



सत्यमेव जयते



## COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2020/07/754)

30<sup>th</sup> July, 2020

### Notice under Section 6(2) of the Competition Act, 2002 filed by Adani Power Limited

#### CORAM:

Mr. Ashok Kumar Gupta  
Chairperson

Ms. Sangeeta Verma  
Member

Mr. Bhagwant Singh Bishnoi  
Member

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

1. On 01<sup>st</sup> July, 2020, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), filed by Adani Power Limited (**APL/ Acquirer**). The Notice is pursuant to the Share Sale and Purchase Agreement (**SPA**) dated 22<sup>nd</sup> June, 2020 entered between APL and Sellers viz., AES OPGC Holding (**Seller 1**) and AES India Private Limited (**Seller 2**) (hereinafter, Seller 1 and Seller 2, will be together referred to as “**Sellers**”).
2. The proposed combination relates to acquisition by APL of 44.63% of equity share capital of Odisha Power Generation Corporation Limited (**Target/ OPGC**) from Seller 1 and 4.37% of equity share capital of OPGC from Seller 2. Pursuant to the proposed combination, APL, will be entitled to hold 49% of the total equity share capital of OPGC, on a fully diluted basis (**Proposed Combination**) (hereinafter, APL and OPGC will be referred to as “**Parties**”).



3. Certain information(s)/ clarification(s) necessary for the assessment of Proposed Combination *inter alia*, relating to overlaps, were sought from time to time responses to the same were received from the Parties *via* emails on 17<sup>th</sup> July, 2020, 27<sup>th</sup> July, 2020 and 29<sup>th</sup> July, 2020.
4. APL is a public listed company incorporated in India with its shares listed on BSE (formerly Bombay Stock Exchange) Limited as well as the National Stock Exchange of India Limited. It is part of the Adani Group. It is stated that APL is primarily engaged in the business of power generation by using coal based thermal power plants. It, is also stated that it directly and through its subsidiaries, operates thermal power plants in Mundra (Gujarat), Tiroda (Maharashtra), Kawai (Rajasthan) , Udupi (Karnataka), Raikheda and Raigarh (Chhattisgarh). The Adani Group is stated to be a business conglomerate with operations including in renewable power generation, thermal power generation, power transmission, power distribution, gas distribution, housing finance, operating ports, coal mining, *etc.*
5. OPGC is a joint venture between the Government of Odisha and the Sellers stated to be engaged in the business of power generation through coal-based thermal power plants as well as hydro power plants.
6. It mentioned that OPGC has two plants located in the IB valley area of Jharsuguda District in the State of Odisha. The first plant i.e. OPGC I is a 2x210 MW coal-fired power generational facility and has a 30-year PPA with GRIDCO Limited (GRIDCO), Odisha state's bulk power procurer, expiring in 2026. The second plant i.e. OPGC II is a 2x660 MW coal-fired power generation facility with 75% of its installed capacity contracted with GRIDCO for a period of four years through 2023, and 100% for the next 25 years through 2048. It is also stated that the entire generation of power is committed to Odisha state's bulk power procurer GRIDCO on the basis of the PPAs.
7. The Commission had observed in its decisional practice in cases relating to power sector that production/distribution chain of electricity consists of three segments, i.e., generation, distribution and transmission and that each of these market segments has a distinct set of producers and consumers. Further, from a demand substitutability point of view,



- switching can only take place internally within each segment. Also, each segment of the electricity supply chain is characterised by different competitive dynamics and governed by different regulatory frameworks. Accordingly, generation, distribution and transmission of power may be delineated as separate relevant product markets.
8. The market for generation of power may be further segmented based on source of power generation such as thermal, hydro, nuclear, solar and other renewable sources, because of the varied characteristics, extent of availability and regulations related to each of these sources of energy.
  9. With regard to relevant geographic market, the Commission had observed that the regional power transmission grids have been synchronised by interconnection, resulting in operation of a national grid, which operates as the single seamless network for transmitting power across the nation. Thus, the relevant geographic market for power generation may be defined as the “*entire territory of India*”.
  10. The Parties to the Proposed Combination are (directly and indirectly) engaged in the power sector in India. As submitted, within the power sector, OPGC is only engaged in the business of generation of power in India through thermal (using coal) and hydro sources. Adani Group (directly and through its subsidiaries/ affiliates) is *inter-alia* engaged in the business of generation of power in India only using thermal (using coal), solar and wind sources. Accordingly, Adani Group and OPGC are active in the markets of generation of power in India.
  11. It is submitted by the Parties that the relevant market for the Proposed Combination are (a) Market for power generation in India (**Relevant Market 1**); and (b) Market for power generation in India through thermal source (using coal) (**Relevant Market 2**).
  12. With regard to vertical relationship, it is submitted that the Adani Group, through Adani Transmission Ltd (**ATL**), is present in the market of transmission of power in India, while OPGC is present in the market of generation of power in India. Therefore, there exists a potential for vertical relationship between the activities of the Parties in India. The Parties submitted that currently there is no existing vertical relationship/ supply arrangement between Adani Group and OPGC in India. In relation to the potential vertical link



between activities of Adani Group and OPGC in India, it is submitted by the Parties that, the upstream market will be the market for generation of power in India (**Upstream Market**) and correspondingly, the downstream market will be the market for transmission of power in India (**Downstream Market**). Further, it is observed that potential vertical link may also exist in the market for generation of power in India and the market for distribution of power in India (**Downstream Market-2**).

13. However, the precise definition of the relevant market is being left open, as the material on record does not suggest that the Proposed Combination is likely to have any appreciable adverse effect on competition in India.
14. In relation to presence of the Parties in Relevant Market 1 and Relevant Market 2, it is observed that the combined market shares of the Parties are **less than 10 percent** and the incremental market share are also insignificant to raise any competition concern. Further, there are other players such as NTPC, MSPGCL, Tata Power and JSW Energy present in the above segments.
15. With respect to vertical relationships, it is submitted that the power generated by OPGC is committed for sale of entire output at tariff determined by the Odisha Electricity Regulatory Commission to GRIDCO, a Government of Odisha entity. It is also mentioned that for the power plants in the IB valley area, OPGC has entered into long terms PPA with GRIDCO Limited for supply of power. Further, considering the presence of ATL in the Downstream Market and other players such as Power Grid Corporation of India Limited and Sterlite Power Transmission Limited, the aforementioned potential vertical relationships are not likely to raise foreclosure concern.
16. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on the factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.
17. This order shall stand revoked if, at any time, information provided by Acquirer is found to be incorrect.



18. The information provided by Acquirer is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.
19. The Secretary is directed to communicate to the Acquirer, accordingly.