether the addition of a new state in the relevant market

was justified and the definition of the relevant market thus arrived at reflected the most relevant competitive constraints on the behaviour of the Parties or not.

13. As regards the overlaps in Andhra Pradesh, the Commission expanded the market to include Karnataka and Maharashtra. Up to this stage, the Commission's findings and the submissions of the Acquirer were the same. The LIFO/LOFI thresholds for the area comprising the aforesaid three states were 11 percent and 18 percent respectively. However, while the Acquirer had further included Tamil Nadu and thereafter, Kerala in the relevant market, the Commission was of opinion that the relevant geographic market should not include Tamil Nadu and Kerala as the same is not justified by the actual pattern of inter-state trade flows. As regards Tamil Nadu, the Commission noted, based on data of inter-state trade for the year 2011-12, that the proportion of exports to Tamil Nadu and Kerala to the total production in the above stated three states and the proportion of exports to these three states to the total production in Tamil Nadu and Kerala is insignificant. Based on this analysis, the Commission decided that the relevant geographic market for the overlaps in Andhra Pradesh may be defined in terms of area comprised by the states of Andhra Pradesh, Karnataka and Maharashtra ("**AP Relevant Market**").

14. As regards the overlaps in Uttar Pradesh and Madhya Pradesh, the Commission observed that the same relevant geographic market is delineated by applying EH Test irrespective of whether Uttar Pradesh and Madhya Pradesh is taken as the base. It expanded the market definition to include Rajasthan, Haryana and Delhi apart from Uttar Pradesh and Madhya Pradesh. The LIFO/LOFI thresholds for the area comprising the aforesaid five states were 8 percent and 18 percent respectively. The Commission, however, observed that inclusion of Bihar and Punjab (as suggested by the Acquirer) in the relevant market is not justified by the trade flows and the methodology of application of EH Test. Based on this analysis, the Commission decided that the relevant geographic market for the overlaps in Uttar Pradesh and Madhya Pradesh may be defined in terms of area comprised by the states of Uttar Pradesh, Madhya Pradesh, Rajasthan, Haryana and Delhi ("**UP/MP Relevant Market**").

15. As regards the overlaps in Uttarakhand, the Commission applied the EH Test with Uttarakhand as the base. It expanded the market definition to include Uttar Pradesh, Madhya Pradesh, Rajasthan, Haryana and Delhi. The LIFO/LOFI thresholds for the area comprising the aforesaid six states were 6 percent and 16 percent respectively. The Commission observed that as was the case with the UP/MP relevant market, inclusion of Bihar and Punjab in the relevant market is not justified by the trade flows and the methodology of application of EH Test. Based on this analysis, the Commission decided that the relevant geographic market for the overlaps in Uttarakhand may be defined in terms of area comprised by the states of Uttarakhand, Uttar Pradesh, Madhya Pradesh, Rajasthan, Haryana and Delhi ("**UK Relevant Market**").

16. As regards the overlaps in Himachal Pradesh, the Commission applied the EH Test with Himachal Pradesh as the base. It expanded the market definition to include Punjab. The LIFO/LOFI thresholds for the area comprising the aforesaid two states were 20 percent and 21 percent respectively. However, while the Acquirer had further included Rajasthan and other states, the Commission was of opinion that the relevant geographic market should not include Rajasthan as the same is not justified by the actual pattern of inter-state trade flows. In accordance with the methodology of application of EH Test, the next state to be considered for inclusion after Himachal Pradesh and Punjab was Haryana and including Haryana in the relevant market had the impact of changing the LIFO/LOFI factors to 43 percent and 15 percent respectively. Apart from the significant reversal of LIFO indicating the fact of Haryana's trade with other states, the Commission further observed that inclusion of Haryana in the relevant market is not justified by the trade flows. Based on data of inter-state trade for the year 2011-12, the proportion of exports to Haryana from the plants located in the above stated two states as a proportion of total production in these three states and the proportion of exports to these two states from the plants located in Haryana is insignificant. Based on this analysis, the Commission decided that the relevant geographic market for the overlaps in Himachal Pradesh may be defined in terms of area comprised by the states of Himachal Pradesh and Punjab ("**HP Relevant Market**").

17. As regards the assessment of the proposed combination, the Commission noted that at present proceedings under Section 44 of the Act against Ultratech are underway in relation to the omission of information in respect of shareholding of promoters of Ultratech in Century Textiles and Industries Limited ("**Century**") and Kesoram Industries Limited ("**Kesoram**") in combination registration no. C-2014-02-246 (Ultratech's acquisition of cement plants of JAL located in Madhya Pradesh). It assessed the proposed combination duly considering the potential impact of the aforesaid shareholdings and decided to leave the question open for final decision in this regard as the same was not having a significant impact on the findings of the Commission.

AP Relevant Market

18. The Commission considered the market structure and observed that the market is fragmented with presence of more than 30 companies. The CR 4 of the AP Relevant market is around 41 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 AP Relevant Market is around 13 percent and that of identified cement plant is around 3 percent, thus resulting in a market share of around 16 percent, post combination. Accordingly, pre-combination HHI of around 595 will increase to post combination HHI of around 661, with change in HHI of 65. The said post-combination HHI and change in HHI is considered as insignificant to raise any concerns of appreciable adverse effect on competition ("**AAEC**"). Based on the aforesaid, the Commission decided that the proposed combination is not likely to result in an AAEC in the AP Relevant Market.

UP/MP Relevant Market

19. The Commission considered the market structure and observed that the market is fragmented with presence of around 20 companies with CR 4 of around 50 percent. It is noted that in terms of installed capacity, the pre-combination market share of

Ultratech in the UP/MP Relevant Market is around 13 percent and that of identified cement plant is around 8 percent, thus resulting in a market share of around 21 percent, post combination. Accordingly, pre-combination HHI of around 864 will increase to post combination HHI of around 986, with change in HHI of 122. It is observed that the post-combination HHI and change in HHI is insignificant to raise any concerns of AAEC. Based on the aforesaid, the Commission decided that the proposed combination is not likely to result in an AAEC in the UP/MP Relevant Market.

UK Relevant Market

20. The Commission considered the market structure and observed that the market is fragmented with presence of around 20 companies with CR 4 of around 52 percent. It is observed that in terms of installed capacity, the pre-combination market share of Ultratech in the UK Relevant Market is around 13 percent and that of identified cement plant is around 9 percent, thus resulting in a market share of around 22 percent, post combination. Accordingly, pre-combination HHI of around 884 will increase to post combination HHI of around 1010, with change in HHI of 126. It is observed that the post-combination HHI and change in HHI is insignificant to raise any concerns of AAEC. Based on the aforesaid, the Commission decided that the proposed combination is not likely to result in an AAEC in the UK Relevant Market.

HP Relevant Market

21. The Commission considered the market structure and observed that the market is concentrated with presence of only 4 companies namely LafargeHolcim, Ultratech, JAL and Cement Corporation of India. JAL and Ultratech are ranked 2nd and 3rd in the relevant market in terms of installed capacity having market shares of around 20 percent and 10 percent respectively. LafargeHolcim accounts for around 68 percent of the total installed capacity of the relevant market and is the market leader. Thus, the proposed combination is integration of the 2nd and 3rd ranked players, in the relevant market, in terms of installed capacity. Post-combination, Ultratech would

have a market share of around 30 percent. In terms of HHI and incremental HHI, the Commission observed that pre-combination HHI of around 5188 will increase to post combination HHI of around 5588, with change in HHI of 400, which may be considered as significant. However, the Commission noted that the Baga plant of JAL is operating at substantially lower capacity utilisation levels due to absence of environmental clearances. Besides, HHI is only a first filter as regards the state of competition post-combination in the relevant market. Other factors influencing competition in the relevant market have to be taken into account before arriving at a conclusion. In view of the same, the Commission observed that the market shares in terms of installed capacity may not be actually reflecting the market dynamics.

22. The Commission further observed that although the proposed combination allows Ultratech to consolidate its position in terms of installed capacity, it would continue to be constrained by presence of LafargeHolcim. Conversely, post the proposed combination, Ultratech might be in a position to compete better than the pre-combination state, thereby constraining LafargeHolcim in a more effective manner. Moreover, the Commission also took into account the fact that the proposed combination has been initiated at the instance of lenders of JAL, given its mounting debt and that the Acquirer intends to introduce and utilise its processes and core competence to increase the capacity utilisation of target assets. On the basis of the aforesaid, the Commission observed that, in the context of the proposed combination, the market could benefit from increase in overall economic efficiency in production and increase in overall quantity of cement, and Ultratech, post the proposed combination might be in a better position to compete more effectively than the pre-combination state of competition. Based on the aforesaid, the Commission decided that the proposed combination is not likely to result in an AAEC in the HP relevant market.

23. Considering the facts on record and 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 combination is not likely to have AAEC in India and therefore, hereby approves the same under sub-section (1) of section 31 of the Act.

24. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.

25. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.

26. The Secretary is directed to communicate to the Acquirer accordingly.