



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/01/239)



*Fair Competition
For Greater Good*

20.04.2015

Notice u/s 6 (2) of the Competition Act, 2002 given by:

- Denki Kagaku Kogyo Kabushiki Kaisha
- Mitsui & Co. Ltd

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

1. On 6th January 2015, 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 (“**Act**”) filed by Denki Kagaku Kogyo Kabushiki Kaisha (“**Denka**”) and Mitsui & Co. Ltd. (“**Mitsui**”). (Hereinafter, Denka and Mitsui are collectively referred to as the (“**Acquirers**”).
2. The proposed combination relates to the acquisition of the chloroprene rubber (“**CR**”) business of E.I. du Pont de Nemours and Company (“**Target assets**”) by Denka Performance Elastomer LLC (“**JV**”), a joint venture company incorporated by Denka and Mitsui for the purpose of acquiring the Target assets. (Hereinafter, Denka, Mitsui and DuPont are collectively referred to as the “**Parties**”).
3. The notice was given pursuant to an Asset Purchase and Sale Agreement executed on 9th December 2014 (“**APSA**”) between JV and DuPont. The proposed combination falls under section 5 (a) of the Act.
4. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), vide letter dated 14th January 2015, the Acquirers were required to remove defects in the notice and provide certain information/document(s). As the response submitted by the Acquirers on 29th



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January 2015 was incomplete, another letter dated 5th February 2015 was issued to the Acquirers to remove the defects as well as to provide additional information under the provisions of regulation 5 and sub-regulation (2) of regulation 19 of the Combination regulations. The Acquirers filed their response on 24th February 2015 after seeking extension of time. As the response dated 24th February, 2015 submitted by the Acquirers was incomplete, another letter was issued to the Acquirers on 27th February 2015, the reply to which was given on 5th March 2015. The Acquirers were again asked to clarify certain points vide letter dated 18th March 2015 to which the reply was filed on 26th March 2015 after seeking extension of time. As the response was incomplete, another letter was issued by the Acquirers on 31st March 2015 requiring them to provide complete details, response to which was submitted by the Acquirers on 15th April 2015 after seeking extension of time.

5. Further, the Commission in its meeting held on 12th February 2015 decided to seek information from the Rubber Board, Ministry of Commerce and Industry on certain issues relating to the proposed combination under Section 36 of the Act read with Regulation 34 of the Combination Regulations. In the same meeting, the Commission also decided to seek information from certain users of CR in India under Section 36 of the Act read with sub-regulation (3) of Regulation 19 of the Combination Regulations. Accordingly, letters were sent under the respective provisions of the Combination Regulations, as mentioned above, for seeking information relating to the proposed combination.
6. Denka, a publicly held corporation in Japan, is stated to be *inter-alia* engaged in a wide range of businesses relating to a range of chemical products, electronic materials and processed resin products besides producing chloroprene rubber using the acetylene method.
7. Mitsui, also a publicly held corporation in Japan, is a general trading company which provides services such as, marketing, financing, logistics, risk management and process development for companies in various sectors and industries.



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8. DuPont, a publicly held corporation in USA, is a science and technology company which provides products and services in a wide range of business segments including agriculture, electronics, industrial biosciences, nutrition and health besides manufacturing CR using the butadiene method of production under its brand name 'Neoprene'. (In this regard, the Acquirers have also stated that CR produced by two methods, namely the acetylene and butadiene methods are interchangeable and substitutable).
9. The Commission considered the details provided in the notice, various submissions of the Parties from time to time and information received from certain organisations and enterprises as stated above, under the respective provisions of the Combination Regulations and observed that Denka and DuPont are engaged in the common business activity of manufacturing and selling CR whereas Mitsui is engaged only in the distribution business. As stated by the Acquirers, Mitsui currently distributes CR produced only by Denka.
10. As regards CR, it is noted that it is a general purpose synthetic rubber with properties such as weather and ozone resistance, oil and abrasion resistance and heat resistance which make CR preferable over the natural rubber and other types of synthetic rubbers for certain applications/uses. CR is stated to be used for adhesives, car parts, general industrial products and other miscellaneous products. Dry CR is used for adhesives, car parts, general industrial products and other miscellaneous products, whereas latex CR is used for adhesives, gloves and water-resistance coating. Further, as regards substitution of CR with other types of rubbers, it is observed that there are certain products and applications such as, premium wet suits and conveyor belts in mines, in case of which CR cannot be easily substituted. However, as per the information submitted in the notice and other documents available on records, there are a number of application wherein CR is increasingly being substituted by other types of rubbers.



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2015/01/239)



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11. Further, in respect of the proposed combination, a precise market definition may be left open as no competition concern is likely to arise in any of the possible relevant market definitions.
12. On the basis of information furnished by the Acquirers, it is noted that while the market share of Denka in India for the year 2013 was between 40-50 percent, post combination its combined market share would only be in the range of 50-60 percent. It is also noted that currently there is no manufacturing facility for CR in India and the entire consumption of CR in India is met through imports. Imports to India constitute an insignificant proportion of the worldwide manufacturing capacity of CR. Further it is also observed that apart from the Parties, Showa Denko K. K., Lanxess AG, Tosoh Corporation are the other major suppliers of CR to India. It is observed that the manufacturers of CR in China, namely, Shanxi SR-Nairit JV and Changshou Chemical are also the potential suppliers of CR in India. In this regard it is also noted that there would be no significant barrier for the manufacturers of CR other than the Parties to increase their supply of CR to the customers in India. Accordingly, the Acquirers would continue to face competition from the other worldwide suppliers of CR as far as India is concerned. Further as regards customers of CR, it is observed that CR is normally purchased by customers who enjoy countervailing buyer power as these purchases are generally made at negotiated prices and switching from one CR supplier to other is not uncommon among the customers.
13. Considering the facts on record and the 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 an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of section 31 of the Act.



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14. This approval is without prejudice to any other legal/statutory obligations as applicable.
15. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
16. The Secretary is directed to communicate to the Acquirers accordingly.