Fair Competition
For Greater Good

COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2018/10/609 and C-2018/10/610)

21st January, 2019

(i) Notice under Section 6 (2) of the Competition Act, 2002, bearing Registration No. C-2018/10/609, jointly filed by Jio Futuristic Digital Holdings Pvt. Ltd., Jio Digital Distribution Holdings Pvt. Ltd. and Jio Television Distribution Holdings Pvt. Ltd.; and (ii) notice under Section 6 (2) of the Competition Act, 2002, bearing Registration No. C-2018/10/610, jointly filed by Jio Content Distribution Holdings Pvt. Ltd., Jio Internet Distribution Holdings Pvt. Ltd., and Jio Cable and Broadband Holdings Pvt. Ltd.

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Mr. U. C. Nahta
Member

Ms. Sangeeta Verma
Member

Legal Representative of the Parties: (1) AZB & Partners
(2) Cyril Amarchand Mangaldas

Order under Section 31(1) of the Competition Act, 2002

1. This single order shall dispose two separate notices filed by subsidiaries of Reliance Industries Limited (**RIL**) on 31st October, 2018 with the Competition Commission of India (**Commission**), under sub-section (2) of Section 6 of the Competition Act, 2002 (**Act**). The notice bearing Registration No. C-2018/10/609 was filed by Jio Futuristic Digital Holdings Pvt. Ltd. (**JFDHPL**), Jio Digital Distribution Holdings Pvt. Ltd. (**JDDHPL**) and Jio Television Distribution Holdings Pvt. Ltd. (**JTDHPL**); and the

notice bearing Registration No. C-2018/10/610 was filed by Jio Content Distribution Holdings Pvt. Ltd. (**JCDHPL**), Jio Internet Distribution Holdings Pvt. Ltd. (**JIDHPL**) and Jio Cable and Broadband Holdings Pvt. Ltd. (**JCBHPL**). (Hereinafter JFDHPL, JDDHPL and JTDHPL are collectively referred to as **Acquirers-1**; JCDHPL, JIDHPL and JCBHPL are collectively referred to as **Acquirers-2**; and Acquirers-1 and Acquirers-2 are collectively referred to as **Acquirers**).

2. The proposed combinations in two notices relate to acquisition by Acquirers-1 and Acquirers-2 of stakes in Den Networks Ltd. (**Den**) and Hathway Cable and Datacom Ltd. (**Hathway**), respectively. The details of the two proposed combinations are given in subsequent paragraphs.

3. **Proposed combination for acquisition of Den (Proposed Combination 1):** It is envisaged that Reliance Industries Limited group (**RIL Group**), through the Acquirers-1 with RIL, Reliance Industrial Investments and Holdings Limited (**RIIHL**), and Reliance Content Distribution Limited (**RCDL**) being persons acting in concert (**PACs**)[1], will acquire 65.96% of the expanded equity share capital of Den (58.92% shareholding by share subscription on preferential issue basis and 7.03% shareholding by share purchase). The above acquisition will also trigger an open offer obligation under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Regulations**). As per information submitted, RIL Group already holds 1.35% of the total paid up equity shareholding of Den.

4. **Proposed combination for acquisition of Hathway (Proposed Combination 2):** It is envisaged that RIL Group, through the Acquirers-2 with RIL, Digital Media Distribution Trust (**DMDT**), RIIHL, and RCDL being PACs, will subscribe to 51.34% of the expanded equity share capital of Hathway, on a preferential issue basis. The aforementioned acquisition will also trigger an open offer obligation under the Takeover Regulations. The aforesaid acquisition will also trigger open offer

[1] It has been submitted that the Acquirers are wholly owned by the Digital Media Distribution Trust (DMDT). RCDL is the sole beneficiary of the DMDT. RIIHL is the protector of DMDT. RCDL and RIIHL are wholly owned subsidiaries of RIL. Thus, the Acquirers belong to RIL Group.

obligations under the Takeover Regulations with respect to two listed entities controlled jointly by Hathway with a third party i.e., Hathway Bhawani Cabletel and Datacom Limited (**HBCDL**) and GTPL Hathway Limited (**GTPL Hathway**). (Hereinafter, Den, Hathway, HBCDL, GTPL Hathway are collectively referred as **Targets** and the Acquirers and Targets are collectively referred to as **Parties**).

5. It has been submitted that post the proposed combinations, the Acquirers-1 and Acquirers-2 will acquire sole control of both Den and Hathway respectively.

6. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**), vide letters dated 16th November, 2018, 7th December, 2018 and 17th December, 2018 certain information *inter alia* relating to overlaps, efficiencies arising out of the proposed combinations, and market shares were sought for both the proposed combinations. The responses to these letters were submitted on 26th November, 2018 and 21st December, 2018 respectively, after seeking extensions of time.

7. In terms of Regulation 19 of the Combination Regulations, vide letter dated 24th December, 2018 certain additional information *inter alia* relating to market shares, segmentation of certain services and competition assessment of certain segments was sought for both the proposed combinations. The responses to these letters were submitted on 7th January, 2019 (for case bearing no. C-2018/10/610) and 8th January, 2019 (for case bearing no. C-2018/10/609) after seeking extension of time.

8. **Acquirers and Reliance Industries Ltd. (RIL):** The Acquirers have been recently incorporated and belong to RIL Group. RIL is a public listed company incorporated in India and is broadly engaged in the business of hydrocarbon exploration and production, petroleum refining and marketing, petrochemicals, retail, telecommunications, broadcasting and content creation. The products/services provided by RIL Group through various entities, relevant for the proposed combinations are as under:

a. Wholesale supply of TV channels to distribution companies by TV18 Broadcast Ltd. (**TV 18**)[2] in respect of the TV channels owned and operated by TV18 and its subsidiaries.

b. Provision of advertising airtime on the TV channels owned and operated by TV18 and its subsidiaries.

c. Retail supply of audio video (**AV content**) (including broadcasting channel) in India by RIL (i.e. Jio TV, Jio Cinema, Saavn) and Network 18 (including its subsidiaries) (i.e. Voot).

d. Content creation and acquisition by Network 18 (including its subsidiaries) and Jio Studios.

e. Wireless broadband internet services (**Wireless-BIS**) through Reliance Jio Infocomm Limited **(RJIL**).

As per information provided, RIL Group is neither present in the business of operating Cable TV nor in Wired broadband internet services (**Wired-BIS**) in India, either directly or indirectly[3].

9. **Den (Target 1):** Den, incorporated in India, is a public listed company. Den is registered as a Multi System Operator (**MSO**) under the Cable Television Networks (Regulation) Act, 1995 and is categorized as a national MSO by the Telecom Regulatory Authority of India (**TRAI**). Den is engaged in the business of providing the following services:

a. Cable TV services (across 13 states of India)

b. Wired-BIS

c. Retail supply of AV content through its online streaming application i.e. Den TV+ (Den + application is an additional and complementary service to its Cable TV subscribers, to access the same set of TV channels they have subscribed to, and 'on-the-go' hand held devices).

---

[2] TV 18 is a subsidiary of Network 18 Media & Investments Ltd. (**Network 18**). Independent Media Trust (of which RIL is the sole beneficiary) owns and controls 73.15% of the paid up equity share capital of Network 18 (directly and indirectly through companies wholly owned and controlled by it).

[3] RIL Group through RJIL has initiated registration for its fixed hi-speed broadband internet services by the name of "**JioGigaFiber**", but is yet to enter the market for Wired-BIS. JioGigaFiber is Fibre To The Home (**FTTH**) Wired-BIS. It is capable of providing high speed internet speeds by employing Optical Fiber Cables ('**OFC'**) for relaying data direct to homes/ places of employment etc.

d. Retail supply of server based local Cable TV channels and acquisition of content for the same.

e. Supply of advertising airtime on server based local Cable TV channels.

10. **Hathway (Target 2):** Hathway, incorporated in India, is a public listed company. Hathway is a Wired-BIS service provider. It also provides cable television services through its subsidiaries and associates, but mainly through its wholly owned subsidiary Hathway Digital Private Limited. Hathway has been registered as a MSO under the Cable Television Networks (Regulation) Act, 1995 and is categorized as a national MSO by the TRAI. Hathway is engaged in the business of providing:

    a. Cable TV services (across 18 states)

    b. Wired-BIS

    c. Retail supply of server based local Cable TV channels and acquisition of content for the same.

    d. Supply of advertising airtime on server based local Cable TV channels.

HORIZONTAL OVERLAPS

11. Considering the products/services of the Parties to the combination, the Parties exhibit horizontal overlaps in the provision of the various products/services relating to broadcasting and distribution and broadband internet services:

    a. Aggregation and distribution of broadcast TV channels to homes

    b. Retail supply of AV content

    c. Provision for Wired-BIS

    d. Supply of advertising airtime on TV channels

VERTICAL OVERLAPS/RELATIONSHIPS

12. Considering the products/services of the Parties to the combination, the Parties exhibit vertical overlaps in the provision of the various products/services

    a. Wholesale Supply of TV channels in India (upstream), and aggregation and distribution of TV channels to homes in India (downstream)

b. Licensing of AV Content, including licensing of linear feeds of TV channels in India (upstream) and Retail supply of AV content (downstream)

c. Advertising on TV channels (upstream) and Supply of Advertising Airtime on TV channels (downstream)

COMPETITION ASSESSMENT

13. The competition assessment is carried out under three business categories, namely:

a. Broadcasting and Distribution

b. Wired-BIS

c. Advertising Airtime

a. Broadcasting and Distribution

Horizontal Overlap in 'Aggregation and distribution of broadcast TV channels to homes' segment

14. Based on the submissions, the Commission noted that both Den and Hathway are MSOs and are active in provision of Cable TV services, a distribution platform for transmission of television channels to end consumers. MSOs transmits the signals received from the broadcasters either directly or through Local Cable Operators (**LCOs**) to the end consumers. Further, it was noted that Den and Hathway provide Cable TV services in 13 states and 18 states of India, respectively, and there is overlap between Den and Hathway in the said business segment in several states in India. However, as already stated RIL Group has no presence in distribution platform operations in India. Therefore, the business overlap resulting because of proposed combinations between the Parties is on account of presence of Den and Hathway as MSOs.

15. The Commission noted that there are various types of Distribution Platform Operators (**DPOs**) such as direct-to-home (**DTH**), Cable TV, Internet Protocol Television (**IPTV**) and Headend in the sky (**HITS**). In this regard, the Commission

noted that each of the above said modes perform the function of distribution of TV channels to homes. However, IPTV and HITS are still nascent technologies and have very insignificant level of penetration amongst TV households. Accordingly, only Cable TV and DTH are to be considered, for determining whether these form part of the same relevant market or not. In this respect, the Commission noted that with the digitization of Cable TV and emergence of national MSOs providing Cable TV services on a pan-India basis, there is nearly similar pricing of services by DTH and Cable TV operators. Also, DTH services provides competitive constraint to Cable TV operations and the above said two services may be viewed at par in terms of end use and quality of service. Furthermore, regulations of TRAI also treat Cable TV at par with DTH. On the basis of the foregoing, the Commission has carried out competition assessment after delineating relevant product market as 'the market for aggregation and distribution of broadcast TV channels to homes through Cable TV and DTH services'.

16. With respect to the relevant geographic market, the Commission noted that both Den and Hathway are present across different states and offer almost similar bouquet of channels pan India. Similarly, other Cable TV service providers are also present across various states, offering similar bouquet of channels at a comparative and competitive price as the Parties to the combination. The Commission, based on the submission of the Parties, also noted that a single license can allow an MSO to operate nationwide. Further, the DTH operators are providing services on pan-India basis and thus providing constraint to all cable operators regardless of their areas of operations. Therefore, the relevant geographic market has been delineated as pan-India. Accordingly, the relevant market is the market for aggregation and distribution of broadcast TV channels to homes through Cable TV and DTH services in India.

17. As stated in preceding paragraphs, Cable TV business is being constrained by the DTH players such as Dish TV, Airtel DTH, Tata Sky, Sun Direct, *etc.* which have pan-India operations as well as by other Cable TV players such as SITI Cable *etc.* The combined market share of the Den and Hathway, post combination, is in the range of [15 – 20] percent in the relevant market. Nevertheless, the Commission also

examined market share of Den and Hathway in the narrower business segment of Cable TV only and noted that the combined market share, post-combination, would be about [20 – 25] percent with an increment in the range of [5 – 10] percent. On the basis of the foregoing, the Commission noted that the combined market share of the Parties in the relevant market or in narrower business segment is not significant to raise any competition concerns in India.

Horizontal Overlap in 'Retail supply of AV content in India' segment

18. The Commission, based on the submission of the Parties, noted that the Parties to combination distribute AV content to end-consumers either through server based local Cable TV channels or over-the-top (**OTT**) applications (where the content is broadcast directly using the internet as a medium), as the case may be. In the former mode of distributing AV content, both Den and Hathway are present. However, in the latter only RIL Group and Den are present.

19. In this context, the Commission, based on the submission of the Parties, noted that the provision of server based local Cable TV channels by Den and Hathway is complementary to the provision of their respective Cable TV services. Accordingly, the Commission noted that the provision of server based local Cable TV channels is not an area of overlap for the purposes of the proposed combinations which merit competition assessment.

20. With respect to OTT segment, the Commission noted that RIL Group is present in the market for retail supply of AV content by way of their OTT platforms. RIL Group is present in the OTT segment through Jio TV, Jio Cinema, Saavn, Voot. Den is present in this market through its OTT application 'Den TV +' which is available only to subscribers of Den Cable TV to view on the go, the channels subscribed to as a cable TV subscriber.

21. The Commission noted that these OTT applications are not substitutable with DTH and/or Cable TV services, for various reasons, including: (a) the viewing experience

of handheld devices does not compare to the viewing experience on TV sets; (b) access to content through OTT requires high speed internet connection and high level of data usage, making it comparatively lot more expensive to Cable TV and DTH. Accordingly, in the instant cases, the Commission noted that the relevant market may be delineated as the market for retail supply of AV content through OTT in India.

22. In the relevant market, the Commission noted that Den has very insignificant market share on the basis of monthly active users (**MAUs**). The Commission further noted that there are competitors like Netflix, Amazon Prime Video, ZEE5, Hotstar, Shemaroo, Hoichoi, which have both large subscriber base as well as content. In view of the above, the Commission observed that the proposed combinations are not likely to raise any competition concern in the said relevant market of retail supply of AV content through OTT in India.

Vertical overlap in 'Wholesale Supply of TV channels in India (Upstream), and aggregation and distribution of TV channels to homes in India (Downstream)'

23. The Commission noted that there is an existing vertical relationship between RIL Group with Den and Hathway as RIL Group supplies its TV channels on a wholesale basis to Den and Hathway, which in turn, distributes these TV channels to end consumers either directly or through their LCOs.

24. The Commission assessed the market share of the RIL Group in upstream segment for different genres and noted that in the upstream segment, there are competitors of RIL Group such as Zee, Star, Sony *etc.* present in nearly all the genres in which RIL Group is present and therefore, would continue to provide competitive constraint to the combined entities post-combination. In the downstream segment, there are a number of DTH players such as Dish TV, Airtel DTH, Tata Sky, Sun Direct, *etc.* as well as other Cable TV players such as SITI Cable. The Commission also noted the relevant regulations of TRAI namely, Telecommunication (Broadcasting and Cable) services (Eighth) (Addressable Systems) Tariff Order, 2017 (**Tariff Order**); Telecommunications (Broadcasting and Cable) services Interconnection (Addressable

Systems) Regulations, 2017 (**Interconnection Regulations**); and The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations, 2017 (**Consumer Protection Regulations**).

25. The Commission observed that under the extant regulatory regime, there is must carry obligation for DPOs, subject to availability of spare capacity, and must provide obligation for the broadcasters. Further, the above said regulations provide that every distributor of TV content is required to publish on its website, *inter alia*, total channel carrying capacity, list of channels available, list of channels for which requests have been received from the broadcaster and an interconnection agreement signed but which are pending distribution due to non-availability of spare channel capacity. Moreover, determination of the maximum retail price of channels is with the broadcasters. In view of the above, the Commission observed that the regulatory landscape and presence of other competitors would ensure that there is no adverse impact on competition, on account of vertical relationship in the instant matter.

Vertical overlap in 'Licensing of AV Content, including licensing of linear feeds of TV channels in India (Upstream) and Retail supply of AV content (Downstream)'

26. The Commission noted that RIL Group licenses AV content (*e.g.* those produced by Network 18 *etc.*) as well as linear feed of its TV channels (*e.g.* channels operated by Network 18 *etc*.) to third parties, including Den and Hathway, for broadcasting on the latter's OTT platform, Den TV+ (as well as on Den's server based local Cable TV channels) and on Hathway's server based local cable TV channels.

27. The Commission observed that the upstream (input) market for 'licensing of AV content in India' is competitive as this market contains several established licensors (including local as well as international studios and TV broadcasters, such as Eros, Disney, Warner Bros, Yash Raj Films, etc.) possessing good number of libraries of AV content. Therefore, post-combination, RIL Group would continue to face competitive constraint from aforementioned entities.

28. With respect to the downstream business segment, as already stated, the incremental market share in the OTT business is negligible on account of the proposed combinations. Further, there are competitors of the Parties in the OTT segment such as YouTube, Netflix, Amazon Prime Video, Hooq, Hotstar, Sony Liv which would continue to provide competitive constraint to the Parties, post-combination. Accordingly, the Commission observed that the proposed combinations are not likely to raise any competition concern.

b. Wired-BIS

Horizontal Overlaps in 'Provision for Wired-BIS'

29. Both Den and Hathway hold a pan-India Internet Service Providers license (**ISP license**) and provides broadband internet services. Currently, Den has been providing Wired-BIS in Delhi NCR, Uttar Pradesh, Haryana, Rajasthan and Kerala. Hathway is present in states of Delhi, Karnataka, Madhya Pradesh & Chhattisgarh, Maharashtra, Goa, UT of Daman, Bihar, Jharkhand, Gujarat, Rajasthan, Tamilnadu, Telangana, and West Bengal. While Den has optical fibre measuring less than 25,000 route kms, Hathway has optical fibre measuring less than 40,000 route kms spread across India. Den has total broadband subscribers ~ 0.11 million and Hathway has total broadband subscribers ~ 1.01 million on all India basis.

30. BIS providers (including Wired-BIS providers) in India are regulated by both Department of Telecommunications (**DoT**) and TRAI. Both DoT and TRAI regularly assess the conditions in the market for provision of BIS and the underlying segment for Wired-BIS and accordingly issue directions, regulations, orders addressing potential issues in this market. Each Internet Service Provider (**ISP**) is required to register itself under the Guidelines for Granting a Unified License (**DoT Guidelines**), in order to operate in any part of the country. DoT has introduced DoT Guidelines pursuant to which, ISPs may now be granted an all-India license (Category A license) or for a specific 'Service Areas' as identified in the DoT Guidelines (Category B

license) or licenses for even narrower geographic areas, defined as 'Secondary Switching Area' (Category C license). There are no restrictions on the number of ISPs in an area and every ISP that holds a Unified License is eligible to provide its services across the entire country. Regulator also mandates 'quality of services' standards in order to ensure that consumers are not in any way subjected to sub-standard services by the ISPs.

31. The Commission noted that there is a distinction between the characteristics of Wired–BIS and Wireless–BIS, in consideration of various differentiating factors such as pricing, speed, data usage and portability. The Commission noted that European Commission (**EC**) has also considered the mobile broadband to belong to a separate market. The Commission also observed that Parties to the proposed combinations treat Household and Business subscriber separately and EC in its decisions has also assessed the Household and Business segments as separate markets.

32. With regard to the relevant geographic market, the Commission observed that there are no local barriers that may affect the pricing of services vis-à-vis the end consumers and both Den and Hathway have secured a Category - A license from Department of Telecommunication and therefore are capable of offering their services across India. While RIL Group does not provide Wired–BIS in India, both Den and Hathway are active in this market across India. However, the Commission has carried out competition assessment both at all India level as well as in the overlapping states i.e. Delhi and Rajasthan.

33. As per submissions, the combined market share (on basis of number of subscribers) of Den and Hathway for Wired-BIS services on a pan India basis is [5-10] percent. Further, in the overlapping states of Rajasthan and Delhi, the combined market shares are also insignificant to raise any competition concerns. Apart from above, there are other major players providing similar services such as BSNL, MTNL, Bharti Airtel, Atria Convergence Technologies, You Broadband.

34. Further, the Commission looked into the presence of Parties to the proposed combinations in terms of their optical fiber cable network and noted that there is negligible increment to the network of RIL Group as a result of the proposed combination. The Commission also noted the insignificant presence of the Targets in the Household and Business segments.

35. In view of the insignificant market shares of Parties in the overall Wired-BIS and very limited presence in both Household and Business segments, the proposed combinations does not appear to cause any adverse effect on competition.

c. Advertising Airtime

Horizontal Overlap in 'Supply of advertising airtime on TV channels' segment

36. It has been submitted that while advertisement airtime through TV18 by RIL is pan-India in nature, Targets cater to local agencies. It is further stated that the target audience and prices charged for advertisement displayed by RIL and by Targets are also distinct.

37. As per submissions, the total market size for supply of advertising airtime on TV channels is around Rs. 32,000 crore and the market share of Den and Hathway is less than 1%. Since the presence of both the Targets in this market is negligible, the incremental market share for the Acquirers is insignificant so as to cause any competition concern.

Vertical overlap in 'Advertising on TV channels (upstream) and Supply of Advertising Airtime on TV channels (downstream)'

38. There is also a vertical overlap in the segment of advertisement airtime and accordingly, the upstream and downstream markets are defined as '*advertising on TV channels*' and '*supply of advertising airtime on TV channels'* respectively. However, RIL Group advertises on Den's server based local Cable TV channels and Den

earned very insignificant revenue from RIL Group's (specifically, TV 18 Home Shopping Network Limited's) advertisements. Accordingly, the above said vertical relationship is not likely to raise any competition concern.

39. The exact market definitions, for all relevant markets, in these cases has been left open as the proposed combinations are not likely to raise any competition concern.

40. In response to the Commission's query, issued via letter dated 16th January, 2019, on the aspect of technical realignment, the Acquirers to the combination submitted the following voluntary undertaking under Regulation 19(2) of the Combination Regulations, on 21st January, 2019:

i The Parties to the proposed combination undertake that there will not be any technical re-alignment due to the proposed combination which will result in change in customer premises equipment of existing subscribers of Den and Hathway for services being currently availed by them from the respective companies.

ii In case, due to the proposed combination, there is any technical re-alignment which will result in change in customer premises equipment to enable the existing subscribers to continue availing from Den and Hathway the services currently being availed by them, then the Parties undertake that the cost of such technical realignment and / or the change in customer premises equipment will not be borne by such customers and the same will be borne by the Parties.

iii Post the proposed combination, the Parties undertake that the customers would be free to choose any type(s) of services or their bundle i.e., between broadband, Cable TV and telephone, offered by the respective companies.

iv In relation to the above, the Parties also undertake to provide an annual compliance report for a period of five (5) years from the date of receipt of the order of the Competition Commission of India approving the proposed combination.

41. The Commission noted that this would save the customer of respective party having to bear the cost of technical realignment that would be carried out by RIL Group, post-combination. The Commission, while accepting the undertaking submitted by the Acquirers, directed the Acquirers to submit annual compliance report, along with other relevant documents, once every year for a period of five (5) years from the date of receipt of this order.

CONCLUSION

42. Considering the facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment of the proposed combinations on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that proposed combinations are not likely to have any appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act subject to compliance of the voluntary commitments given by the Acquirers.

43. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.

44. The information provided by the Acquirers shall be treated as confidential, at this stage, in terms of and subject to provisions of Section 57 of the Act.

45. The Secretary is directed to communicate to the Acquirers accordingly.