

**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

IN THE MATTER OF

FIRST PHASE REVIEW

**ACQUISITION OF 9% SHARES OF TAPAL ENERGY
(PRIVATE) LIMITED BY SITHE MAURITIUS LIMITED**

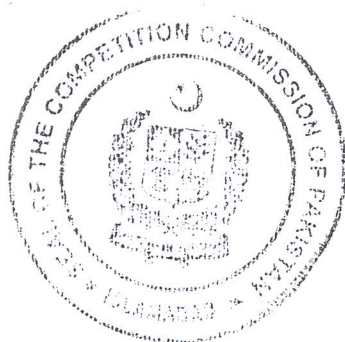
CASE: 763/Merger-CCP/15

Commission

Ms. Vadiyya Khalil
Chairperson

Mr. Mueen Batlay
Member

Mr. Ikram Ul Haque Qureshi
Member



ORDER

I Background

1 On 5th November 2015, Tapal Energy Limited (TPL) submitted a pre-merger application (the "application") to the Commission, notified the acquisition of 10% shares of Tapal Energy Limited ("The Target") from Kingpin Investment Limited ("The Seller") by Sithe Mauritius Limited ("The Acquirer"), along with the necessary information.

II Merger Parties

2 Acquirer

Sithe Mauritius Limited ("Sithe"), incorporated on 29th April 1997 in Mauritius, holds a Category 1 Global Business License under the Financial Services Act 2007. The principal activity of the company is to hold investments in Tapal Energy Limited. It is a wholly owned subsidiary of Marubeni Corporation of Japan while, it does not have any subsidiaries. It is already holding % shares in the Target.

3 Sithe had total assets valuing PKR (USD). Its turnover remained at PKR (USD) on 31st December 2014.

4 Target

Tapal Energy Limited (TPL) is an Independent Power Producer (IPP). It is a special purpose company, a joint venture independent power project of local and international investors. The company owns and operates a 126MW thermal power plant to supply electricity to K-Electric. TPL is a very small player of the relevant market with only % market share.

5 TPL had total assets valuing PKR on 30th June 2015. Its turnover remained PKR for the above mentioned period.

6 Seller

Kingpin Investment Limited ("Kingpin") is a holding company domiciled in Hong Kong, to hold shares in TPL and has no other investment. Kingpin Investment Limited holds shares of TPL.

III Transaction

7 The proposed transaction involves acquisition of % () shares of the Target (TPL) by the acquirer (Sithe) from the seller (Kingpin). The proposed transaction is valued at USD /- estimated at PKR . After the proposed transaction the total shareholding of the acquirer in the Target will be %.

8 The transaction meets the notification thresholds prescribed in Regulation 4(2)(a),(b),(c)& (d) of the Competition (Merger Control) Regulations 2007. The acquirer's assets value more than PKR 300 Million and combined assets being more than PKR 1 Billion rupees and turnover of acquirer more than PKR 500 million and combined turnover being more than PKR 1 Billion. The transaction value also exceeds PKR 100 million and percentage of share to be acquired exceeds 10% of the total shareholding of the Target.

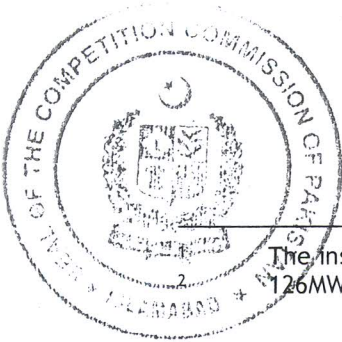


IV Relevant Market:

- 9 The relevant market in this case is the power generation market in the country. The country has an installed capacity of 24,375 MW of electricity generation through different means mainly thermal, hydel, nuclear and renewable energy.
- 10 The Relevant Geographic market is Pakistan.
- 11 Market position in the relevant market is as under:

Company Name	Installed Capacity (MW)	Market Share(%)
Thermal		
GENCO with PEPCO		
KEL		
Independent Power Plants (IPPs)		
HUBCO ¹		
Kot Addu Power Company (KAPCO)		
Uch Power		
Rouch Power		
Pak Gen Power		
Nishat Power Plant		
Lalpir Power Limited		
Others		
Sub Total IPPs Generation		
IPPs connected with KEL		
i. Tapal Energy Limited		
ii. Gul Ahmad Power Project		
CPPs/SPPs connected with KEL		
Total Thermal Generation		
Hydel Generation		
WAPDA Hydel		
IPPs Hydel		
Total Hydel Generation		
Nuclear		
CHASNAP (I&II)		
KANUPP		
Total Nuclear Generation		
Wind		
Wind Power Plant with PEPCO		
Total Wind Generation		
Grand Total		%

Source: State of Industry Report 2014, NEPRA



The installed capacity includes HUBCO Narowal Plant (225MW).
126MW is the installed capacity but the Net/Dependable Capacity fluctuates.

[Handwritten signatures]

V Findings of the Phase I investigation on the competition assessment

12 The competition assessment in Phase-I has resulted in the following finding:

- The proposed transaction involves acquisition of 7% shares of TPL from Kingspin by Sithe. After the proposed transaction the total shareholding of the Acquirer in the Target will be 7%. The Acquirer is a holding company and its principal activity is to hold investments. It is not a market participant in the relevant market and hence has nil market shares.
- The Target has an insignificant market share of 0.5% in the relevant market, which is much less than the prescribed limit of 40%. Post-merger the market share will not be changed. The transaction will not result in creation or strengthening of dominant position. The merger does not meet the presumption of dominance as determined under Section 2(1)(e) read with the Section 3 of the Competition Act 2010 (the "Act").

VI Conclusion

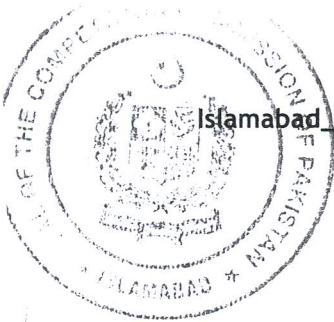
13 In conclusion, there is no evidence that suggests a substantial lessening of competition by creating or strengthening of dominant position in the relevant market. The proposed transaction is hereby authorized under Section 31(1) (d) (i) of the Act.

14 It is so ordered.


(Mueen Batlay)
Member


(Ikram Ul Haque Qureshi)
Member


(Vadiyya Khalil)
Chairperson



Islamabad 28th Decemeber, 2015