COMPETITION COMMISSION OF INDIA

Combination Registration No. C-2024/01/1106

19th March 2024

Notice under Section 6(2) of the Competition Act, 2002 given by UltraTech Cement Limited

CORAM:

Ms. Ravneet Kaur
Chairperson

Mr. Anil Agrawal
Member

Ms. Sweta Kakkad
Member

Mr. Deepak Anurag
Member

<u>Order under Section 31(1) of the Competition Act, 2002</u>

1. On 25th January 2024, the Competition Commission of India (**Commission**) received a notice under Section 6(2) of the Competition Act, 2002 (**Act**), given by UltraTech Cement Limited (**Acquirer**/**UltraTech**).

2. The Proposed Combination involves the acquisition of the cement business of Kesoram Industries Limited (**Kesoram**) (**Kesoram Cement Business**) by UltraTech, which comprises, among others, the following assets:

   (i) An integrated grey cement unit located at Sedam, Karnataka, having an installed capacity of 9 million tonnes per annum (**MTPA**) (**Sedam Plant**);

(ii) An integrated grey cement unit located at Basantnagar, Telangana, having an installed capacity of 1.75 MTPA (**Basantnagar Plant**) [Sedam Plant and Basantnagar Plant are collectively referred to as the "**Kesoram Cement Plants**"];

(iii) Cement packing plant located at Solapur, Maharashtra with a capacity of 0.66 MTPA (referred to hereafter as the "**Solapur Packing Unit**"); and

(iv) Land acquired by Kesoram, situated at Solapur, Maharashtra.

3. The Notice was filed with the Commission pursuant to a composite scheme of arrangement dated 30th November 2023 under Sections 230 to 232 of the Companies Act, 2013 amongst Kesoram, UltraTech, and their respective shareholders and creditors (**Scheme**) and the Implementation Agreement dated 30th November 2023 (**Implementation Agreement**).

4. In terms of Regulation 14(3) of the Competition Commission of India (Procedure in regard to the transaction of business related to combinations) Regulations, 2011 (**Combination Regulations**), the Commission, *vide* letter dated 7th February 2024 (**RFI**), sought certain information and clarifications. Acquirers submitted their response on 21st February 2024 after seeking an extension of time (**Response to RFI**).

5. Ultratech is a listed public limited cement manufacturing company. It is a subsidiary of Grasim Industries Limited. Both Grasim and UltraTech are flagship companies of the 'Aditya Birla conglomerate'. Mr. Kumar Mangalam Birla is the Chairman and Non-Executive Director on the Board of Directors of Grasim and UltraTech. UltraTech is engaged in the manufacture of grey cement, white cement, ready mix concrete (**RMC**), clinker, and building products in India and is also engaged in the provision of building solutions in India. As of 31st December 2023, UltraTech has an installed capacity of around 133 MTPA of grey cement in India.

6. Kesoram is a listed public limited company which as stated is a part of the B. K. Birla Group. It is engaged, directly and/or indirectly, through its subsidiaries, in the businesses of manufacture and sale of grey cement, rayon, transparent paper, and chemicals in India.

Further, as stated, the B. K. Birla Group is active in the cement sector through Kesoram, and its other group company *viz.*, Mangalam Cement Limited (**Mangalam**).

7. The Commission noted that there are two varieties of cement, *i.e.*, grey cement and white cement. Within the category of grey cement, there are different variants of cement such as Ordinary Portland Cement (**OPC**), Portland Pozzolona Cement (**PPC**), Portland Slag Cement (**PSC)** etc. As regards the variants of grey cement, the Commission, in its earlier decisions[1], has noted that different varieties of grey cement are considered to be largely interchangeable. The white cement is considered to constitute a different market, however, as stated in the notice, Kesoram Cement Business is not involved in the manufacture of white 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, the Commission in its earlier decisions[2], has noted that cement being a bulk commodity, involves significant transportation costs and, therefore, the 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. Further, competition authorities generally use the Elzinga Hogarty Test (**EH Test**) and catchment area analysis to determine the relevant geographic market. The Commission in its decisional practice has maintained that regardless of the choice of the threshold level for the purpose of the EH Test and catchment area tests, there should be sufficient cause in terms of the competitive constraints for inclusion of an additional state/area in the relevant geographic market and that the said tests should be applied in a manner that ensures that the market definition thus arrived at reflects the most relevant constraints on the behaviour of the parties to a combination. The Commission has also used the EH Test for delineating relevant geographic market(s) for the purpose of assessment of combinations in the

[1] 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; C-2018/05/575 – UltraTech/Century and others.

[2] Ibid

cement sector. For the purposes of the EH Test, the Commission has been using the inter-state cement dispatch data for the year 2011-12[3].

9. Given the unavailability of industry wide inflow/ outflow data and the concurrent encumbrances of the EH Test, the Acquirer applied the EH Test in a modified manner considering the actual despatch data of the Parties i.e., UltraTech and Kesoram Cement Business (**Modified EH Test**). The Modified EH Test was applied considering base States as cluster of Karnataka and Telangana (since the Kesoram Cement Business cement plants are located in Karnataka and Telangana) and also by considering Karnataka and Telangana separately as base States. On the aforesaid basis, the Acquirer proposed that the relevant geographic markets for the purposes of the Proposed Combination should be defined as the area comprising the states of Karnataka, Telangana, Maharashtra, Andhra Pradesh and Tamil Nadu (**Broad Relevant Market**) or in the alternative, the area comprising the states of Karnataka, Telangana, Maharashtra and Andhra Pradesh (**Narrow Relevant Market**).

10. The Commission observed that the underlying assumptions in the Modified EH Test may not still yield a good proxy of the industry-wide cement dispatch patterns. The Commission, accordingly, considered, *inter alia*, the plant-wise dispatch data of the Parties and 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. Considering the same, the Commission, delineated the relevant geographic market which corresponds to the Narrow Relevant Market proposed by UltraTech. The Commission further noted that the Narrow Relevant Market is in sync with the decisional practice of the Commission considering the same region[4]. Considering the aforesaid aspects, the Commission decided that the relevant geographic market for the overlaps in Telangana and Karnataka may be defined in terms of the area comprised by the states of Karnataka, Telangana, Maharashtra and Andhra Pradesh (**KTK/TN Relevant Market**).

---

[3] No data is available for subsequent periods. The Cement Manufacturers Association (**CMA**) last published the interstate cement dispatch data for the year 2011-12.

[4] C-2016/04/394 – UltraTech/Jaypee

11. The Commission observed that there is cross-shareholding between the families of Mr. Kumar Mangalam Birla (**KMB Family**) and the Late Mr. B.K. Birla and his family (**BKB Family**) in certain entities and it had also issued an Order under Section 44 of the Act in an earlier case against Ultratech for failure to provide information in respect of such shareholdings. The three entities of B. K. Birla Group considered relevant by the Commission were Century Textiles and Industries Limited (**Century**), Kesoram, and Mangalam. Of these entities, the cement assets of Century have been acquired by UltraTech and approved by the Commission earlier[5], Kesoram Cement Business is the subject matter of the present assessment and Mangalam has no presence in the relevant market as delineated above. As regards Mangalam, the Acquirer submitted that Mangalam is a part of the B.K. Birla group and that neither Grasim nor UltraTech holds any direct shareholding in Mangalam. Considering that Mangalam has no presence in the relevant market as delineated above, the Commission is of the view that the potential impact of the cross-shareholdings of KMB Family and BKB Family in Mangalam is not relevant in the assessment of the Proposed Combination and accordingly decided to leave the question of any shareholding/control of KMB Family over Mangalam open.

12. For the purposes of assessment of the impact of the Proposed Combination in the KTK/TN grey cement market, the Commission, at the outset, considered the presence of the Parties as reflected in their market shares (in terms of present installed capacity and installed capacity likely to be operational by the end of FY 2024-25). The Commission observed that the combined market shares by various estimates are likely to be in the range of 22 percent to 26 percent with an increment of 5 percent to 6 percent. In terms of the impact on the level of concentration in the market, the Proposed Combination is likely to result in a maximum incremental HHI of less than 250 which may be considered insignificant considering that HHI post the Proposed Combination is estimated to be less than 1000 which is indicative of an unconcentrated market even when the Proposed Combination is considered consummated. The unconcentrated and fragmented market structure is also reflected in the presence of more than 30 companies and post Proposed Combination CR

[5] C-2018/05/575 – UltraTech/Century

4 of the KTK/TN Relevant market being around the maximum of 45 percent. Based on the aforesaid, the Commission decided that the Proposed Combination is not likely to result in an appreciable adverse effect on competition (**AAEC**) in the KTK/TN Relevant Market.

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

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

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

16. The Secretary is directed to communicate to the Acquirer accordingly.