



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2018/02/558)

27<sup>th</sup> March, 2018

**Notice under sub-section (2) of Section 6 of the Competition Act, 2002 filed by  
UltraTech Cement Limited**

**CORAM:**

Mr. Devender Kumar Sikri  
Chairperson

Mr. Sudhir Mital  
Member

Mr. U. C. Nahta  
Member

Mr. G. P. Mittal  
Member

**Legal representatives:** Trilegal

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

1. On 22<sup>nd</sup> February, 2018, the Competition Commission of India (“**Commission**”) received a notice (“**Notice**”) under sub-section 2 of Section 6 of the Competition Act, 2002 (“**Act**”) filed by UltraTech Cement Limited (“**UltraTech**” or “**Acquirer**”). The Notice was given pursuant to the Resolution Plan dated 15<sup>th</sup> January, 2018 as revised on 12<sup>th</sup> February, 2018 (filed under Insolvency and Bankruptcy Code, 2016).
2. The proposed combination involves acquisition by UltraTech of 100 percent equity shares of Binani Cement Limited (“**Binani Cement**” or “**Target**”) (“**Proposed Combination**”) (hereinafter, Binani Cement and UltraTech are collectively referred to as “**Parties**”). Further, the Acquirer had submitted that 20 percent of the equity share capital of Binani Cement may be issued and allotted to certain unsecured financial creditors of Binani Cement and resultantly, UltraTech will hold 80% of the equity share capital of Binani Cement.



सत्यमेव जयते



3. UltraTech, listed on the Bombay Stock Exchange (“**BSE**”) and the National Stock Exchange (“**NSE**”), is a subsidiary of Grasim Industries Limited (“**Grasim**”), a company of the Aditya Birla Group. As stated in the Notice, the Acquirer is engaged in the manufacture and sale of, *inter alia*, grey cement, white cement and ready-mix concrete, clinker, building solutions in India. It has an installed capacity of 66.25 MTPA of grey cement in India.
4. Binani Cement, a subsidiary of Binani Industries Limited (“**BIL**”), has two cement plants (located at Binanigram and Neem ka Thana) and two limestone mineral concessions in Rajasthan. It is engaged in the production and sale of grey cement, white port land cement and other varieties of cement and also manufactures and supplies concrete, lime, clay, gypsum and limestone *etc.* For manufacture of grey cement, Binani Cement has installed capacity of 6.25 MTPA.

#### *Intimation of Change*

5. The Acquirer, *vide* its letter dated 21<sup>st</sup> March, 2018, submitted intimation of change under Regulation 16 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”). *Vide* the said letter, it was informed that BIL is independently seeking termination of the insolvency and bankruptcy proceedings (“**IBC Proceedings**”) involving Binani Cement. In this context, the Acquirer submitted that on 19<sup>th</sup> March, 2018 UltraTech has in-principle arrived at a commercial understanding with BIL to purchase 98.43% of the equity share capital of Binani Cement, subject to termination of the IBC Proceedings (**Alternate Proposed Transaction**).
6. By way of its abovesaid letter, UltraTech, under Regulation 16 of the Combination Regulations, intimated the Commission that the Alternate Proposed Transaction has amended the Notice with respect to:
  - i. the mode in which the Proposed Combination would be undertaken if the IBC Proceedings stand terminated; and
  - ii. the consequential change in consideration payable by UltraTech to BIL.



सत्यमेव जयते



7. The Acquirer further stated that the Alternate Proposed Transaction is a mere modality and nothing else changes from a competition standpoint, viz., (a) acquirer and target remain the same; (b) relevant market delineation unchanged; (c) competition impact assessment and economist report remain unchanged; (d) the analysis in terms of the factors under Section 20(4) of the Act remain unchanged.”
8. The Commission, while taking the submission dated 21<sup>st</sup> March, 2018 on record, observed that as on date, there is no definiteness vis-à-vis the Alternate Proposed Transaction. Accordingly, the Commission observed that the aforesaid submissions of the Acquirer cannot be accepted as intimation of change under Regulation 16 of the Combination Regulations.

#### *Competition assessment*

9. The Commission, based on the submission of the Acquirer, noted that activities of the Parties overlap in manufacture and sale of grey cement.
10. The Commission observed that Parties have cement plants located in the state of Rajasthan. In this regard, the Commission noted that the Acquirer has, based on inter-state trade flows of cement for the year 2011-12, delineated relevant geographic market using Elzinga-Hogarty (“**EH**”) Test, for the overlapping state of Rajasthan. In addition, the Acquirer has also suggested 3 alternative relevant geographic markets, as follows:
  - i) Area comprising of the states of Rajasthan, Madhya Pradesh, Uttar Pradesh, Delhi, Haryana, Punjab & Gujarat (“**Broader Market**”).
  - ii) Area comprising of the states of Rajasthan, Madhya Pradesh, Uttar Pradesh, Delhi and Haryana (“**Intermediate Market**”).
  - iii) Area comprising of the states of Rajasthan, Haryana & Gujarat (“**Narrow Market**”).
11. The Commission, based on the data published by Cement Manufacturer Association for the year 2011-12, is of the view that the relevant geographic market should comprise of states of Rajasthan, Haryana and Western Uttar Pradesh (“**Rajasthan Market**”). Madhya Pradesh cannot be added to the relevant geographic market as it appears to be a self-contained state in relation to production / consumption of cement. Further, Eastern



Uttar Pradesh has been excluded from the relevant geographic market as cement generally does not travel such a distance. In respect of inclusion of state of Delhi in the relevant geographic market, the Commission observed that even if it were included / excluded from the relevant geographic market, there would be no material change in competition assessment as state of Delhi has negligible cement manufacturing capacity.

12. The Commission assessed market share, based on the installed capacity, of the Parties and their competitors both for Rajasthan Market and after adding Delhi to Rajasthan Market. The Commission observed that market share at both the level is as follows:
  - a. Rajasthan Market – Combined market share of the Parties is in the range of 20-25 percent, with an incremental market share of 5-10 percent. Some of the competitors present (along with their market share are: Shree Cement (20-25 percent), J K Lakshmi Cement (5-10 percent), J K Cement (5-10 percent).
  - b. Rajasthan Market plus Delhi – In this scenario, combined market share of the Parties show a marginal decrease of less than 0.5 percent over the Rajasthan market.
13. Given that in the Rajasthan Market and Rajasthan Market plus Delhi, there does not appear to be any competition concern, the Commission decided to leave the relevant geographic market open. The Commission noted that there are competitors, which would continue to provide competitive constraint to the Parties post-combination and thus, there is no competition concern due to the Proposed Combination.
14. The Commission also noted that there does not exist any vertical relationship between the Parties.
15. Considering facts on record, details provided in the Notice given under sub-section (2) of Section 6 of the Act and assessment on the basis 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 an appreciable adverse effect on competition in India.



16. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
17. The information provided by the Acquirer is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.
18. The Secretary is directed to communicate to the Acquirer accordingly.