



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
FIRST PHASE REVIEW**

**JOINT VENTURE AGREEMENT BETWEEN M/S. K-ELECTRIC
LIMITED, CHINA DATANG OVERSEAS INVESTMENT CO.
LIMITED AND CHINA MACHINERY ENGINEERING
CORPORATION, ESTABLISHING A 2X350 MW COAL-FIRED
POWER PLANT AT PORT QASIM.**

CASE: 818/Merger-CCP/2016

Commission

Ms. Vadiyya Khalil
Chairperson



Mr. Mueen Batlay
Member

ORDER

I. Background

1. The Competition Commission of Pakistan ("Commission") is in receipt of a pre-merger application ("Application") dated 20th June, 2016 (received by the Commission on 21st June, 2016) sent by M/s. K-Electric Limited ("KE") notifying the Commission of an upcoming Joint Venture between KE, China Datang Overseas Investment Co. Limited ("China Datang") and China Machinery Engineering Corporation ("CMEC") (collectively "JV Parties") pursuant to a Joint Development Agreement ("JD Agreement") and a Shareholders Agreement, establishing a 2x350 MW coal-fired power plant along with a Jetty within one complex at Port Qasim named Datang Pakistan Karachi Power Generation (Pvt.) Ltd ("Datang Pakistan").

II. JV Parties

KE:

2. KE is a public listed company incorporated under the Companies Ordinance, 1984. It is a utility company engaged in the business of electricity generation, transmission and distribution of electricity within its licensed areas in Pakistan.
3. Its revenue generated for the financial year ended December 31st, 2015 was approximately PKR _____ whereas its assets remained approximately PKR _____ for the same period.

China Datang:

4. China Datang is an unlisted company incorporated under the laws of People's Republic of China. It is engaged in the business of power generation and the development, construction, operation and maintenance of coal-fired power plants. China Datang does not currently operate in Pakistan.
5. Its income for the financial year ended December 31st 2015 was approximately RMB _____ (approximately PKR _____) whereas its assets remained approximately RMB _____ (approximately PKR _____).



CMEC:

6. CMEC is a public listed company incorporated under the laws of People's Republic of China. It is engaged in the business of international engineering contracting in areas such as electric power, transportation, electronic communications, housing & architecture, power plant construction, environmental protection, mining and resource exploration. CMEC does not currently operate in Pakistan.
7. Its revenue for the financial year ended December 31st 2015 was approximately RMB (approximately PKR _____), whereas its assets stood at RMB (approximately PKR _____) for the same period.

III. Transaction:

8. The JV Parties have formed Datang Pakistan through a collaborative arrangement pursuant to the JD Agreement and Shareholders Agreement.
9. The transaction value in this case is USD _____ (approximately PKR _____).
10. The transaction meets the thresholds prescribed in Regulation 4 (2) (a), (b) and (c) of the Merger Regulations as the value of gross assets of the undertaking is greater than PKR 300 million, and the combined assets of the undertakings are greater than PKR 1 billion. The annual turnover of the undertaking is greater than PKR 500 million and the combined turnover of the undertakings is greater than PKR 1 billion. The transaction relates to the acquisition of shares or assets of more than PKR 100 million.


IV. The Relevant Market:

11. The relevant product market in this case has been defined as that of the provision of electricity generation, transmission and distribution services.
12. The relevant geographic market is Pakistan.
13. One of the JV Parties, namely KE, is active in the relevant market, with a market share of 13%.
14. Post transaction, the market position will remain the same. However, once operational, Datang Pakistan will have a market share of _____, conditional upon the total installed power generation capacity in Pakistan. Subject to joint control by the JV Parties, post transaction, KE's market share of the relevant market may increase to _____.



V. Findings of the phase I investigation on competition assessment:

15. KE is a utility company engaged in the business of electricity generation, transmission and distribution of electricity within its licensed areas in Pakistan, with a market share of approximately 30% of the relevant market. China Datang is engaged in the business of power generation and the development, construction, operation and maintenance of coal-fired power plants, and is not currently active in Pakistan, whereas CMEC is engaged in the business of international engineering contracting in areas such as electric power, transportation, electronic communications, housing & architecture, power plant construction, environmental protection, mining and resource exploration, and is also not active in Pakistan.
16. The three JV Parties have entered into a joint venture whereby Datang Pakistan is established.
17. Datang Pakistan, once operational, will be engaged in the construction, ownership and operation of a 2x350 MW coal-fired power plant along with a jetty at Port Qasim.
18. The transaction does not meet the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Competition Act, 2010.
19. 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.
20. It is so ordered.


(Vadiyya Khalil)
Chairperson


(Mueen Batlay)
Member

