COMPETITION COMMISSION OF INDIA

Combination Registration No.C-2024/11/1206

4th March 2025

Notice under Section 6(2) of the Competition Act, 2002 given by Ambuja Cements Limited.

CORAM:

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

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

1. On 8th November 2024, the Competition Commission of India (**Commission**) received a notice (**Notice**), under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**), given by Ambuja Cements Limited **(Acquirer)**. The Notice was filed pursuant to the execution of: (a) Share Purchase Agreement dated 22nd October 2024 amongst

Acquirer and Promoter Group (including Promoter)[1](**SPA 1**); (b) Share Purchase Agreement dated 22nd October 2024 amongst Acquirer and certain public shareholders of the Target (**SPA 2**); (c) public announcement to the Open Offer dated 22nd October 2024 (**PA**), and detailed public statement dated 29th October, 2024 (**DPS**) in relation to the Open Offer pursuant to and in compliance with the requirements of the Securities and Exchange Board of India (**SEBI**) (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (as amended) (**Takeover Code**).

2. In terms of Regulation 14 of the Competition Commission of India (Combinations) Regulations, 2024 (**Combination Regulations**), *vide* letters dated 22nd November 2024, 26th November 2024 and 30th December 2024 (**RFI**), certain information(s) / clarification(s) relevant for the purpose of assessment of the combination were sought from the Acquirer. The responses to the same dated 20th December 2024, 20th January 2025 and 10th February 2025 were received.

3. The Proposed Combination entails the following:

a) The acquisition of 46.80% of the issued share capital in Orient Cement Limited (**Target**) by the Acquirer, including 37.90% held by the current Promoter and Promoter Group and 8.90% from certain public shareholders.

b) The execution of SPA 1 and SPA 2 triggers an obligation on the Acquirer to make an open offer under Regulation 3(1) and 4 of the Takeover Code for acquisition of up to 26% of the expanded share capital of the Target (**Open Offer**). Assuming full acceptance of Open Offer, the shareholding of the Acquirer will stand at 72.8% [hereinafter, Acquirer and Target are referred to as the **Parties**].

[1] Amita Birla, Chandrakant Birla, Nirmala Birla, Avani Birla, Avanti Birla, Amer Investments (Delhi) Limited, Hindusthan Discounting Company Limited, India Silica Magnesite Works Limited, Jaipur Finance and Dairy Products Pvt. Ltd., National Engineering Industries Limited, Universal Trading Company Limited, Bengal Rubber Company Limited, Central India Industries Limited, Gwalior Finance Corporation Limited, Rajasthan Industries Limited, Ashok Investment Corporation Limited, and Shekhavati Investments and Traders Limited.

4. The Acquirer is a public listed company which is a part of the Adani Group. Adani Group Entities act as Promoter Group and hold 67.57% shareholding in the Acquirer. The Acquirer is engaged in the manufacture and sale of grey cement products, including Ordinary Portland Cement (**OPC**), Pozzolona Portland Cement (**PPC**), Pozzolana Slag Cement (**PSC**) and Pozzolona Composite Cement (**PCC**) in India. The Acquirer (including its subsidiaries) operates 22 integrated cement plants across India, as well as 10 bulk cement terminals and 21 grinding units.

5. The Acquirer and all such entities of the Adani group that meet the Materiality Thresholds[2] and also satisfy the definition of "group" as per Explanation (b) to Section 5 of the Act, have been considered as part of the '**Adani Group'**. Adani Group is a global integrated infrastructure players with businesses in key industry verticals such as natural resources, ports, logistics and energy.

6. The Target is a public listed company which is part of CK Birla Group. The Promoter and Promoter Group holds 37.90% shareholding in the Target. It is engaged in the business of manufacturing grey cement like PPC and OPC *etc*. It has three manufacturing facilities at Devapur (Telangana), Chittapur (Karnataka) and Jalgaon (Maharashtra), with distribution in 10 states across India. The integrated manufacturing facilities cumulatively amount to 8.5 MTPA capacity for manufacturing of cement, 5.6 MTPA capacity for manufacturing of clinker and 138.3 MW of power generation assets consists of Captive Power Plant (**CPP**) (95 MW), Waste Heat Recovery System (**WHRS**) (10.1 MW), and solar power (33.2MWdc) through AMP Solar Systems Private Limited (**AMP Solar**) and Ardeur Renewables Private Limited (**Ardeur**) SPVs. The Target has also secured a concession from Madhya Pradesh Power Generating Company Limited to set up a 2 MTPA cement grinding unit within the premises of the Satpura Thermal Power Station in Sarni, Madhya Pradesh.

[2] In terms of the Competition (Criteria of Combination) Rules, 2024, an entity is considered as an affiliate of a party, if the said party has: (a) shareholding or voting rights of 10% or more in such entity; or (b) a right or ability to have a representation on the board of directors of an entity either as a director or observer; or (c) right or ability to access commercially sensitive information of such entity. (**Materiality Threshold**).

7. It is stated in the notice that both the Acquirer (including its affiliates) and the Target are engaged in the business of manufacture and sale of grey cement products (OPC, PPC, PSC *etc*.). The Commission in its earlier decisions[3] has noted that the two varieties of cement *i.e.,* white cement and grey cement have different product characteristics and end use and therefore, constitute separate relevant product markets. As regards the variants of grey cement, the Commission, in its earlier decisions[4], has noted that different varieties of grey cement are considered to be largely interchangeable. Given that Parties exhibit horizontal overlap in the manufacture and sale of grey cement, accordingly, the relevant product market for the purposes of assessment of the Proposed Combination is defined as the market for grey cement.

8. As regards the relevant geographic market(s), the Commission in its earlier decisions[5], has noted that cement being a bulk commodity, involves significant transportation costs and, therefore, consumption of cement is generally centred around production clusters and from the perspective of demand and supply, these self-contained areas, having homogeneous conditions of competition, constitute distinct relevant geographic markets for the purposes of competition assessment of a combination.

9. For the purposes of identification of the area that would form part of the relevant geographic market, the Commission, in its decisional practice, has been using the shipments test as postulated by Elzinga and Hogarty (**EH Test**) and the catchment area analysis. The EH Test aims to identify the areas which can be considered as self-contained and have homogeneous conditions of competition based on the extent of flow of product into/outside a given geographic area. With regard to the thresholds of LIFO (Little In From Outside) and LOFI (Little Out From Inside), what constitutes 'little', generally, 25 percent is considered a weak threshold and 10 percent is considered a strong threshold.

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[3] C-2020/03/734- Nuvoco Vistas/Emami Cement; and C-2024/01/1106 - UltraTech Cement Limited / Kesoram Industries Limited.
[4] C-2013/10/135 - UltraTech/Jaypee; C-2014/07/190 – Holcim Limited/Lafarge S.A; C-2015/02/246 – UltraTech/Jaypee; C-2015/08/300 - HeidelbergCement AG; C-2016/04/394 – UltraTech/Jaypee and others.
[5] Ibid

10. For the purposes of EH Test, the industry dispatch data is required. However, as the Cement Manufacturers Association last published the industry cement dispatch data for the year 2011-12, no data is available for subsequent periods. Accordingly, the Parties have now been applying EH Test in a modified manner considering their actual inter-state despatch of cement as a proxy for industry data (**Modified EH Test**). However, as regards the Modified EH Test, the Commission in its decisional practice has observed that the underlying assumptions in the Modified EH Test may not yield a good proxy of the industry-wide cement inter-state dispatch patterns.

11. Apart from the industry wide dispatch data, the second requirement of EH/Modified EH Test is the choice of appropriate threshold. As regards the question of threshold, the Commission has consistently maintained that regardless of the choice of threshold level, there should be sufficient cause in terms of the qualitative competitive constraints for inclusion of an additional state/area in the relevant geographic market and that the said test should be applied in a manner that ensures that the market definition arrived at reflects the most relevant constraints faced by the Parties to the combination.

12. Another approach which is used and has been used by the Commission in its decisional practice for delineating relevant geographic market(s) is the catchment area analysis. Catchment area means the geographical area from which a firm primarily draws its customers or can potentially draw its customers. The delineation of catchment area of a cement plant also requires consideration of certain threshold on the aforesaid lines as the EH Test. Further, catchment area analysis can be delineated in terms of actual areas being supplied by the relevant plant (**Actual Dispatch Based Catchment Area**) and also in terms of 'potential' catchment area based on radial distance over which the cement dispatches for the decided threshold are made (**Dispatch Distance Based Catchment Area**). Again, both the Actual Dispatch Based Catchment Area and Dispatch Distance Based Catchment Area have their own merits and limitations. While Actual Dispatch Based Catchment Area approach emphasizes assessment of impact of a proposed combination on the areas actually served by the plants of target enterprise, the Dispatch Distance Based Catchment Area emphasises the potential competition

aspect. However, both the approaches are limited to the extent of relevance of 'threshold' as was the case with EH/Modified EH Test.

13. Given the aforementioned limitations, the assessment and findings on relevant market(s) need to account for the specificities of the markets under assessment, for example, the dynamics of location of cement production clusters in India and the consumption centres these clusters are most likely to serve considering the transportation costs involved for delineation of relevant geographic market(s).

14. The Modified EH Test was applied by the Acquirer considering Karnataka, Maharashtra and Telangana (**Overlapping States**) separately as base states for the financial years 2021-22 to 2023-24. On the aforesaid basis, the Acquirer proposed that the relevant geographic markets for the purposes of the Proposed Combination while employing the 10% threshold should be delineated as the area comprising the states of Telangana, Maharashtra, Karnataka, Madhya Pradesh and Gujarat (**Broad Relevant Market**), and by employing the 25% threshold, as the area comprising the states of Telangana, Maharashtra and Karnataka (**Narrow Relevant Market**).

15. The Commission also independently applied the modified EH Test to identify the areas forming part of the relevant geographic markets. In order to account for the limitations of the test and specific nature of this industry in India, due consideration was given to the LIFO/LOFI thresholds as well as the change in these thresholds with each successive addition of a state, in order to arrive at a relevant market reflecting the most relevant competitive constraints on the behaviour of the Parties. Accordingly, various plausible relevant market(s) were considered including the Broad and Narrow Relevant Market proposed by the Parties.

16. The Commission in its decisional practice has considered the question of delineation of relevant geographic market when overlapping plants are located in states of Maharashtra, Telangana and Karnataka. For overlaps in the states of Telangana and

Karnataka, the Commission in an earlier case[6] has considered the relevant geographic market comprising the states of Andhra Pradesh (including Telangana), Karnataka and Maharashtra. For overlaps in the state of Maharashtra, the Commission has observed[7] that Maharashtra forms part of relevant geographic market comprising the states of Karnataka and Andhra Pradesh (including Telangana). Accordingly, the Commission has been considering the relevant geographic market for aforesaid overlapping areas in terms of the geographic area comprising the states of Andhra Pradesh, Telangana, Karnataka and Maharashtra (**KTK/TN Relevant Market**). The Commission also considered the Parties' dispatch patterns and observed that the relevant geographic market for assessment of the Proposed Combination can be KTK/TN Relevant Market or further segments of the same *viz*., KTK and MH or TN, MH and KTK. Further, Gujarat can also be part of the plausible market for overlapping plants in KTK and MH considering the specific dispatch patterns as noted. Accordingly, the Commission undertook assessment of the Proposed Combination for these plausible relevant markets. However, the Commission observed that the Proposed Combination is not likely to cause a significant change in market dynamics in any of the plausible relevant market(s) that could be delineated and accordingly, decided to leave the exact delineation of the relevant market(s) open.

17. For the purposes of assessment of the impact of the Proposed Combination in the **KTK/TN** grey cement market, the Commission considered the market shares of the Parties and observed that the combined market share is in the range of [15 – 20] %, both on the basis of present installed capacity as well as projected operational capacity (as of FY 2027), with an incremental market share of less than 5 %. Further, the said market has presence of more than 20 companies including Ultratech, JSW Cement, Chettinad Cement, My Home Cement, Dalmia Cement *etc*. Based on the aforesaid, it appears that the Proposed Combination is not likely to result in to appreciable adverse effect on competition (**AAEC**) in the said market. The aforesaid findings are not likely to change significantly in any of the other plausible markets noted above.

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[6] C-2024/01/1106 - UltraTech Cement Limited/Kesoram Industries Limited
[7] C-2018/05/575 – UltraTech/Century

18. In addition to the horizontal overlap as specified above, the Parties exhibit vertical linkages with respect to limestone, fly ash, clinker and construction activities. Further, there are certain existing supply arrangements between the Parties with respect to supply of cement by Target to the Acquirer Group for manufacturing ready-mix concrete (**RMC**); and supply of coal by Acquirer Group to the Target. With regard to these vertical linkages, the Commission observes that the same do not raise any foreclosure concern owing to factors such as, nominal presence of the Parties, market structure, captive consumption, presence of numerous competitors *etc*. in each of the markets at the upstream and downstream level.

19. 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 AAEC in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.

20. This order may stand revoked if, at any time, the information provided by Acquirer is found to be incorrect.

21. The information provided by Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.

22. The Secretary is directed to communicate this order to Acquirer.