



04.02.2016

Notice u/s 6 (2) of the Competition Act, 2002 jointly given by Andhra Pradesh Gas Distribution Corporation Limited, GDF Suez Energy International Global Developments B.V., Shell Gas B.V. and GAIL (India) 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

Mr. M.S. Sahoo
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: M/s Lakshmikumaran & Sridharan Attorneys

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

Introduction

1. On 26.10.2015, 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”) jointly filed by Andhra Pradesh Gas Distribution Corporation Limited (“APGDC”), GDF Suez Energy International Global Developments B.V. (“Engie”), Shell Gas B.V. (“Shell”) and GAIL (India) Limited (“GAIL”) (hereinafter, APGDC, Engie, Shell and GAIL are collectively referred as the “Parties”).

2. The Parties envisage setting up of the project comprising of two joint ventures namely TermCo and TradeCo (“Proposed Combination”). The TermCo is proposed to be set up by APGDC, Engie and Shell to develop the terminal which will comprise a floating storage and regasification unit (“FSRU”), along with related infrastructure and facilities within the Kakinada port in the state of Andhra Pradesh, India. For this purpose, a joint venture agreement was executed between APGDC, Engie and Shell on 25.09.2015. The TradeCo is proposed to be set up between GAIL, Engie and Shell for purchasing LNG from LNG suppliers, delivering LNG to TermCo, and to sell RLNG purchased from TermCo to downstream customers in India. For this purpose, a joint venture agreement was executed between GAIL, Engie and Shell on 25.09.2015.
3. The Parties have submitted that both the joint ventures are green-field in nature. However, since Shell is transferring Front End Engineering Design (“FEED”) to TermCo as part of the transaction, the asset/turnover of the Shell group has been taken into account in accordance with the sub-regulation (9) of Regulation 5 of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (“Combination Regulations”). Thus, the proposed combination on account of the transfer of FEED, meets the notification thresholds prescribed under the Act.
4. In terms of Regulation 14 of the Combination Regulations, vide letter dated 13.11.2015, the Parties were required to provide certain information/document(s) by 23.11.2015. The Parties filed their reply to the aforesaid letter on 30.11.2015 after seeking extension. However, it was noticed that the response filed was incomplete and there were omissions in the data; therefore, another letter in terms of Regulation 14 in continuation of the previous letter dated 13.11.2015 was issued on 10.12.2015 directing the Parties to file response by 18.12.2015. The Parties filed response on 23.12.2015 after seeking extension. Vide letter dated



15.01.2016, the Parties were required to provide requisite information by 19.01.2016. The Parties filed their reply to the aforesaid letter on 18.01.2016.

Parties to the combination

5. APGDC, a 50:50 joint venture of the Government of Andhra Pradesh and GAIL Gas Limited (a subsidiary of GAIL), is incorporated in India as a private limited company. APGDC is established primarily for creating gas infrastructure in the state of Andhra Pradesh. Apart from being a part of TermCo for development of FSRU, APGDC is authorized to lay the Kakinada – Srikakulam pipeline connecting various demand centres and also to construct and operate the city gas distribution (“CGD”) system in the East and West Godavari districts of Andhra Pradesh.
6. GAIL is a listed central public sector company under the Ministry of Petroleum and Natural Gas. GAIL has presence across the entire natural gas value chain including gas transmission and marketing, transmission of liquefied petroleum gas, LNG regasification, CGD etc.
7. Engie is a part of the Engie group France which is present throughout the entire energy value chain in electricity and natural gas at global level. In India, Engie is mainly involved in sale of LNG. Apart from sales of LNG, Engie group is also active in India in i) power generation by way of their investment in Meenakshi Energy Private Limited; and ii) provision of engineering and consulting services to various companies in energy sector through Tractebel Engineering and Lahmeyer International.
8. Shell, incorporated in Netherlands, is a part of the Shell group of companies. Royal Dutch Shell plc, a company incorporated in England and Wales is the parent company of the Shell group. Shell group of companies have operations in more than 70 countries and territories in various businesses including oil and natural gas exploration, production and marketing, manufacturing, marketing and shipping of oil products and chemicals, and renewable energy products. In India, Shell is engaged in activities involving supply of natural gas, fuel products, lubricants, chemicals, provision of technical services etc.



Competition Assessment

9. The Proposed Combination relates to the natural gas sector. The Commission noted that there is a huge demand supply mismatch for natural gas in India, especially in the Eastern coast and that currently, there is no facility to import LNG on the Eastern coast. At present, there are four LNG terminals operating in India, all of which are located on the Western coast, namely Dahej, Kochi, Dabhol and Hazira. While, Dahej and Kochi terminals are operated by Petronet LNG Limited¹ (“PLL”); Dabhol terminal is operated by Ratnagiri Gas and Power Private Limited²; and Hazira terminal is operated by Hazira LNG Private Limited³. There are also a few upcoming LNG terminals which are at various stages of being set up on the Eastern coast, such as Ennore⁴ in Tamil Nadu, Gangavaram⁵ in Andhra Pradesh, and Dhamra⁶ in Odisha.
10. The Commission noted that the Proposed Combination envisages setting up of a greenfield joint venture for creating necessary infrastructure for supplying natural gas in India. The Commission observed that there is deficiency in natural gas supply in India and the Proposed Combination has inherent efficiencies in terms of creating a new source of LNG for consumers, thereby increasing supply of LNG in India and more specifically in Andhra Pradesh.
11. The Commission further noted that the Indian natural gas industry is characterized by presence of (i) vertically integrated players; (ii) horizontal or vertical cross shareholdings; and (iii) joint ventures of competitors. In this regard, the Commission noted that considering the prevalent industry practices and the nature of the Proposed Combination, it seems that the same is not likely to result in any change in the competition dynamics in any market in India.

¹Promoted by Oil and Natural Gas Corporation, GAIL, Indian Oil Corporation and Bharat Petroleum Corporation Limited. Apart from the promoters, Engie group also holds 10% shareholding in PLL.

²Promoted by GAIL and National Thermal Power Corporation

³ Partnership between Shell Gas B.V and Total GazElectricité Holdings France

⁴ Promoted by Indian Oil Corporation and Government of Tamil Nadu

⁵ Promoted by PLL

⁶ Promoted by Adani Enterprises



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2015/10/333)



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For Greater Good*

12. 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.
13. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
14. The Secretary is directed to communicate to the Parties accordingly.