



BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

FIRST PHASE REVIEW

JOINT VENTURE AGREEMENT BETWEEN KHALEELI
FAMILY, DOSSA GROUP, INDUSTRIAL INVESTORS, CDC
PAKISTAN POWER PROJECTS LIMITED AND ZEPHYR
POWER PRIVATE LIMITED.

CASE: 883/Merger-CCP/17

Commission:

Ms. Vadiyya Khalil
Chairperson

Mr. Ikram ul Haque Qureshi
Member



ORDER

I Background

1 On 14 April 2017, Mr. Zia Khaleeli, Mrs Maryam Khaleeli, Mr. Kumayl Khaleeli, Mr. Hunain Khaleeli, Mrs Zainab Khaleeli and Mrs Nadia Zafar (Collectively, "Khaleeli Family"), Mr. Sadek Nisar Dossa, Dossa Cotton and General Trading Company Limited (Collectively, "Dossa Group"), CDC Pakistan Power Projects Limited ("CDC Power"), Mr. Danish Iqbal and Mr. Saad Iqbal (Collectively, "Industrial Investor Group" or "IIG"), submitted a pre-merger application (the "Application") to the Competition Commission of Pakistan (the "Commission"), notifying the Joint Venture Agreement dated 20 April 2017 ("JV Agreement") between and among Khaleeli Family, Dossa Group, CDC Pakistan, Industrial Investors and Zephyr Power (Private) Limited (the "JV Company") to manage and operate Zephyr Power, which is a 50MW wind power project situated in Gharo, Sindh pursuant to Section 11(3) of the Competition Act 2010 (the "Act") read with Regulation 6 of the Competition (Merger Control) Regulations 2016 ("Merger Regulation").

The case is examined as under:

II Joint Venture Parties

Member 1 to JV

2 Khaleeli Family is comprised of business individuals. They are referred to as the "Development Team" in the JV Agreement. Mr. Zia Khaleel, Mrs Maryam Khaleeli and Mr. Kumayl Khaleeli collectively hold _____ share in the JV Company. Post transaction, Khaleeli Family will jointly hold _____ shares in the Target.

3 Mr. Zia Khaleeli is also the CEO (Chief Executive Officer) of R.E Solar (Private) Limited which aim at developing two solar plants of 20MW each: R.E Solar I (Private) Limited and R.E Solar II (Private) Limited (Collectively, "R.E. Solar"). Both R.E. Solars have secured Letter of Intent from Alternate Energy Development Board (AEDB). R.E. Solar are yet to be developed.

4 Total Assets of Khaleeli Family in 2016 were PKR _____

Member 2 to JV

5 Dossa Group is engaged in trading activities including export of cotton. The group holds _____ shares in the Target. Post transaction, Dossa Group's shareholding in the Target will reach _____

6 Total Assets of Dossa Cotton and General Trading Company as on 30th June 2017 were PKR _____ while the total Turnover for the same period remained at PKR _____ . Total Assets of Mr. Sadek Nisar Dossa in 2016 were PKR _____

Member 3 to JV

IIG is engaged in directorship in various companies including power sector companies.



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8 IIG has presence in the power sector in Pakistan as both are directors in Metro Power Company Limited, Metro Wind Power Limited, Metro Solar Power Limited, JDSN Electric Limited, Jamshoro Power Company Limited and Kot Addu Power Company Limited. They also have presence in Gul Ahmed Wind Power Limited and Gul Ahmed Electric Limited; however both the companies have not commenced commercial operations as yet.

9 IIG's total Assets in 2016 were PKR

Member 4 to JV

10 CDC Power is a wholly owned subsidiary of CDC Group plc. CDC Group plc (CDC Group) is a Development Finance Institution owned by the government of UK. At present, CDC Power is a dormant company and its Turnover is Nil. The Turnover of CDC Group for the year ended 31st December 2015 were GBP [PKR (@1GBP=PKR134.38)]. CDC Power will hold shares in the Target, post transaction.

Target/ JV Company

11 Zephyr Power was incorporated in 2005 as a private limited company under the laws of Pakistan. The company holds a Letter of Intent (LOI) from AEDB to own, develop and operate a 50MW grid connected wind farm project in Gharo, Sindh.

12 Total Assets of Zephyr Power as on June 30th 2016 were PKR while its Turnover for the above mentioned period remained nil as the company has not commenced operation.

Transaction

13 In the proposed transaction the JV parties including the Khaleeli Family, Dossa Group, Industrial Investors, CDC Pakistan and Zephyr Power are entering into a Joint Venture Agreement to regulate the operations and management of Zephyr Power and the relationship of the shareholders. The authorized share capital of the company is shares of PKR each. The transaction involves issuance of new shares of the Target to the existing investors (Khaleeli Family & Dossa Group) and the New Investors (Industrial Investors & CDC Pakistan). The share holding pattern of the Target after the execution of the proposed transaction will be as follows:

- CDC Power ()
- IIG [] (each for Mr. Danish Iqbal and Mr. Saad Iqbal)
- Khaleeli Family ()
- Dossa Group ()

14 The value of transaction for the proposed transaction is US\$ [PKR (@1USD=104.83 as on 25th April 2017)]

15 The proposed transaction meets the notification thresholds prescribed in Regulation 4(2) (a) (b) (c) & (d) of the Merger Regulations, by having undertaking's assets valuing more than PKR 300 million and turnover of the undertakings being more than PKR 500 million. While the transaction value also exceeds PKR 100 million and percentage of shares to be acquired exceeds 10% of the total shareholding of the Target.



Relevant Market

The relevant product market in this case is the "Power Generation" market. The country generates electricity through different means mainly thermal, hydel,

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nuclear and renewable energy. The power generation market has a mix of state-owned enterprises and independent power producers (IPP's).

- 17 The relevant geographic market is Pakistan. Among the JV Parties, IIG and Khaleeli family have presence in the relevant geographic market through shareholding in different companies. Mr. Sadek Nisar Dossa of the Dossa Group also has presence in the relevant market through insignificant shareholding in few companies operating in the relevant market. CDC Power has no presence in the relevant market in Pakistan.

Findings of the Phase I Competition Assessment

- 18 The competition assessment in Phase I have resulted in the following finding:
- i. The proposed transaction envisaged establishment of a JV Company. The JV Parties i.e. Khaleeli Family, Dossa Group, IIG and CDC Pakistan entered into a JV Agreement to manage the operations of JV Company and the shareholders' relationship.
 - ii. JV Company shall own develop and operate a 50MW wind power farm in Gharo, Sindh. The proposed transaction will bring investment in the project through issuance of new shares and provisions of loans to the Target.
 - iii. IIG has presence in the relevant market through considerable shareholding in Metro Power Company Limited and Metro Solar Power Limited both being 50 MW power plants each.
 - iv. The relevant market is a mix of state-owned enterprises and IPP's. The market structure represents monopsony.¹ The power market is a regulated market with a single buyer i.e. National Transmission and Distribution Company (NTDC) while the prices are determined by National Energy and Power Regulatory Authority (NEPRA).
 - v. AEDB that was established in 2003 to facilitate, promote and encourage development of renewable energy is the regulator for the companies operating in the renewable energy segment. The relevant product and geographic market is also a high entry barrier market due to high cost of setting up a power plant and scarcity of suitable location for setting up a wind power project.
 - vi. JV Company has not commenced business operations yet, however considering its generation capacity the project is likely to have a market share of approx.,
 - vii. The market share of the JV Parties will slightly increase up to with inclusion of Metro Power Company Limited (50MW) and Metro Solar Power Limited (50MW) which would be much below the presumption of dominant position i.e. 40% prescribed under Section 2(1) (q) of the Act. There will be no significant change in the dynamics of the relevant market, post-merger.
 - viii. The transaction is not likely to result in creation or strengthening of dominant position in the relevant market. The proposed transaction does not meet the presumption of dominant position as is provided under Section (2) (1) (e) read with Section 3 of the Act.



A market structure that has only one buyer which interacts with multiple would-be sellers.

VSK 91

VI Condition(s)
19

VII Conclusion

20 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.

20 It is so ordered.

Vadiyya Khalil

Vadiyya Khalil
(Chairperson)

Ikram ul Haque Qureshi

Ikram ul Haque Qureshi
(Member)



Islamabad 3rd May 2017