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Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

Case No. 98 of 2016

In Re:

C. Shanmugam

Informant No. 1/ IP-1

Manish Gandhi

Informant No. 2/ IP-2

And

**Reliance Jio Infocomm Limited
Department of Telecommunications
Telecom Regulatory Authority of India
Bharat Sanchar Nigam Ltd.**

**Opposite Party No.1/ OP-1
Opposite Party No.2/ OP-2
Opposite Party No.3/ OP-3
Opposite Party No.4/ OP-4**

CORAM

**Mr. Devender Kumar Sikri
Chairperson**

**Mr. S. L. Bunker
Member**

**Mr. Sudhir Mital
Member**

**Mr. Augustine Peter
Member**

**Mr. U. C. Nahta
Member**

**Mr. Justice G. P. Mittal
Member**



सत्यमेव जयते



Appearance during the preliminary conference held on 20th March, 2017:

For the IP-1: Mr. Piyush Gupta, Advocate

For the IP-1: Mr. Anup Singh, Advocate

For OP-1: Mr. Ramji Srinivasan, Senior Advocate
Mr. Susmit Pushkar, Advocate
Mr. Srijan Sinha, Advocate
Ms. Sakshi Agarwal, Advocate
Mr. Dhruv Rajain, Advocate
Mr. Ritin Raj, Advocate
Mr. Aabhas Kshetarpal, Advocate
Mr. Hiten Sampath, Advocate
Mr. Rajagopalan Venkatakrishnan, Advocate
Ms. Shelly Saluja, Advocate
Mr. Sunil Gupta, RJIL

Order under Section 26(2) of the Act

1. The information has been filed by Mr. C. Shanmugam and Mr. Manish Gandhi (both collectively referred to as the “**Informants**”) under Section 19(1)(a) of the Competition Act, 2002 (hereinafter, the “**Act**”) against Reliance Jio Infocomm Limited (hereinafter, “**RJIO**” or “**OP-1**”), Department of Telecommunications, Ministry of Communications (hereinafter, “**DOT**” or “**OP-2**”), Telecom Regulatory Authority of India (hereinafter, “**TRAI**” or “**OP-3**”) and Bharat Sanchar Nigam Limited (hereinafter, “**BSNL**” or “**OP-4**”) alleging, *inter alia*, contravention of the provisions of Section 4 of the Act by OP-1.
2. OP-1 is stated to have been established as a venture of group industries of Reliance Industries Ltd., which launched its 4G internet services on 5th September, 2016 under the name and style of “Reliance Jio”. OP-2 and OP-3 are public governing organisations who formulate and stipulate policies, guidelines and regulations for the well-functioning of telecom industry as well as grant licenses to telecom players. OP-4 is a telecom company, which is fully



सत्यमेव जयते



owned and operated by the Government of India and deals in providing various telecom services like landline telecom, mobile telecom, internet and broadband services, *etc.* The Informants have made OP-4 as one of the parties as it may assist the Commission in arriving at a logical conclusion regarding the conduct of OP-1 and its effects on the market.

3. Brief details of the facts and allegations presented in the information are as follows:

3.1. OP-1 has hidden objectives of abusing its dominant position by use of its financial status. It has the *mala fide* intention of becoming a monopoly/non-competitive player in the telecom industry in India and to control and regulate the industry independently of the market forces.

3.2. Based on news articles and certain publications in the web world, it is evident that OP-1 has launched its above said "Reliance Jio" services by infusing a huge investment of Rs 1,50,000/- crore, which is claimed to be the one of the world's biggest start up investment. This huge investment in telecom industry is stated to be an indication of its dominant position in comparison to the other existing telecom players and further indicate its imminent leadership in the telecom sector.

3.3. OP-1 has introduced a welcome offer whereby the prospective subscribers have been offered to use all services including voice calls, internet data, roaming services, browsing, *etc.* free of cost till December, 2016. After, December, 2016, the user charges would vary from Rs. 16/- to Rs. 4,999/-. OP-1 has also agreed to offer a few other services like streaming music, HD video and content worth Rs. 15,000/- free of cost till December, 2016.



- 3.4. Users of the services of OP-1 should have a smart phone which supports 4G network and voice over LTE. For that purpose, OP-1 is offering the 4G compatible Mobile Handsets @ Rs 3,000/- per handset unit. Though OP-1 is offering free calling/ voice call service and internet till 31st December, 2016, it partly recovers the cost of the same through other mediums like sale of smart phones, which needs thorough investigation.
- 3.5. OP-1 is in a dominant position and is abusing the same, which needs a detailed investigation to find out the real objective behind its offers *i.e.*: (i) whether lifetime free voice calls and roaming have been clarified to the consumers?; (b) whether the proposed tariffs have been approved by OP-3?; and (c) whether the introductory offer of OP-1 is really for healthy competition in the market?
- 3.6. As per the news article dated 9th September, 2016 published in “The Business Line”, the current market practice is to charge a base rate of Rs 4,000/- per GB Data, whereas OP-1 is providing the same services at a discount of 90%. Thus, the introductory offer of OP-1 has the effect of predatory pricing. Further, OP-1 has made a preliminary investment of Rs 1,50,000/- crore but it has offered to provide all services free of cost for three months. Hence, this introductory offer is nothing but a demonstration of position of strength by OP-1 to bear the losses on account of predatory pricing and compel every competitive service provider to reduce their tariffs for a short period/ particular period to a very large extent after execution of operations by OP-1.
- 3.7. The sole motive and purpose of the introductory offer of OP-1 has strong element to allure the new subscribers as well as existing subscribers of other telecom players. There is every possibility that



सत्यमेव जयते



once a new subscriber opts for the services of OP-1, it may be difficult for the subscriber to walk out because of the hidden conditions imposed by OP-1.

- 3.8. The other telecom service providers cannot withstand before OP-1, not only now but in future also because of its sound financial status and marketing strategy. Thus, small players simply have to go out of the market and the medium players will have to either bow down or wind up their telecom services.
- 3.9. The Informants have hence alleged that the free offer of OP-1 are in contravention of Sections 4(1), 4(2)(a), 4(2)(c), 4(2)(e) and 19(4) of the Act.
4. The Commission considered the information in its ordinary meetings held on 3rd January, 2017 and 23rd February, 2017 and decided to have a preliminary conference with the Informants and OP-1 on 8th March, 2017. Accordingly, the Commission heard the said parties on 8th March, 2017 and required RJIL to file certain information latest by 27th March, 2017. After seeking due extension of time, RJIL furnished the required information on 12th April, 2017. The Commission considered the same on 19th April, 2017 and took it on record.
5. The gravamen of the allegations of the Informant concerns free services provided by OP-1 since inception of its business *i.e.* from 5th September 2016 under one offer or other. This has been alleged as contravention of the provisions of Section 4 of the Act. In order to examine the impugned free services under the provisions of Section 4 of the Act, it needs to be ascertained whether OP-1 enjoys a dominant position in any relevant market. Only when such a position is established as being enjoyed by OP-1, it will be imperative to examine as to whether the impugned conduct amounts to an abuse or not.



सत्यमेव जयते



6. The Commission notes that the Informants have expressed concerns regarding free services offered by RJIL. According to the Informants, such free offers amount to predatory pricing and contravention of various provisions of Section 4 of the Act. In its recent Order dated 9th June, 2017 passed under Section 26(2) of the Act in Case No. 3/2017, the Commission has dealt with the same issue *i.e.* whether the free offers of RJIL amount to predatory pricing and/or contravention of the provisions of Section 4 of the Act. The relevant extract of the order is reproduced below:

14. *On the question of relevant market, the Commission notes that wireless telecommunication services is the focal service in the instant case. While the Informant claims 4G LTE telecommunication services as the relevant product market, OP-2 [RJIO] has contended that there is no difference between the telecom services offered using 4G, 3G and 2G technologies. To its support, OP-2 has referred to various portions of the recent Annual Report of the Informant to suggest that it itself does not differentiate between telecom services provided using different technologies.*

15. *Telecom service providers offer voice and data services (such as access to email services or general internet services) together as a bundled tariff plan. With the emergence of smartphones, a wide variety of data intensive applications have been developed for mobile handsets. However, data consumption can also take place on a standalone basis, separate from voice services, through various devices such as mobile broadband dongles, 3G/4G enabled tablets or mobile 3G/4G routers. While voice and mobile broadband services for smartphones are sold/bought together in a bundled form and are used in the same mobile handset, mobile broadband over data-only devices is purchased and consumed independent of any voice services. However, all the telecommunication service providers are similarly placed to offer a variety of services designed for data-only device users and voice-enabled device users. Thus, distinction between the said services has not been found necessary in the facts and circumstances of the case. Accordingly, the relevant product/service appears to be wireless telecommunication services.*

16. *The Commission is cognizant of the fact that 4G technology is superior to 3G technology in certain aspects and will be operative only in 4G compatible mobile instruments. It will not be operative in a 3G compatible handset. However, a 3G network will be operative in a 4G*



सत्यमेव जयते



compatible handset. This implies that the ongoing technology evolution is backward compatible i.e. between a new generation handset and an old generation network. Although consumers may have to incur additional cost towards buying new mobile instrument to avail 4G telecommunication services, considering the relatively lesser life span of mobile handsets and ongoing technological innovation, constant migration of existing subscribers to upgraded ecosystem is natural and inevitable over a period of time. From the supply side, any new entrant in the telecom market is likely to adopt the technology available at that time and later upgrade its network from time to time to migrate or additionally offer services based on newer technologies. In this ongoing process of evolution, it is not appropriate to differentiate wireless telecommunication services based on technologies used for providing such services. More importantly, the cost of 3G and 4G compatible mobile handsets and the tariff for 3G and 4G telecommunication services appear to be largely similar. It may also be relevant to point out that DoT grants uniform and same licence to all telecommunication service providers i.e. Unified Access Licence and it does not differentiate between service providers based on the technology deployed by them. The Commission notes that the decisions relied upon by the Informant regarding relevant market are specific to the facts and circumstances of the concerned cases and the same are of no relevance to the wireless telecommunication services impugned herein. In any case, relevant market is an economic reality to be determined based on facts and circumstances of each case. In view of the foregoing discussion, the Commission is of the view that the relevant product market in the facts and circumstances of the present case is the market for 'provision of wireless telecommunication services to end users'.

17. *As regards the relevant geographic market, it is noted that a consumer located in a particular place is not likely to avail telecommunication services from any other territory. He is likely to choose amongst the different options available in his locality. Further, a subscriber calling another subscriber located within the same telecommunication circle, irrespective of the physical distance between the two, is treated as a local call and any call terminating in other service areas is a long-distance call viz. Subscriber Trunk Dialling(STD). On the supply side, spectrum is the primary input required for offering wireless mobile communication services and the same is allocated to service providers through an auction process. India has been divided into 22 circles for such purpose and separate auction has been conducted for each circle. It further appears that telecommunication service providers determine circle wise tariff. In view of these factors, each of the said circles appear to constitute distinct and separate geographic market. Thus, the relevant geographic market in the instant case appears to be 'each of the 22 telecommunication circles in India'.*



18. Accordingly, the relevant market in the instant case is the market for 'provision of wireless telecommunication services to end users in each of the 22 circles in India'.

19. Coming to the assessment of dominant position, the Commission notes that after the opening up of telecommunication market to private players, this market has witnessed entry of a number of players competing with each other resulting in decrease of tariffs and constant improvements in quality and variety of services. As per the TRAI press release dated 17th February, 2017, the wireless subscriber base of private telecommunication players at pan-India level constitutes 91.09% as against 8.91% held by public sector undertakings. The market is led by the Informant with a market share of 23.5% followed by Vodafone (18.1%), Idea (16.9%), BSNL (8.6%), Aircel (8%), RCOM (7.6%), OP-2 (6.4%), Telenor (4.83%), Tata (4.70), Sistema (0.52%), MTNL (0.32%) and Quadrant (0.27%). Further, in none of the 22 telecommunication circles, the Opposite Party has a market share higher than 7%. As may be seen, the market is characterised by the presence of several players ranging from established foreign telecom operators to prominent domestic business houses like TATA. Many of these players are comparable in terms of economic resources, technical capabilities and access to capital. Further, the market is characterised by the presence of several players resulting in sufficient choice to consumers who can shift from one service provider to another and that too with ease. This implies that dependence of consumers on any single telecom operator is not of any significant extent. Against this background, it is difficult to construe dominant position being possessed by OP-2 with 6.4% market share, which presupposes an ability to operate independently of the market forces to affect its consumers or competitors.

20. The Informant has alleged that OP-2 is dominant on account of its large spectrum holding in the most premier bands, which are compatible for offering 4G LTE services. It has been submitted that OP-2 holds 50 per cent of the spectrum in 2300 MHz band and 28 per cent of 1800 MHz band deployed for LTE network. Further, pursuant to the network and spectrum sharing arrangement with RCOM, OP-2 has access to 35 per cent of 800MHz band as well. On the other hand, the learned senior counsel for OP-2 contended that such estimation is biased as the Informant holds the maximum spectrum in 1800 MHz band, which is the most efficient band amongst others. In this regard, it is observed that the extant regulatory requirements of DoT appear to cap the overall and band-wise spectrum holding by telecom operators, which to a large extent takes care of undesirable concentration of spectrum in the hands of few operators.



21. During the preliminary conference, the learned senior counsel for the Informant argued that OP-2 has unfettered access to the funds of OP-1, which is the largest private sector company in the country. The learned counsel for OP-2 referred to various portions of the recent Annual Report of the Informant to suggest that the Informant has also made huge investments in telecom market and is in a financially sound position. The Commission notes that financial strength is relevant but not the sole factor to determine dominant position of an enterprise. Considering comparable investments and financial strengths of competitors, the success of OP-2 in managing large scale investments does not suggest dominant position being enjoyed by OP-2. The Commission does not find it appropriate to hold OP-2 dominant in a scenario where its customers constitute less than 7 per cent of the total subscriber base at pan-India level, various functions of telecom service providers are regulated and entrenched players have been in existence for more than a decade with sound business presence, comparable financial position, technical capabilities and reputation. Even if one were to consider 4G LTE services as the relevant product market, OP-2 is not likely to hold dominant position in such market on account of the presence of the Informant, Vodafone, Idea, etc., who derive commercial and technical advantages due to their sustained and sound business presence in other telecom services. It needs to be appreciated that OP-2 is a new entrant, who has commenced its business recently i.e. from 5th September, 2016.

22. In the absence of any dominant position being enjoyed by OP-2 in the relevant market, the question of examining the alleged abuse does not arise. Notwithstanding this, the offers of OP-2 do not appear to raise any competition concern at this stage. All through the preliminary conference, the learned senior counsel for the Informant alleged that the impugned offers of OP-2 amount to below-cost pricing and has resulted in OP-2 gaining a huge subscriber base of around 72 million in a period of just 4 months. This, according to the Informant amounts to predatory pricing. However, the Informant has not demonstrated reduction of competition or elimination of any competitor nor has any intent to that effect is demonstrated. The Commission notes that providing free services cannot by itself raise competition concerns unless the same is offered by a dominant enterprise and shown to be tainted with an anti-competitive objective of excluding competition/ competitors, which does not seem to be the case in the instant matter as the relevant market is characterised by the presence of entrenched players with sustained business presence and financial strength. In a competitive market scenario, where there are already big players operating in the market, it would not be anti-competitive for an entrant to incentivise customers towards its own services by giving attractive offers and schemes. Such short-term business strategy of an entrant to penetrate the market and establish its identity cannot be



सत्यमेव जयते



considered to be anti-competitive in nature and as such cannot be a subject matter of investigation under the Act.

23. *In view of the foregoing discussion, the Commission is of the considered view that no prima facie case of contravention of Section 4(2)(a)(ii) of the Act is made out against OP-2.*

7. Based on the above determination, in its recent order dated 9th June, 2017, the Commission is of the view that the introductory offers of OP-1 does not amount to any contravention of the provisions of the Act.
8. The Commission, therefore, is of the view that no *prima facie* case of contravention of the provisions of Section 4 of the Act is made out against the Opposite Parties. Accordingly, the matter is ordered to be closed in terms of the provisions of Section 26(2) of the Act.
9. The Secretary is directed to transmit copy of this order to the parties.

**Sd/-
(Devender Kumar Sikri)
Chairperson**

**Sd/-
(S. L. Bunker)
Member**

**Sd/-
(Sudhir Mital)
Member**

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Justice G. P. Mittal)
Member**

**New Delhi
Date: 15/06/2017**