**BEFORE THE**
**COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF**

**FIRST PHASE REVIEW**

# ACQUISITION OF SHARES OF SK HYDRO PRIVATE LIMITED BY CHINA GEZHOUBA GROUP OVERSEAS INVESTMENT COMPANY LIMITED AS A RESULT OF ACQUISTION OF WHITE CRYSTAL LIMITED.

**CASE: 847/Merger-CCP/16**

Commission

Ms. Vadiyya Khalil
**Chairperson**

Mr. Shahzad Ansar
**Member**

# ORDER

I Background

1 On 20th October 2016, China Gezhouba Group Overseas Investment Company Limited ("CGGC OIC") (the "Acquirer"), submitted a pre-merger application (the "application") to the Commission, for the intended acquisition of 78% shares of SK Hydro (Private) Limited ("SK Hydro ") (the "Target") by CGGC OIC as a result of acquisition of White Crystal Limited , along with the applicable processing fee and necessary information in accordance with the Competition (Merger Control) Regulations 2007 (the "Merger Regulations").

II Merger Parties

Acquirer

2 CGGC OIC was incorporated in 2016 as a limited liability company under the laws of Peoples Republic of China. It is a wholly owned subsidiary of China Gezhouba Group Company ("CGGC") which is a state owned corporation. The principal activity of the Acquirer is project investment, investment management, asset management, technical consultation, mechanical equipment leasing.

3 The Acquirer is a recently incorporated undertaking, therefore it has Nil Turnover , however the Total Assets of Acquirer's parent company i.e. China Gezhouba Group Company ("CGGC") as on 31st December, 2015 were RMB (PKR @1RMB=PKR15.36) and Turnover of RMB (PKR @1RMB=PKR15.36) for the above mentioned period.

Target

4 SK Hydro (Private) Limited was incorporated in Pakistan in 2005 as a private limited company. The principal activity of the company is to set up a power plant of 870MW in Sukki Kinnari, at River Kunnar in Mansehra, Khyber Pakhtunkhwa province of Pakistan on build-own-operate-transfer (BOOT) basis.

5 Total Assets of SK Hydro as on 30th June 2015 were PKR . its Turnover remained during the mentioned period.

III Transaction

6 It is a cross border merger taking place in China, in which CGGC OIC intends to acquire White Crystal Limited as a result of which the acquirer will also acquire shares of SK Hydro (Private) Limited held by its parent company i.e. White Crystal Limited. SK Hydro is developing an 870 MW hydro power plant at Sukki Kinnari. The project cost is US D at a debt-equity ratio of . After the execution of the transaction the Acquirer will undertake subsequent equity commitment that is estimated at USD

7 The consideration for the proposed transaction for the acquisition of shares is estimated to be USD [PKR (@1 USD= PKR 104.66)].

8 The transaction meets the notification thresholds prescribed in Regulation 4(2) (a) (b) (c) & (d) of the Merger Regulations, by having acquirer's assets valuing more than PKR 300 million and combined assets being more than PKR 1 billion and turnover of acquirer more than PKR 500 million and combined turnover being more than PKR 1 billion. The transaction value is PKR 100 million and percentage of shares to be acquired exceeds 10% of the total shareholding of the Target.

## IV Relevant Market:

9 The Relevant Product Market in this case is "Power Generation". The country generates electricity through different means mainly thermal, hydel, nuclear and renewable energy. The power generation market has a mix of state owned enterprises and independent power producers (IPP's). The total generation capacity of the country including the ongoing projects, under construction projects and projects at development stage is estimated to be 59,093 MW.[1]

10 The Relevant Geographic market is Pakistan.

11 The project under development at Sukki Kinnari is an 870 MW run of the river power project that is being developed by the Target, while the Acquirer's parent company i.e. CGGC has a subsidiary that is developing a 640 MW power plant at Azad Pattan. Both the projects are hydel power projects.

## V Findings of the Phase I investigation on the competition assessment

12 The competition assessment in Phase I have resulted in the following findings:

- The proposed transaction involves acquisition of shares of the Target (SK Hydro) by the Acquirer (CGGC OIC). The Target (SK Hydro) and the Acquirer (through its Parent company's subsidiary) operate in same relevant product and geographic market creating a horizontal relationship between the two.
- The relevant product and geographic market is a mix of state owned enterprises and IPP's. The market structure represents monopsony.[2] The electricity generation 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).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 hydel power plant.
- Pre-merger the Acquirer (CGGC OIC) through its parent company's subsidiary i.e. Azad Pattan has generation capacity of 640 MW and a market share of in the relevant product market while, the Target (SK Hydro) has generation capacity of 870 MW and a market share of
- Post-merger the combined market share of both the entities will be which will be much below the presumption of dominance (prescribed limit

[1] "State of the Industry Report, 2015" NEPRA.

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

of 40%). Post merger there will be no significant change in the market dynamics of the relevant product and geographic market. The transaction will result in an insignificant increase in the market power of the Acquirer in the relevant market.

- The proposed transaction will not hamper competition in the relevant market due to the existing dynamics of the relevant market that faces demand-supply gap. The proposed transaction will bring efficiencies in form of investment that is needed for completion of the power project.
- The transaction is not likely to result in creation or strengthening of dominant position in the relevant market. The intended merger does not meet the presumption of dominance as determined under Section (2) (1) (e) read with 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.

Vadiyya Khalil
(Chairperson)

Shahzad Ansar
(Member)

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

Islamabad 30th November, 2016