



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2014/04/164)

29.09.2014

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

- Mumbai International Airport Private Limited;
- Indian Oil Corporation Limited;
- Bharat Petroleum Corporation Limited;
- Hindustan Petroleum Corporation Limited; and
- Mumbai Aviation Fuel Farm Facility Limited

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

1. On 3rd April 2014, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (hereinafter referred to as the “**Act**”) relating to the proposed combination between Mumbai International Airport Private Limited (“**MIAL**”), Indian Oil Corporation Limited (“**IOCL**”), Bharat Petroleum Corporation Limited (“**BPCL**”), Hindustan Petroleum Corporation Limited (“**HPCL**”) (IOCL, BPCL and HPCL are hereinafter collectively referred to as the “**Oil PSUs**”) and Mumbai Aviation Fuel Farm Facility Limited (“**MAFFFL**”) filed by MIAL, IOCL, BPCL, HPCL and MAFFFL (hereinafter collectively referred to as the “**Parties**”). The proposed combination pertains to creation of a joint venture by IOCL, HPCL, and BPCL along with MIAL in MAFFFL. The said joint venture is proposed to be created to construct and manage an integrated fuel facility at Chhatrapati Shivaji International Airport, Mumbai (“**CSIA**” or “**Mumbai Airport**”).
2. The Oil PSUs are, *inter alia*, engaged in refining, production and marketing of petroleum and related products including petrol, diesel, gas, aviation turbine fuel (“**ATF**”), and petrochemicals. IOCL supplies ATF and owns and operates ATF fuelling infrastructure at over 80 airports in the country. As a joint venture partner in the companies namely, Delhi Aviation Fuel Facility Private Limited (“**DAFFPL**”) and Indian Oil Skytanking Limited (“**IOSL**”), IOCL, also partially owns the fuelling



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infrastructure at Terminal 3, Indira Gandhi International Airport and at Kempegowda International Airport, Bengaluru respectively. BPCL, *inter alia*, supplies ATF through its 36 aviation service stations at all the major airports in the country. It renders Into-Plane services to leading domestic and international airlines through a joint venture company, namely, M/s Bharat Stars Services Private Limited (“BSSPL”). HPCL is stated to own and operate 30 aviation service facilities in India for supply of ATF to its customers.

3. MIAL is the airport operator and presently has no role in supplying ATF to aircrafts. It has the exclusive right and authority to *inter alia* operate, manage and develop Mumbai Airport/CSIA and contract with third parties pursuant to the Operation, Management and Development Agreement, dated 4th April 2006, entered into between Airports Authority of India (“AAI”) and MIAL (“OMDA”).
4. MAFFFL was incorporated by MIAL in the year 2010 as its fully owned subsidiary company. It has been stated by the Parties that in-principle decision regarding creation of MAFFFL was taken in a meeting of the National Facilitation Committee (“NFC”) held under the chairmanship of Secretary, Ministry of Petroleum and Natural Gas, Government of India, in March 2009. MAFFFL had been incorporated specifically in order to establish an integrated fuel farm facility at the Mumbai Airport.
5. The proposed combination relates to formation of a joint venture (JV) in MAFFFL by IOCL, BPCL, HPCL and MIAL in terms of the Shareholders Agreement (“SHA”) entered into among the Parties on 6th March 2014. Post combination, it is proposed that:
 - Each of the JV partners would have 25 per cent shareholding in MAFFFL. MAFFFL will own the existing fuel facilities at Mumbai Airport, modify the existing fuel infrastructure owned by the Oil PSUs to create an integrated fuel facility and operate it after commissioning.



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- MAFFFL, as the owner of the facilities, will only be responsible for receiving ATF from the ATF suppliers, storing, handling and delivering the same to the aircrafts of the respective airlines, either on its own or through an operator selected by way of a competitive bidding process.
6. The proposed combination falls under Section 5 of the Act.
 7. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (hereinafter referred to as “**Combination Regulations**”), vide letter dated 11th April 2014, the Parties were required to remove certain defects and provide information/document(s) latest by 21st April, 2014. The Parties filed their reply on 24th April, 2014 after seeking an extension. In terms of sub-regulation (4) of Regulation 5 and sub-regulation (2) of Regulation 19 of the Combination Regulations, vide letter dated 25th April 2014, the Parties were required to provide certain additional information by 1st May 2014. After seeking extension, the Parties filed the reply on 12th May 2014. Vide letter dated 13th May 2014, the Parties were required to provide further additional information by 21st May 2014. After seeking extension, the Parties filed their reply on 22nd May 2014. Further, vide letter dated 27th May 2014, the Parties were required to provide certain additional information by 30th May 2014, the reply of which was filed by them on 3rd June 2014. Vide letter dated 6th June 2014, the Parties were required to provide certain clarifications and additional information by 10th June 2014, the reply to which was filed by due date. Furthermore, vide letter dated 20th June 2014, the Parties were required to provide certain clarifications and additional information by 30th June 2014. However, the Parties filed their reply on 7th July 2014 after seeking extension in this regard.
 8. In terms of Regulation 34 of the Combination Regulations, letters each dated 12th May 2014, were sent to Airports Economic Regulatory Authority (“**AERA**”) and Petroleum and Natural Gas Regulatory Board (“**PNGRB**”), to seek comments on certain issues relating to proposed combination. In terms of sub-regulation (3) of Regulation 19 of



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the Combination Regulations, letters were also sent to Reliance Industries Limited (“**RIL**”), Essar Oil Limited (“**Essar**”) and Shell MRPL Aviation Fuels and Services Ltd. (“**Shell MRPL**”) (RIL, Essar and Shell MRPL hereinafter collectively referred to as the “**Private Oil Cos.**”) for seeking their comments/views on the proposed combination.

9. The Commission considered the details provided in the notice, replies furnished by the Parties to the queries of the Commission, comments of the Private Oil Cos. and the information available in public domain relating to the proposed combination in its meeting held on 20th June 2014, 3rd July 2014 and 8th July 2014. In this regard, the Commission was not satisfied with the plea of the Parties that the proposed combination will provide impetus to the market for ATF supply in Mumbai Airport and formed a *prima facie* opinion that the proposed combination is likely to cause appreciable adverse effect on competition in the relevant market as defined by the Parties i.e. market for supply and distribution infrastructure necessary to supply ATF to aircrafts within the Mumbai Airport.
10. The Commission decided to issue a show cause notice to the Parties in terms of sub-section (1) of Section 29 of the Act as to why investigation in respect of the proposed combination should not be conducted in its meeting held on 8th July 2014. Accordingly, a show cause notice (“**SCN**”) under sub-section (1) of Section 29 of the Act was issued to the Parties on 17th July 2014 directing them to respond in writing within thirty days of the receipt of the notice.
11. The Parties filed the response to the SCN on 19th August 2014. Although, due date for submitting the response was 16th August 2014. However, since 16th to 18th August 2014, were public holidays, the Parties submitted the response to the SCN on 19th August 2014 (“**the Response**”).
12. The Commission considered the information available on record including the Response in its meeting held on 27th August, 2014.



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- 13.1 As regards the efficiencies of the open access fuel farms especially with reference to the Mumbai Airport, the Parties have submitted in the Response that the proposed combination would result in reduced infrastructure charges as compared to those presently incurred individually by the ATF suppliers. It is also stated that the proposed combination would reduce burden on limited land resources available at Mumbai Airport. Further, as the integrated fuel farm facility is to work on open access and arm's length basis, this would provide an opportunity to other ATF suppliers to sell ATF at Mumbai Airport and thus, increase the competition. As stated by the Parties absent the proposed combination, other ATF suppliers would have to go through the entire process for creation of infrastructure after seeking specific regulatory approvals and it is only after creation of integrated fuel farm facility that the other ATF suppliers would be able to supply ATF at Mumbai Airport. It has been submitted by the Parties that, while offering a wide choice of ATF suppliers to the airlines, such a model of integrated fuel farm facility could also trigger competition among the oil companies for supply of fuel at lesser rates.
- 13.2 In this regard, the Commission noted that ATF can be transported from refineries / terminals / depots to aviation fuel stations at the airports through various modes such as pipelines, rail or trucks depending on the infrastructure available (“**Off-site**”). The Off-site infrastructure is one part of the overall ATF supply chain and accordingly, ATF suppliers may have collaborations / tie ups with the other ATF suppliers for renting Off-site infrastructure. ATF which is supplied to an airport is then stored and transported to the aircraft (“**On-site**”). ATF suppliers themselves undertake fuelling operations at airports where no integrated fuel farms are under operation. At airports with integrated fuel farms operating on open access basis, independent operators are selected through competitive bidding for the management and operation of the farm. Operators selected for fuelling of aircrafts are known as ‘Into Plane Service Providers’.
- 13.3 The Commission observed that an aviation fuel farm or depot is a facility at an airport for receipt, storage, handling and delivery of aviation fuel to aircrafts. An aviation fuel



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farm typically has product receipt facilities, storage tanks, pumps, filters and delivery facilities through a hydrant system or refuellers. An open access system allows qualified ATF suppliers to access and use the fuel farm facility on a non-discriminatory basis and enables air carriers to freely select the ATF suppliers. As per the information given in the notice, open access systems are now prevalent in Delhi, Bangalore and Hyderabad airports. As per their submissions, the Parties seek to create an open access aviation fuel farm at Mumbai Airport by taking over the existing fuel facilities currently owned by the Oil PSUs; disposing off the redundant facilities; modifying existing fuel infrastructure to create the integrated facility, and thereafter, operating it either on their own or through an operator selected by way of competitive bidding.

- 13.4 It is observed in this regard that the AERA regulates tariffs in relation to aeronautical services including the service for supplying fuel to the aircrafts at an airport.
14. The following paragraphs describe the specific concerns of the Commission and the clarifications submitted by the Parties in respect of these concerns expressed in the SCN.
- 15.1 In the SCN, the Commission had expressed its view that non-availability of Off-site infrastructure facilities may constrain the ability of new ATF supplier to operate and compete with Oil PSUs at the Mumbai Airport. The Commission also observed that the existing *inter se* arrangement between the Oil PSUs whereby IOCL has been extended the facility of buying and drawing ATF from two refineries of BPCL and HPCL for supplying ATF at Mumbai Airport is likely to distort the level playing field in ATF supply.
- 15.2 As per the submissions in the Response, the Off-site infrastructure (i.e. pipelines) may not constrain the ability of a new ATF supplier to operate at Mumbai Airport owing to the fact that ATF suppliers at other airports including at Delhi, Bangalore and Hyderabad, are transporting ATF to the airports through both tank trucks and pipelines. The Parties have submitted that the pipelines are connected to fuelling infrastructure at



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the Mumbai Airport on one end and to HPCL's and BPCL's respective refineries at the other, as a result of which allowing access to any other ATF supplier is not physically possible.

- 15.3 As regards, the issue of existing arrangements between the Oil PSUs, the Parties have submitted that the product sharing arrangements among the Oil PSUs are entered into on need and mutual exchange/reciprocal basis at an all-India level. It has been further submitted by the Parties that a new ATF supplier may also negotiate with BPCL and/or HPCL for a similar product sharing arrangement subject to commercial considerations. It is submitted by the Parties that at present, the Oil PSUs have a similar tie up with a non-PSU entities for product sharing with respect to sale of motor spirit and high speed diesel, at feasible locations.
- 16.1 In the SCN, the Commission had observed that certain restrictive clauses of SHA, viz., restriction on share transfers for a period of five years, obligation on the Oil PSUs to together hold minimum fifty-one per cent of the share capital of MAFFFL at all times, right of first refusal (“**RoFR**”) to non-selling shareholders and prior written consent from each of the non-selling shareholders in case the prospective transferee was their competitor, indicated an intention of the Parties to control operations and management of MAFFFL in perpetuity. The Commission viewed that such restrictions in the SHA reinforced the likelihood of conflict of interest and the possibility of foreclosure due to dual role of Oil PSUs as ATF supplier and owner of the integrated fuel farm facility.
- 16.2 As regards the restriction on share transfers for a period of five years, the Parties have submitted that at the initial stages when MAFFFL would be setting up an integrated fuel farm facility, the experience and capability of the Oil PSUS in constructing, commissioning and managing integrated fuel farm facility will be critical as well as helpful. Further, by stipulating that the existing shareholders would continue as part of MAFFFL for a period of five years, an attempt was being made to ensure that MAFFFL's policies continue to be influenced by the Government's mandate and that the transparency is maintained in operations. The Parties have also submitted that the



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stipulated five year period could be justified when viewed in the light of gestation period required for the recoupment of investment by MAFFFL's shareholders.

- 16.3 In this regard, the Parties have voluntarily in good faith, on an in-principle basis, pending approval from their respective board of directors, offered to amend the SHA to the effect that clause 10.2¹ of the SHA and all references to the term "lock-in period" in the SHA shall stand deleted by way of an amendment agreement to the SHA. The Parties have agreed further to seek board approval for such an amendment, within a period of three months, from the date of the Response.
- 16.4 As regards the Commission's concern expressed in the SCN regarding obligation on the Oil PSUs in SHA to together hold minimum fifty-one per cent of the share capital of MAFFFL at all times, the Parties have submitted that such equity stake, whether held by the Oil PSUs or by any other ATF supplier, will have no impact on the supply of ATF at the Mumbai Airport, as MAFFFL would continue to treat all ATF suppliers, whether public or private, as equal players. The Parties have also laid stress on the point that Oil PSUs are not 'selling' but are only 'transferring' their infrastructure to MAFFFL and hence, it is justified that they participate in MAFFFL's management. The Oil PSUs, being the Government owned companies are also required to ensure that distribution and marketing of ATF is done in a manner which best serves public interest.
- 16.5 The Parties have also submitted that without prejudice to their rights and voluntarily in good faith, on an in-principle basis, pending approval from the board of directors of each of the Oil PSUs, they are willing to delete clause 10.3² of the SHA in its entirety,

¹ Clause 10.2 of the SHA:

"No shareholder shall be permitted to transfer any shares held by it in the Company for a period of 5 years from the Closing Date" (the "Lock-in Period")"

² Clause 10.3 of the SHA:

"Subsequent to the expiry of the Lock-in Period, any Shareholder may:

10.3 (i) Subject to compliance with the requirements set forth in this Section 10, Transfer any Shares held by it to a third Party in accordance with the procedure set forth in Section 10.4; and



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thereby stipulating no minimum shareholding requirements, in order to allay the concerns the Commission. The Parties further agree that board approval for such an amendment will be sought within a period of three months from the date of the Response.

16.6 As regards the restrictive clause in the SHA pertaining to RoFR and prior written consent from each of the non-selling shareholders in case the prospective transferee is their competitor, the Parties have submitted that this is a standard clause in almost all negotiated agreements pertaining to closely held companies, whereby the Parties, who run any commercial activity in the form of a joint venture, would prefer to operate with only the known promoters/ individuals with whom there is a commonality of purpose in the business activity. However, with respect to the provision stated in clause 10.4(v)(a)³ in the SHA regarding prior written consent from each of the non-selling shareholders, the Parties, pending approval from their respective board of directors, have committed to delete the said clause in the SHA implying that there would be no restriction on transfer of shares to a competitor provided that the RoFR process as provided in the SHA had been followed. The Parties have agreed that the board approvals for this purpose will be sought within a period of three months from the date of the Response.

17.1 In the SCN, the Commission had expressed its concern that post combination, the Oil PSUs would act in dual capacity, one as being the shareholders in MAFFFL and the other in their role as ATF suppliers at the Mumbai Airport. The Commission had stated that it was evident from the various clauses of the SHA that the Oil PSUs would actively participate in the management of MAFFFL through their representatives on the

10.3(ii) Subject to compliance with the requirements set forth in Section 10.5, Transfer any Shares held by it to its Affiliate,

“Provided that notwithstanding, and subsequent to the completion of any such Transfer and subject to the provisions of Section 17.3, Oil PSUs shall be obliged to continue to hold at all times during the terms of the Concession, in aggregate, at least 51% of the issued and paid-up equity share capital of the Company”

³ Clause 10.4(v)(a) of the SHA:

“In case such third party is a “Competitor” (as defined in Section 10.6 below) of any non-Selling Shareholder, then sale shall be effected only with the prior written consent of such non-Selling Shareholder.”



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board and that there was a possibility that the Oil PSUs could foreclose access to the infrastructure essential to supply ATF at the Airport. The Commission in this regard also observed that the conflict of interest could be an impediment to the operationalization of the joint venture on non-discriminatory and open access basis.

- 17.2 The Parties have submitted that by way of the proposed combination, the ownership of all the existing fuelling infrastructure within the premises of the Mumbai Airport would be transferred to MAFFFL. Further, the Parties have stated that the integrated fuel farm facility and the infrastructure could be used by any of the ATF suppliers, in an open access and arm's length basis, upon payment of a regulated common fee. The Parties have stated that the equitable distribution of shareholding and rights amongst its shareholders would further ensure that none of the shareholders could influence MAFFFL to their advantage. The various agreements between the shareholders of MAFFFL also contemplate that MAFFFL will operate with all the ATF suppliers on an arm's length basis only.
- 17.3 The Parties have stated further that MAFFFL will not be privy to any of the negotiated agreements between the ATF suppliers, which include Oil PSUs, and airline operators. Further, it is submitted by the Parties that as regards providing Into-Plane Services, clause 10.4.4(i) of the Into-Plane Fuelling Service Agreement requires MAFFFL or its sub-contractors providing Into-Plane Services to act on a non-discriminatory basis. The Parties have stated that there are sufficient checks and balances to ensure that post combination MAFFFL shall operate in an independent and non-discriminatory manner and on an arm's length basis with each of the Oil PSUs.
- 17.4 In this regard, the Parties have stated that they will set up a Joint Co-ordination Committee ("JCC"), in line with the JCCs functioning at the New Delhi and Bengaluru airports, which shall ensure effective and efficient performance of the proposed fuel farm facility and Into-Plane Services at the Mumbai Airport. As stated by the Parties, the JCC would, *inter alia*, consist of the representatives from the fuel farm operator who would be appointed by MAFFFL through a competitive bidding process; airport operator; MAFFFL; Into-Plane Service providers; Oil PSUs; private OIL Cos.;



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domestic and international air carriers. The Parties have submitted that the JCC would, *interalia*, review the operation of the open access system, to ensure that the ATF suppliers and air carriers are treated fairly and equitably.

- 18.1 In the SCN, the Commission had also expressed a concern that reduction in storage capacity available in Mumbai Airport from the present 49,000 KL to 38,000 KL post combination, is likely to distort the level playing field on account of possible non-availability of storage capacity to non-Oil PSU ATF suppliers.
- 18.2 In this regard, the Parties have submitted in the Response that based on the present and the projected demand for ATF at the Mumbai Airport in the next four to five years, the storage of 38,000 KL would provide for more than seven days of ATF requirement. The Parties have also submitted that depending upon the business of each individual ATF supplier, the storage capacity of 38,000 KL shall be shared amongst all the ATF suppliers on equal terms and there will be no discrimination between the suppliers for number of days of storage. Hence, there is no possibility of any distortion of level playing field pursuant to the proposed combination. It has been further submitted by the Parties that based on the agreements entered into with the ATF suppliers, MAFFFL shall monitor the inventory levels of ATF on a daily basis and that ATF suppliers, based upon their contracts and the actual daily upliftment by the airlines, shall be in close touch with MAFFFL, on a daily basis, to ensure placement of adequate quantity of their ATF in the proposed integrated fuel farm facility.
- 18.3 The Parties, through the Response, have also submitted that, pending approval from the board of directors of each of the Oil PSUs, they stand committed to construct all the five tanks in the first phase of construction itself for a total capacity of 47,500 KL. The Parties have submitted that they agree that the board approvals in this regard will be sought within a period of three months from the date of the Response.
19. The Commission has also noted that the parties in addition to the commitments, as detailed above, have also agreed in the Response to provide following safeguards in operation of MAFFFL, on its commissioning, as follows:



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- (a) MAFFFL shall publish on its website, from the date of commissioning of the integrated fuel farm facility, the following details:-
- (i) tariff applicable (i.e., the AERA regulated fare) for various services, including discounts offered, if any;
 - (ii) maximum storage capacity used by various ATF suppliers vis-à-vis the allotted monthly capacity, on a monthly basis;
 - (iii) any change in availability of storage capacity on account of scheduled maintenance, cleaning etc shall be published at least one month in advance;
 - (iv) procedure for access to the integrated fuel farm facility, agreements to be entered into, criteria for assignment of storage capacity to an ATF supplier, etc.;
 - (v) template of the standard form agreements to be entered into by MAFFFL with ATF suppliers with MAFFFL and Into-Plane Service providers, as well as any revisions or amendments thereto (on a no-names basis); and
 - (vi) rates approved by AERA will be displayed on every revision.
- (b) The Parties shall :-
- (i) incorporate a clause in the standard supplier agreement to the effect that each ATF supplier shall comply with competition law principles in relation to the usage of the integrated fuel farm facility;
 - (ii) set up a Joint Co-ordination Committee; and
 - (iii) communicate (in writing) to the ATF suppliers, any deviation from the terms and conditions provided in the standard form agreement. The reasons for denying any ATF supplier the right to supply ATF at the Mumbai Airport shall also be communicated in writing to the concerned ATF supplier.
- (c) The Parties shall put in place adequate monitoring mechanisms and shall ensure that the proposed integrated fuel farm facility operates in complete consonance with the principles of competition law and fairness.



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20. The Commission has noted that the supply of ATF from the refineries to the airports involves various steps, such as supply of ATF from the refineries to the airports; storage at the airports in tanks and distribution which entails delivery of ATF from the storage to the aircrafts. These steps are linked and constitute the supply chain necessary for the ATF supply to the aircrafts at the airports. Therefore, each of the steps necessary to supply ATF to the Mumbai airport could constitute a market or be treated as related markets. However, in this regard the Commission has noted that the Off-site infrastructure owned by the Oil PSUs are connected on end to end basis from refineries to Mumbai Airport and, therefore, it is not physically feasible to allow access to the Off-site infrastructure to any other ATF supplier. The Commission has, therefore noted that the relevant market in respect of the proposed combination would be the infrastructure facilities at the CSIA for the receipt, storage, handling and delivery of the aviation fuel to the aircrafts at the airport.
21. On the basis of submission of the Parties, the Commission has also noted that for management of On-site infrastructure of MAFFFL, an operator would be appointed through a competitive bidding process, whereas two operators would be selected for Into Plane Services.
22. The Commission noted that Mumbai Airport is a land constrained airport and the integration of individual facilities of the Oil PSUs, post combination, would lead to an optimum usage of the land. The Commission noted that the integrated fuel farm facility would work on an open access basis and the charges for the operation of which would be regulated by AERA. The Commission also noted that the proposed fuel farm facility is stated to bring in reduction in the infrastructure charges to be paid by the ATF suppliers vis-à-vis the present charges for operation of the individual facilities. The Commission took note of the fact that taking into consideration the examples of fuel farm facilities operating at the other airports it is only after the creation of such facilities at those airports that the ATF suppliers other than the Oil PSUs entered the market to supply ATF. Accordingly, the Commission is of the opinion that creation of such facility could provide similar benefits to all the users of such facility at the Mumbai Airport. The Commission also observed that as the proposed combination is



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about integration and upgradation of the existing fuelling infrastructure and operations at the Mumbai Airport, there could be competition enhancing benefits associated with the creation of such a facility, absent which, it could be practically difficult for new entrants to duplicate the infrastructure for fuelling the aircrafts, thus resulting in a status quo condition with respect to the number of ATF suppliers at the airport.

23. As regards certain clauses of the SHA as mentioned in preceding paragraphs in respect of which the Commission had expressed its concern and discussed above in detail, the Commission considered all the arguments put forth by the Parties in this regard. The Commission is of the opinion that with the commitments offered by Parties regarding these concerns, participation of non-Oil PSU player (s) in the ownership of the MAFFFL would be possible in future. The Commission is also of the opinion that with the commitment regarding increase in capacity, the concern arising therefrom would be alleviated. The Commission also took note of additional voluntary commitments submitted by the Parties. The Commission is of the view that such additional commitments offered by the Parties would enhance transparency and promote arm's length distance in the operations of MAFFFL.
24. Accordingly, the Commission directs each of the Parties to pass requisite board resolutions, approving the following voluntary commitments, as offered by them vide the Response and as discussed above in detail, within three months from the date of this order:
- a) Amendment of the SHA to the effect that clause 10.2 of the SHA and all references to the term "lock-in period" in the SHA are deleted by way of an amendment agreement to the SHA.
 - b) Deletion of clause 10.3 of the SHA in its entirety, thereby removing stipulation of minimum shareholding requirements of the Oil PSUs.
 - c) Amendment of the SHA to the effect that clause 10.4(v)(a) will be deleted in entirety such that there will be no restriction on transfer of shares to a competitor.



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- d) Commitment to construct all five tanks in the first phase of construction itself so that the total capacity available is not less than 47,500 KL.
25. In this regard, the Commission also directs the Parties to furnish the copies of the respective board resolutions alongwith the amended and restated agreements within 30 days of the passing of the aforesaid board resolutions.
26. Apart from the preceding commitments offered by the Parties in respect of which the Parties have been directed vide paragraph 24 above to pass the requisite board approvals, in keeping with the additional commitments offered by the Parties, the Commission directs each of the Parties to ensure the implementation of safeguards in the operation of MAFFFL on its commissioning as listed in paragraphs 19 (a), (b) and (c), in entirety.
27. Considering the facts on record as per the details provided in the notice given under sub-section (2) of Section 6 of the Act, the assessment of the proposed combination on the basis of the factors stated in sub-section (4) of Section 20 of the Act after taking in account the voluntary commitments offered by the Parties, 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.
28. This order shall stand revoked in case of failure to comply with the commitments submitted by the Parties, and/or order of the Commission and also if, at any time, the information provided by the Parties is found to be incorrect.
29. The Secretary is directed to communicate to the Parties accordingly.



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