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Info Capsule

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CCI APPROVES THE COMBINATION OF LINDE AKTIENGESELLSCHAFT AND PRAXAIR, INC. UNDER SECTION 31(7) OF THE COMPETITION ACT, 2002, SUBJECT TO MODIFICATIONS/REMEDIES TO ADDRESS THE ANTI-COMPETITIVE EFFECTS RESULTING FROM THE SAID COMBINATION[1]

On 11th January 2018, the Competition Commission of India (Commission) received a notice jointly given by Linde Aktiengesellschaft (Linde) and Praxair, Inc. (Praxair) (collectively, Parties) in relation to the combination of Linde and Praxair under a newly incorporated holding company, which will be owned by the Parties' current shareholders.

Linde, headquartered in Munich, Germany, is an international gases and engineering company and is primarily active in industrial gases, medical gases, specialty gases and the related engineering and services sectors. Praxair, headquartered in Connecticut, USA, is an international gases company and is primarily active in manufacture and/or supply of industrial gases, medical gases and specialty gases.

Based on its investigation, the Commission was of the opinion that the proposed combination is likely to have an appreciable adverse effect on competition in some markets in India but the same could be addressed by way of modifications to the proposed combination. Accordingly, the Commission approved the proposed combination under Section31 (7) of the Competition Act, 2002, subject to the following divestments to be implemented by the parties:

A. Divestment of Linde India's entire shareholding in Bellary Oxygen Company Private Limited (Belloxy), a joint venture between Linde India and Inox Air Products Limited;
B. Divestment of Praxair's three on-site plants in the East Region, namely, Tata 1 and Tata 2 and 3 located at Jamshedpur and two cylinder filing stations located at Asansol and Kolkata; and
C. Divestment of Linde's one on-site plant in the South Region, namely, JSW – 2 located at Bellary, Karnataka and two cylinder filing stations located at Hyderabad and Chennai.

The aforesaid remedies shall be implemented by way of sale and transfer of respective businesses to an independent entity(ies), which meets the parameters prescribed in the order of the Commission.

The remedies ordered by the Commission aim to eliminate the substantial overlap in terms of presence of the Parties in the affected regions and for establishment of independent competitor(s) or strengthening of the existing competitor(s) by ensuring that they have an integrated presence in markets for industrial gases encompassing tonnage, bulk and cylinder businesses.

For legally binding text of the modifications and other details, please visit https://www.cci.gov.in/sites/default/files/Notice_order_document/C-2018-01-545.pdf

CCI IMPOSES PENALTIES UPON SUGAR MILLS AND THEIR ASSOCIATIONS FOR RIGGING THE BIDS IN RESPECT OF JOINT TENDER FLOATED BY OIL MARKETING COMPANIES FOR PROCUREMENT OF ETHANOL FOR BLENDING WITH PETROL[2]

The Competition Commission of India (CCI) has imposed penalties upon 18 sugar mills and 2 Associations (Indian Sugar Mills Association and Ethanol Manufacturers Association of India) for rigging the bids in respect of a Joint Tender floated by Oil Marketing Companies (HPCL/ BPCL/ IOCL) on 02.01.2013 for procurement of ethanol for blending with petrol.

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[1] Available at: http://www.pib.gov.in/PressReleseDetail.aspx?PRID=1546558
[2] Available at: http://www.pib.gov.in/PressReleseDetail.aspx?PRID=1546553

The Final Order was passed by CCI on 18.09.2018on a batch of informations filed by India Glycols Limited and 5 other Informants.

Pursuant to a Notification dated 02.01.2013 issued by the Ministry of Petroleum & Natural Gas, Government of India, regarding mandatory 5% blending of ethanol with motor spirit/ gasoline, the Government owned Public Sector Oil Marketing Companies (OMCs) viz. IOCL/ HPCL/ BPCL invited quotations from alcohol manufacturers for supply of ethanol through a Joint Tender dated 02.01.2013 which was issued by BPCL on behalf of OMCs - as the coordinator of the tender process. Through the joint tender, OMCs invited sealed tenders under the two bid system i.e. technical bid and price bid from ethanol suppliers. The supply was to be made available to various Depots/ Terminals of OMCs across the country for a period of one year w.e.f. 01.03.2013.

The Informant (India Glycols Limited), however, alleged that Indian Sugar Mills Association (ISMA) and Ethanol Manufacturers Association of India (EMAI) persuaded the OMCs to come-out with a Joint Tender for the purpose of procuring ethanol. The said joint tendering by OMCs was alleged to be an Agreement amongst horizontal players to procure ethanol from various suppliers in contravention of the provisions of Section 3 of the Competition Act, 2002 ('the Act') which was likely to cause appreciable adverse effect on competition within India in supply and distribution of ethanol. It was also alleged that the sugar manufacturers who had participated in the Joint Tender of 2013 manipulated the bids by quoting similar rates and in some cases identical rates through an understanding and collective action in violation of the provisions of Section 3 of the Act.

The Commission in its order noted that the bidders through their impugned conduct have contravened the provisions of Section 3(3)(d) read with Section 3(1) of the Act by acting in a collusive and concerted manner which has eliminated and lessened the competition besides manipulating the bidding process in respect of the impugned tender floated by OMCs. The bidders who participated in respect of the depots located in UP, Gujarat and Andhra Pradesh in response to the joint tender floated by OMCs, were found to have acted in a concerted and collusive manner in submitting their bids. This was evidenced from the prices quoted, quantities offered and the explanations given by the parties. Such collusion was further strengthened from the fact that the bidders utilized the platform of ISMA and also acted on the signals emitted by EMAI which influenced the bidding behavior of the parties.

Accordingly, a total penalty of Rs. 38.05 crore was imposed upon 18 Sugar Mills and their Trade Associations (ISMA/ EMAI). Besides, a Cease and Desist Order was also issued against them. While imposing penalties, the Commission applied the principle of relevant turnover and based the penalties on the revenue generated by the sugar mills from sale of ethanol only. The penalty was imposed by the Commission @ 7% of the average relevant turnover of the sugar mills. However, penalty @ 10% of the average receipts was imposed upon the Trade Associations viz. ISMA and EMAI keeping in view the key role they played in facilitating bid rigging.

The Order of the Commission was passed in Case Nos. 21, 29, 36, 47, 48 & 49 of 2013 and a copy thereof has been uploaded on the website of CCI at **www.cci.gov.in.**

Team ICSI