



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2021/02/813)

19th March 2021

Notice under Section 6(2) of the Competition Act, 2002 given by The Tata Power Company 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 8th February 2021, the Competition Commission of India (**‘Commission’**) received a notice under Section 6(2) of the Competition Act, 2002 (**‘Act’**), given by The Tata Power Company Limited (**‘Acquirer’** / **‘TPCL’**). The notice was given pursuant to a Letter of Intent dated 29th January 2021 (**‘LOI’**) issued by Odisha Electricity Regulatory Commission (**‘OERC’**) to TPCL and TPCL’s Letter of Acceptance (**‘LOA’**) dated 5th February 2021.
2. It is submitted in the notice that in June 2019 OERC initiated the process of sale of 51% of equity share capital of North Eastern Electricity Supply Company of Odisha Limited (**‘Target’** / **‘NESCO’**), under Section 20 of the Electricity Act, 2003, through a competitive bidding process. OERC *vide* its LOI informed TPCL that it is the successful bidder. [Hereinafter, Acquirer and Target are collectively referred to as the **‘Parties’**.]



3. The proposed combination is envisaged through following inter-connected steps:

Step 1: Grid Corporation of Odisha Limited (**'GRIDCO'**) (a wholly owned subsidiary of the Government of Odisha), which holds 100% of NESCO, will incorporate a wholly-owned special purpose vehicle (**'Project SPV'**) and transfer distribution business of NESCO to Project SPV.

Step 2: TPCL will acquire 51% of equity share capital of the Project SPV and GRIDCO will hold the remaining 49% of equity share capital of the Project SPV.

4. TPCL, a public listed company, is primarily engaged in the business of power generation, transmission and distribution in India, directly and through its subsidiaries. Tata Sons Private Limited (**'TSPL'**) is the largest promoter of TPCL and the principal holding company of the Tata group. TPCL is also engaged in coal supply and shipping arrangements for its thermal power generation operations in Indonesia and Singapore. TPCL is also present in Bhutan, Zambia, Georgia and Netherlands through joint ventures, to implement hydro projects.
5. NESCO is a wholly-owned subsidiary of GRIDCO. NESCO is engaged in the business of distribution and retail supply of power in five districts of Odisha namely, (i) Balasore; (ii) Bhadrak; (iii) Jajpur; (iv) Keonjhar; and (v) Baripada (*i.e.* **'Licensed Areas'**). NESCO does not have operations outside India.
6. It was submitted in the Notice that the Parties (directly and indirectly) are engaged in the power sector in India. NESCO is engaged in the business of distribution and retail supply of power and Tata Group is present in the business of generation, transmission and distribution of power in India. In distribution of power, TPCL is operating in the licensed areas of Mumbai, North and West Delhi, some parts of Jharkhand and certain other areas of Odisha. It is submitted that Acquirer and Target operate in the market for distribution of electricity in different licensed areas. Further, TPCL (including its group companies) has not supplied power under open access in Odisha including in Licensed Areas.



Accordingly, there is no horizontal overlap between the activities of Tata Group and NESCO. It is further submitted that the distribution companies in Odisha are obligated to fulfil their power requirement from GRIDCO. In the event that GRIDCO conveys its inability to fulfil the demand, they may procure power from alternate sources, with prior approval of the OERC. It is submitted that GRIDCO procures power by way of competitive bidding process at tariffs, regulated and approved by the OERC.

7. The Commission decided to leave the delineation of the relevant market open as it was observed that the Proposed Combination is not likely to cause an appreciable adverse effect on competition in any of the relevant markets.
8. Further, it was submitted by the Acquirer that there are no existing vertical or complementary relationships between the Tata Group and NESCO. However, there may be following two potential vertical relationships between the Tata Group and NESCO:
 - (i) Tata Group is present in power generation (*upstream market*) and NESCO is present in power distribution (*downstream market*)
 - (ii) Tata Group is present in power transmission (*upstream market*) and NESCO is present in the power distribution (*downstream market*).
9. The market share of Tata Group in power generation sector in India is in the range of [0-5]% in terms of both installed capacity and actual production (by volume) and [5-10]% in terms of actual production (by value). The market share of Tata Group in power transmission sector in India is in the range of [0-5]% in terms of circuit kms. Accordingly, based on the foregoing it appears that the Parties do not have any ability or incentive to foreclose competition in any market.
10. 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.



Combination Registration No. C-2021/02/813



11. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
12. The information provided by the Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
13. The Secretary is directed to communicate to the Acquirer accordingly.