



**BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN**

**FIRST PHASE REVIEW**

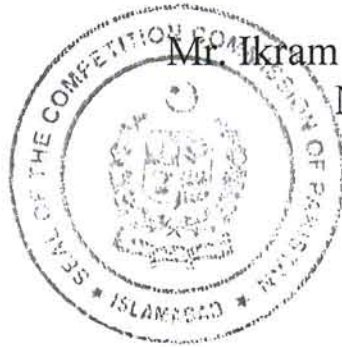
**In the Matter of Acquisition by Fauji Fertilizer Co. Limited of  
shares in Thar Energy Limited.**

**CASE: 876/Mergers/CCP/17**

Commission:

Ms. Vadiyya Khalil

Chairperson



Mr. Ikram Ul Haque Qureshi

Member

## I. BACKGROUND

1. On 30.03.2017, the Competition Commission of Pakistan (the “**Commission**”) received a pre-merger application (the “**Application**”) of a proposed acquisition by which Fauji Fertilizer Company Limited (“**FFCL**” or the “**Acquirer**”) intends to acquire . . . ordinary shares of the issued and paid-up capital of Thar Energy Limited (“**TEL**” or the “**Target**”) from Hub Power Company Limited (“**HUBCO**” or the “**Seller**”) by way of share purchase and/or by direct subscription. The Application is made pursuant to Section 11(3) of the Competition Act 2010 (the “**Act**”) and Regulation 6 of the Competition (Merger Control) Regulations 2016 (the “**Merger Regulations**”) along with the requisite information.

## II. THE PARTIES

### The Acquirer

2. FFCL, a public listed company incorporated under the Companies Ordinance 1984, has its registered office in Rawalpindi, Pakistan. The company is an associated company of Fauji Foundation Group (“**Fauji Group**”) and is the largest chemical fertilizer manufacturer, distributor, and seller in Pakistan. FFCL’s associated companies include FFC Energy Limited, Fauji Fertilizers Bin Qasim Limited, Askari Bank Limited and Fauji Fresh n Freeze Limited.
3. FFCL’s total assets amounted to PKR . . . for the financial year ended 31.12.2016 and its turnover remained PKR . . . for the same period.

### The Target

4. TEL, incorporated as a public unlisted company under the Companies ordinance 1984, is based in Karachi, Pakistan. The company is a subsidiary of HUBCO and is engaged in the development of a mine-mouth 330MW coal-base power plant for generation of electricity. The plant is located at Thar Coal Block-II in Sindh, Pakistan. The total cost of TEL project is USD . . . It is envisaged to commence its commercial operations by the 4th quarter of 2019.

TEL has not yet commenced its proposed business operation. Therefore, there is no information available as to its total assets and turnover, at present.



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### The Seller

6. HUBCO, a public listed company under the Companies ordinance 1984, is located at Hub, Lasbela District of Balochistan, Pakistan. The company is one of the largest Independent Power Producers (IPPs) in the country with a combined power generation capacity in excess of 1400 MW.
7. HUBCO's total assets amounted to PKR \_\_\_\_\_ for the financial year ended June 30.06.2016 and its total turnover was PKR \_\_\_\_\_ for the same period.

### III. THE TRANSACTION

8. As per the information provided in the Application, HUBCO will divest 30% of its shareholding in TEL in favor of FFCL for cash consideration on the agreed per share price or, alternately the Acquirer will make a direct subscription in and to the ordinary shares of TEL such that, in either case, FFCL will end up having \_\_\_\_\_ of the issued and paid-up capital of TEL. Based on par value, the value of the transaction is PKR \_\_\_\_\_ (i.e. PKR \_\_\_\_\_ being the par value of one ordinary share, multiplied by \_\_\_\_\_ being the number of shares to be acquired/ subscribed). The acquisition/ subscription will be financed by FFCL through its own resources. The transaction agreement has yet to be executed/ consummated after the necessary permission from the Commission is granted as requested in the Application.
9. The transaction meets the notification thresholds prescribed in Regulation 4 (2) (a), (b), (c) and (d) of the Merger Regulations as the combined assets of the merging entities exceed PKR 01 billion and their combined annual turnover also exceed PKR 01 billion. The transaction value also exceeds PKR 100 million, and the percentage of shares to be acquired are more than 10%.

### IV. THE RELEVANT MARKET

10. The Target is an IPP, engaged business of generation of electricity. The IPPs and other power generation companies (GENCOs), except K-Electric, sell all of their generated electricity to the Central Power Purchasing Agency (CPPA), while the supply of electricity is regulated by National Electric Power Regulatory Authority (NEPRA), which determines tariff as well. Therefore, the relevant product market is the production and wholesale supply of electricity generated by power companies. The relevant geographic market is Pakistan.

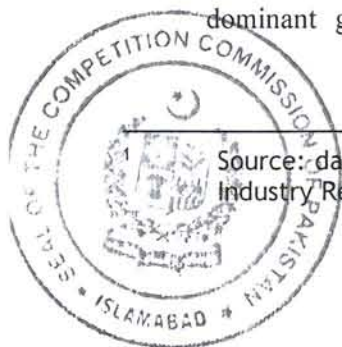


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## V. THE PHASE-I COMPETITION ASSESSMENT

11. The Acquire is principally engaged in the business of production, distribution, and sale of chemical fertilizer across Pakistan. It has investments in companies operating in the fertilizers, cement, banking and renewable wind energy sector. Fauji Group owns majority equity stakes in FFCL and has common directorship. Fauji Group owns multiple IPPs in Pakistan.
12. The Seller is principally engaged in the business operating an oil-fired power station of 1200 MW in Balochistan and a 214 MW oil-fired power station in Punjab, Pakistan. The Target is incorporated as a public unlisted company and is a mine-mouth 330 MW coal-based power plant located in Thar, Sindh, Pakistan. It is envisaged to commence its commercial operations by the 4<sup>th</sup> quarter of 2019. HUBCO currently owns \_\_\_\_\_ of share capital of TEL.
13. The total installed capacity of the IPPs and GENCOs of the relevant market is approximately 24,364 MW, while the total production is approximately 97,481 GWh<sup>1</sup>. Based on the installed capacity of IPPs and GENCOs, TEL has a market share of approximately \_\_\_\_\_. Fauji Group owns multiple IPPs in Pakistan. The total capacity of all IPPs under Fauji Group is 609.5 MW, representing approximately \_\_\_\_\_ market share of the relevant market.
14. According to FFCL, the transaction will enable it to diversify and expand its investment portfolio and mitigate business risk. Additionally, the current gas curtailment scenario and saturation in the fertilizer market in Pakistan has prompted to actively evaluate alternate lines of business. The acquisition of \_\_\_\_\_ shareholding in TEL will provide it an opportunity to enter into coal-based power generation and diversify its investment portfolio.
15. Both the Acquirer and the Target are engaged in the generation of electricity, hence there are certain horizontal overlaps between their commercial activities. Post-merger, the market share of Fauji Group will add up to \_\_\_\_\_ of the relevant market. However, the merger parties do not have the actual or potential ability to act independently of customers or competitors or otherwise as a dominant group in the relevant market because the generation and distribution/ supply of



Source: data provided by the Applicant *vide* email dated 18.04.2017 based on NEPRA State of Industry Report, 2015.

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electricity is regulated by NEPRA. Therefore, the transaction does not meet the presumption of dominant position as is provided under Section 2 (1) (e) read with Section 3 of the Act

VI. CONDITION(S)

VII. CONCLUSION

17. There is no evidence to suggest that the proposed transaction is likely to substantially lessen competition by creating or strengthening of a dominant position in the relevant market. Therefore, the proposed transaction is hereby authorized under Section 31 (1) (d) (i) of the Act.

18. It is so ordered.

*Vadiyya Khalil*

(Vadiyya Khalil)

Chairperson

*Ikram Ul Haque Qureshi*

(Ikram Ul Haque Qureshi)

Member



6<sup>th</sup> May, 2017