COMPETITION COMMISSION OF INDIA

31st January, 2012

Combination Registration No.: C-2011/12/14

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

1. On 12th December, 2011, the Competition Commission of India (hereinafter referred to as the "**Commission**") received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the "**Act**") of the proposed acquisition of shares of Navyug Special Steel Private Limited ("**Navyug**"), a wholly owned subsidiary of Mahindra Ugine Steel Company Limited (hereinafter referred to as "**Musco**"), by Sanyô Special Steel Co., Ltd. (hereinafter referred to as the "**Sanyo**") and Mitsui & Co., Ltd. (hereinafter referred to as the "**Mitsui**") (hereinafter, Navyug, Musco, Mitsui and Sanyo are collectively referred to as the "**parties to the combination**").

2. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (hereinafter referred to as the "**Combination Regulations**"), on 16th December, 2011, the parties to the combination were required to remove certain defects and provide information/document(s) by 26th December, 2011. The parties to the combination furnished the required information/document(s) on 26th December, 2011. Further, in terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, on 6th January, 2012, the parties to the combination were required to furnish additional information/document(s) in relation to the transaction by 20th January, 2012. In response to the letter of the Commission, the parties to the combination have furnished information on 20th January, 2012 and 31st January, 2012.

3. The proposed combination comprises subscription of 29 per cent and 20 per cent of the fully diluted share capital of Navyug by Sanyo and Mitsui respectively. The notice was filed by the parties pursuant to execution of a Share Subscription Agreement on 11th November, 2011 between Musco, Sanyo, Mitsui and Navyug (hereinafter referred to as the "**SSA**").

4. The proposed share subscription by Sanyo and Mitsui is a combination under Section 5(a) of the Act.

प्रतिस्पर्धा आयोग Competition Commission of India ★ दिल्ली / New Delhi

5. As per the details provided by the parties, the following transactions are connected and incidental to the proposed combination:-

a) Navyug has entered into a business transfer agreement (hereinafter referred to as the "**BTA**") with Musco on 11th November, 2011 Under the BTA, Musco intends to transfer its steel and rings division to Navyug through slump sale on a going concern basis subject to conditions precedent mentioned therein;

b) Simultaneous to the execution of the SSA, Musco, Mitsui, Sanyo and Navyug have executed a shareholders' agreement on 11th November, 2011. Upon closing of the SSA and BTA, the shareholders' agreement would regulate the respective rights of Musco, Mitsui and Sanyo, as shareholders of Navyug and their respective responsibilities regarding the management of the steel business of Navyug and its subsidiaries from time to time; and

c) On 11th November, 2011, Navyug and Sanyo have entered into a technical assistance agreement. Under the said agreement, following completion of the SSA, Sanyo would provide technical assistance to Navyug to achieve productivity improvement cost reduction and increase profitability in relation to the steel business, to take advantage of the increased demand for specialty steel in the Indian market and producing an equal or higher quality of special steel in comparison to other companies in the special steel industry in India.

6. The parties to the combination have stated that certain compliances in relation to transfer of steel and rings division of Musco to Navyug are conditions precedent to the proposed share subscriptions by Mitsui and Sanyo. It is further stated that a single notice has been filed in respect of subscription of 29 per cent and 20 per cent of the fully diluted share capital of Navyug by Sanyo and Mitsui respectively as both the subscriptions are inter-connected and inter-dependent on each other and fall within the ambit of sub- regulation (4) of Regulation 9 of the Combination Regulations.

7. Sanyo is a company based in Japan, with offices in Thailand, Indonesia, USA and China. Sanyo is engaged in the business of manufacturing, processing and marketing of specialty steel, formed and fabricated materials and metal powdered products. Sanyo has recently incorporated a wholly owned subsidiary in India, namely, Sanyo Special Steel India Private Limited, for the purpose of gathering market information concerning special steel in India.

8. Mitsui is a global diversified trading, investment and service company headquartered in Tokyo, pursuing the businesses ranging from product sales, world-wide logistics

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

and financing through the development of major international infrastructure and other projects in various fields including iron and steel, minerals, chemicals, financial markets, food and retail etc. Mitsui has a wholly owned subsidiary in India namely, Mitsui and Co. India Private Limited, which is a trading company that imports and exports various steel products into and out of India. It has been stated in the notice that Mitsui also currently holds 20 per cent of the share capital of the Indian Steel Corporation Limited which was incorporated in 2004 and is engaged in the production of flat steel products.

9. Musco is a company incorporated under the provisions of the Companies Act, 1956 having its shares listed in National Stock Exchange of India Limited and BSE Limited. Currently, 55.47 per cent of the stake in Musco is held by Mahindra & Mahindra Limited. Musco has two business divisions namely, steel and rings; and stamping. It has been stated in the notice that pursuant to the BTA, the steel and rings division of Musco would be transferred to Navyug. The current business activities of the steel and rings division of Musco include the manufacture of steel which is sold to customers who use steel as a raw material for producing various end products, and the manufacture of rings, which are produced by the steel segment of Musco. The stamping division of Musco offers sheet metal parts for the automobile and engineering industry and press tools.

10. Navyug is a wholly owned subsidiary of Musco incorporated on 8th November, 2011 under the provisions of the Companies Act, 1956. It has been stated in the notice that the products currently being supplied by Musco in steels and rings division, and which will continue to be supplied by Navyug post-combination, will cater to the needs of the automotive, engineering, oil and gas, tools and die industry, bearings and other capital goods industry. It has also been stated that Navyug will be active in the manufacture of carbon steel, stainless steel, highly alloyed steel and low-middle alloy steel.

11. The announcement dated 30th November, 2011 made by Musco to the National Stock Exchange of India Limited[1] states that the steel business of Musco is operating under a challenging environment due to various factors like high costs of raw materials, borrowings, power, fuel etc. These factors are adversely affecting the performance of the steel business. With a view to improve the performance of the steel business and to ensure its growth, the company [Musco] has been exploring options and opportunities to restructure the same. As a step towards accomplishing the said objective, the board of Musco had considered hiving off the steel business as a going concern by way of a slump sale, to a wholly owned subsidiary of Musco and induct in such subsidiary strategic investor/s who can bring new technology and marketing

[1] Available at www.nseindia.com

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India दिल्ली / New Delhi network to provide quality edge and wide customer base for the products of the steel business. The announcement also states that Musco has inter-alia entered into appropriate contractual arrangements with Sanyo and Mitsui, pursuant to which it is proposed that Sanyo and Mitsui will invest in the equity capital of Navyug, subject to requisite approvals and satisfaction of certain conditions.

12. The proposed combination would result in Navyug becoming a joint venture between Musco, Mitsui and Sanyo.

13. The proposed combination concerns manufacturing, marketing and sale of various steel products and rings used in the automobile and bearing sectors.

14. Steel is an iron based alloy or mixture containing two or more metallic and/or non-metallic elements usually dissolving into each other when molten. It may contain one or more elements other than iron such as carbon, manganese, silicon, nickel, lead, copper, chromium etc. India has the fourth largest steel industry in the world. The steel industry in India is characterized by the presence of large and modernized steel plants with backward and forward integration and captive availability of raw material for the production of wide and varied steel products as well as the presence of steel producers with small to medium scale units which operate without forward or backward integration. Unlike the large integrated steel producers, Musco is a non-integrated steel producer. The parties to the combination have stated that the steel and rings division of Musco is a loss making division for the past three years and the losses could be attributed to high cost of energy and raw materials as well as intense competition in the domestic market, both from domestic manufacturers and from imports. The parties to the combination have also stated that the purpose of the proposed combination is to revive the loss making business with infusion of capital and technical expertise from Mitsui and Sanyo, to achieve better competitiveness vis-à-vis other steel producers in India.

15. The parties to the combination have stated that Musco has an installed capacity of 2,40,000 tonnes and the actual steel production by Musco for the financial year ending March 31, 2011 was 1,23,447 tonnes, and that the total steel produced in India in the same period was 71.9 million tonnes. As per the details provided in the annual report of Musco for the financial year ending 31st March, 2011, a significant portion of the products manufactured by Musco are sold to the Mahindra & Mahindra group to which it belongs. Musco has registered sales of INR 1,343 crore during the financial year ending 31st March, 2011. Barring revenues earned from its group companies, the revenue of Musco earned from sales to non-group companies is around INR 699 crore.

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

16. Considering the composition and utility of the steel products offered by the parties to the combination in India, their businesses may be classified as alloy steel; and non-alloy steel (carbon steel).

17. Alloy steel is produced using alloying elements such as manganese, silicon, nickel, chromium etc. On the basis of composition and utility, alloy steel may be further classified into high alloy steel, low-middle alloy steel and stainless steel. *High-alloy steel* products are primarily used for sophisticated applications in the automobile and defence industries. High-alloy steel contains high quantity of alloying elements such as manganese, silicon, nickel, chromium, etc. The parties to the combination have stated that within the high alloy steel category, Navyug would manufacture tool steel used in the construction, automobiles, household goods industry, and for drilling in the oil and gas industry. Mitsui does not manufacture any high alloy steel product in India, however Mitsui imports into India heat resisting bars with high composition of nickel/chromium used in the engine valve of automotives. Sanyo does not manufacture or directly sell any of its products in India. However, Sanyo's tool steel and heat resistant steel used in dies and valves respectively are imported into India indirectly through trading companies.

18. *Low-middle alloy steel* differs from high alloy steel due to its chemical composition. The forms of low-middle alloy steel include bearing steel, manganese steel, micro-alloy and case carburizing steel, all of which are used in various industrial applications including in the automobiles, engineering and oil & gas industry. It has been stated by the parties to the combination that Navyug would be active in the production of all the above forms of low-middle alloy steels. Mitsui imports into India, bearing steel and Cr-Mo steel used in the manufacture of bearings and gears of two wheelers. Sanyo indirectly imports into India, bearing steel used in manufacture of bearings and engineering steel used in making of gears and shafts.

19. *Stainless steel* is a type of alloy steel that contains significant proportions of chrome and nickel, and has characteristics of resistance to corrosion and high temperatures. It is observed that Mitsui does not import stainless steel into India. Sanyo indirectly imports into India stainless steel used in the manufacturing of shafts, bolts, valves and boilers. It has been stated by the parties to the combination that Navyug would be active in the production of stainless steel long products.

20. Carbon steel is generally referred to as non-alloy steel as it has no alloying components except carbon which is normally present. Carbon steel may be further classified on the basis of composition, shape and utility. The parties have stated that Navyug would be active in the production of semi-finished carbon steel products, secondary processed steel products and carbon steel categorized as special steel. As

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

per the details provided by the parties to the combination, Mitsui and Sanyo neither manufacture nor directly or indirectly import any kind of carbon steel into India.

21. Sanyo does not manufacture or directly sell any of its products in India. It has been stated in the notice that Sanyo neither itself nor through any entity over which it has control, produce products that are related to the products of Musco at different levels of the production chain in India. Some of the alloy steel products of Sanyo such as tool steel, bearing steel and stainless steel are sold in India through trading companies. However, the business operations of Sanyo in India are comparatively insignificant. As per the details given in the notice and the additional information provided by the parties to the combination, Sanyo does not have any assets in India and its turnover in India is also not substantial. Further, Sanyo does not sell its products directly into India and its turnover in India is through indirect sales. In view of the foregoing, Sanyo and Musco are not related at different level of the production chain in India. Further, due to the limited presence of Sanyo in India, the similarity between the products of Sanyo and Musco in India, if any, do not give rise to any adverse competition concern. It is also observed that competition and/or the relationship at different levels of production chain between Mitsui and Sanyo in India, if any, is also negligible in view of Sanyo's limited presence in India.

22. Mitsui does not manufacture any products in India. Mitsui imports into India heat resisting bars, bearing steel and Cr-Mo steel, all falling within the alloy steel category. Musco does not produce heat resisting bars that are similar to those imported by Mitsui into India. The bearing steel and Cr-Mo steel imported by Mitsui into India are apparently similar to some of the alloy steel products manufactured by Musco. However, as per the additional information provided by the parties, the share of Mitsui in the total alloy steel imported into India is negligible. The share of Musco in the total alloy steel produced in India is also insignificant. Even if the business of Mitsui and Musco in bearing steel and/or Cr-Mo steel in India is taken into consideration for the purpose of assessment of the proposed combination, the share of both, individually as well taken together, would not be significant so as to give rise to any adverse competition concern.

23. As regards the business of rings used in the automobile and bearing industries, as per the details provided in the annual report of Musco for the financial year ending 31st March, 2011, Musco has registered sales of 2,785 tonnes worth INR 24.32 crore. Mitsui does not import any rings into India. Some of the rings produced by the group companies of Sanyo are indirectly imported into India; however, such imports are insignificant. The parties have also stated that Musco has been competing in its rings business with large competitors in India. Considering the comparatively negligible presence of the parties to the combination in the business of rings used in automobile

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

and bearing sectors, the proposed combination is not likely to give rise to any adverse competition concern.

24. Based on the facts on record and the details provided in the notice filed under sub-section (2) of Section 6, the proposed combination is not likely to give rise to any adverse competition concern in India.

25. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and the assessment of the proposed combination after duly considering the relevant factors mentioned in the section 20(4) of the Act, the Commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the proposed combination under sub-section (1) of Section 31 of the Act.

26. This approval is without prejudice to any other legal/statutory obligations as applicable.

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

28. The Secretary is directed to communicate to the parties to the proposed combination accordingly.

भारतीय प्रतिस्पर्धा आयोग Competition Commission of India नई दिल्ली / New Delhi

Certified True Copy

13/2/2012

ANIL K. VASHISHT
Office Manager
Competition Commission of India
New Delhi