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**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No.C-2016/06/404)

27.07.2016

**Notice under Section 6 (2) of the Competition Act, 2002 given by  
Power and Energy International (Mauritius) Ltd.**

**CORAM**

**Devender Kumar Sikri**

Chairperson

**S. L. Bunker**

Member

**Sudhir Mital**

Member

**Augustine Peter**

Member

**U. C. Nahta**

Member

**M.S. Sahoo**

Member

**G. P. Mittal**

Member

**Legal Representatives of the parties: Khaitan & Co**

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

1. On 2<sup>nd</sup> June 2016, the Competition Commission of India (“**Commission**”) received a notice filed by Power and Energy International (Mauritius) Ltd (“**PIL**” or “**Acquirer**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice was filed pursuant



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to the Subscription Agreement (“SA”) and Share Holder Agreement (“SHA”), each dated 9<sup>th</sup> May 2016 between PIL, GMR Energy Limited (“GEL” / “Target”), GMR Infrastructure Limited (“GIL”), GMR Renewable Energy Limited (“GREL”), GMR Energy Projects (Mauritius) Limited (“GEPL”) and Tenaga Nasional Berhad (“TNB”).

2. The proposed acquisition relates to acquisition of 30 per cent of equity shares of GEL by PIL, pursuant to the execution of SA and the SHA on 9<sup>th</sup> May 2016. It is stated in the notice that PIL will also acquire certain affirmative rights in GEL which will amount to control over GEL.
3. PIL, a wholly owned subsidiary of Tenaga Nasional Berhad (“TNB”), is incorporated in Mauritius and has certain investment holding activities in Mauritius.
4. It has been submitted in the notice that TNB, listed on the Kuala Lumpur Stock Exchange, is the largest electricity utility in Malaysia. It is engaged in business of generation, transmission and distribution of power. TNB is also, *inter alia*, engaged in: (i) energy-related operations such as the manufacture of transformers, high-voltage switchgears and cables; (ii) professional consultancy services; (iii) architectural, civil, electrical engineering works and services; and (iv) repair and maintenance services.
5. It is stated in the notice that TNB and PIL do not have any direct or indirect activities in India.
6. GIL is a flagship company of the GMR group and is engaged in the business of developing projects in areas such as airports, energy, transportation and urban infrastructure in India.
7. GEL, a company registered in India, is stated to be a subsidiary of GIL. In India, it is *inter alia* engaged in the development, operation and maintenance of power projects, power generation, transmission, and captive coal mining for its plant in Chhattisgarh, both directly



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and indirectly, through its subsidiaries. It has a portfolio of five operational power assets (comprising coal, gas and renewable energy assets) with a combined generation capacity of 4,630MW.

8. On the basis of the submissions of the Acquirer, the Commission observed that PIL and TNB neither have any business presence nor any direct or indirect investments in India. Therefore, there is no horizontal overlap in India between the Acquirer and the Target.
9. As, PIL and TNB do not have any business presence in India, the Commission observes that there is no possibility of any vertical foreclosure post combination in India.
10. The Commission further observed that the SHA contains non-compete covenant under Clause 23.1 which provides that all shareholders of GEL, PIL and TNB, and their respective affiliates (as defined in the SHA) shall not, whilst remaining a shareholder of GEL, either alone or in conjunction with or on behalf of any other person: (a) establish, engage or be directly or indirectly interested in carrying on any business in India which is a 'Relevant Business' other than through GEL or an entity controlled by GEL; and (b) assist any other person in relation to the above activities. The 'Relevant Business' has been defined in the SHA as *development, ownership and operation of power projects; power generation, transmission, distribution and trading of electricity in India; power generation for sale to off-takers in India; and captive mining for power plants in India.*
11. The Commission noted that the aforesaid non-compete covenant, to the extent it relates to the scope of products/ services of the proposed combination, is beyond what is necessary for the implementation of the proposed combination and therefore not ancillary to the proposed combination.
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



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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 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 Acquirer is found to be incorrect.
14. The information provided by the Acquirer is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
15. The Secretary is directed to communicate to the Acquirer accordingly.