



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

FIRST PHASE REVIEW

ACQUISITION OF SHAREHOLDING IN M/S K-ELECTRIC
LIMITED BY M/S SHANGHAI ELECTRIC POWER COMPANY LIMITED
FROM M/S KES POWER LIMITED

CASE: 854/Merger-CCP/16

Commission

Ms. Vadiyya S. Khalil
Chairperson

Mr. Shahzad Ansar
Member



ORDER

I Background

1. On 17th November 2016, M/s Shanghai Electric Power Company Limited ("SEPCO" or referred to as the "Acquirer") and M/s KES Power Limited ("KES" or the "Seller") submitted a pre-merger application (the "Application") to the Commission through their representatives for the intended acquisition of _____ shareholding in M/s K-Electric Limited ("K-Electric" or the "Target"). The Application was submitted along with the necessary information and applicable processing fee in accordance with the provisions of the Competition Act, 2010 (the "Act") and the Competition (Merger Control) Regulations, 2007 (the "Merger Regulations"). The Commission's review of the proposed transaction is as under:

II Merger Parties

Acquirer

2. SEPCO was founded in 1998 and is headquartered in Shanghai. It is principally engaged in the production and sale of electricity and thermal power. Through its subsidiaries and associates, it is involved in the development and construction of electric power projects, provision of maintenance and repairing services, as well as the distribution of fuels. SEPCO has established businesses all over China and it has been expanding overseas businesses step by step.
3. SEPCO has reported operating revenue of over RMB _____ FY15 (approximately PKR _____) while the total assets of the company were valued at RMB _____ FY15 (approximately PKR _____).

Target

4. K-Electric was incorporated on 13 September 1913, under the now repealed Indian Companies Act, 1882 (currently Companies Ordinance, 1984). In 1952, the Government of Pakistan took control of the Company by acquiring majority shareholding of KESC. In 2005, the Government privatized K-Electric. In 2009, The Abraaj Group and AL Jomaih/NIG bought the power utility for a significant equity stake in the company through KES Power Ltd (SPV), which holds _____ shares in K Electric.
5. Current shareholding in K-Electric is held by KES 66.4%, Government of Pakistan Asian Development Bank _____ International Finance Corporation _____ and other shareholders
6. K-Electric is a vertically integrated power utility company that manages the generation, transmission and distribution of electricity to Karachi and the nearby areas of Dhabeji, Ghoro in Sindh and Hub, Uthal, Vindhari and Bela in Balochistan. It services an area of over 6,500 square kilometers, supplying electricity to all industrial, commercial, agricultural and residential areas that come under its network.

Total assets of K-Electric as on June 30, 2015 stand at PKR _____ while its reported turnover for the above mentioned period is PKR _____



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Seller

8. KES is a special purpose vehicle with the sole purpose of holding shares of K-Electric and has no other business. It was incorporated under the laws of Cayman Islands where it has its registered office.
9. The Abraaj Group, Al-Jomaih Holding Company and National Industries Group mainly own KES.

III Transaction

10. The proposed transaction entails the acquisition of [redacted] stake in the Target by the Acquirer from the Seller. The Abraaj Group, Al-Jomaih Holding Company and National Industries Group wish to divest their entire equity stake in K-Electric, through KES by selling the shares to SEPCL. The value of the transaction is approximately USD [redacted] (PKR [redacted] as of 24/11/2016), which the Acquirer plans to fund through a combination of internal cash sources and external financing.
11. The transaction meets the notification thresholds as prescribed in Regulation 4(2)(a), (b), (c) & (d) of the Merger Regulations, with the combined assets of the parties being more than PKR 1 Billion and combined turnover being more than PKR 1 Billion. The transaction value also exceeds PKR 100 million and the percentage of voting shares to be acquired exceeds 10% of the total shareholding of the Target.

IV Relevant Market:

12. K-Electric is involved in the "Electricity Generation, Distribution and Transmission Industry" in Pakistan. The geographic area of its operations covers Karachi and the nearby areas of Dhabeji, Ghara in Sindh and Hub, Uthal, Vindhra and Bela in Balochistan.
13. In Pakistan, the generation of electric power for the purpose of sale, is a licensed activity. NEPRA grants generation license to different power producing companies who wish to sell their electric power to national grid or to sell their electric power production to bulk power consumers. However, there is no need of generation license for those electric power producers which produce electricity for their self use.

V Findings of the Phase I investigation on the competition assessment

The competition assessment in Phase I have resulted in the following finding:

14. The proposed transaction involves acquisition of [redacted] shares of K Electric (Target) by Shanghai Electric Power Company Limited (Acquirer) from KES Power Limited (Seller).
15. Post transaction SEPCL would leverage its own strengths as a strategic investor and further realize K-Electric's potential to provide better services to the people of Pakistan.
16. In the relevant geographic region, K-Electric has exclusive rights to distribute electricity and therefore, has no competitors operating in the area. In the reportable market, although K-Electric has a non-exclusive transmission license, it is the sole company providing such service. This makes K-Electric the sole player in regards to Transmission and Distribution.

17. With reference to Power Generation, K-Electric has a non-exclusive license to generate power and therefore, other power generation companies are also operating within that region. K-Electric generates estimated [redacted] of the power for the region while other companies supply the rest.



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18. Although K-Electric is the major operator in the region, the relevant industry is strictly regulated by NEPRA thus K-Electric is unable to alter market dynamics. Therefore, post-transaction, there will be no change in the market dynamics of the relevant markets in the particular geographic region as the competition will not be affected by the intended acquisition.
19. The proposed transaction relates to an acquisition and is not likely to result in the creation or strengthening of a dominant position in the relevant market. The intended acquisition does not meet the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Act.

VI Conclusion

20. In conclusion, there is no evidence that suggests a substantial lessening of competition by the creation or strengthening of a dominant position in the relevant market. The proposed transaction is hereby authorized under Section 31(1) (d) (i) of the Act.
21. It is so ordered.

Vadiya S. Khalil

(Vadiyya S. Khalil)
Chairperson

Shahzad Ansar

(Shahzad Ansar)
Member



Islamabad, the 2nd Dec, 2016