



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2017/03/494)

Dated: 30.05.2017

Notice under Section 6 (2) of the Competition Act, 2002 given by Bharti Airtel Limited and Telenor (India) Communications Private Limited

CORAM:

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal Representatives of the parties: M/s AZB & Partners

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

1. On 20.03.2017, the Competition Commission of India (“**Commission**”) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”), given by Bharti Airtel Limited (“**Airtel**”) and Telenor (India) Communications Private Limited (“**Telenor India**”) (collectively “**Parties**”).
2. The proposed combination envisages transfer of 100 percent shares of Telenor India to Airtel through a court driven scheme of merger (“**Proposed Combination**”). As on the date of completion of the Proposed Combination, Telenor India will stand amalgamated and all its assets, liabilities, interests and obligations, as applicable, shall stand transferred and vested in Airtel. The Notice was filed with the Commission pursuant to (i) resolutions passed by the board of directors of Airtel and



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Telenor India each on 23.02.2017 approving the Proposed Combination; and
(ii) execution of Implementation Agreement by and between Airtel, Telenor India and Telenor South Asia Investments Pte Limited¹ on 23.02.2017 (“**IA**”).

3. 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 letter dated 07.04.2017, Parties were required to provide certain information/document(s) latest by 17.04.2017. The Parties filed response on the due date and made certain additional submissions on 27.04.2017. It was noted that the response filed by the Parties was incomplete and accordingly, vide letter dated 03.05.2017, the Parties were required to provide the complete response by 05.05.2017. The Parties submitted complete response on 09.05.2017, after seeking extension of time.
4. Airtel, a part of Bharti Enterprises group (“**Bharti Group**”), is a publicly traded global telecommunications corporation with operations in 17 countries across Asia and Africa. It is engaged in provision of various B2C and B2B telecommunication services. B2C services include, *inter-alia*, retail mobile telephony services, wireline services etc. and B2B services include, *inter-alia*, National Long Distance Services (“**NLD**”), International Long Distance Services (“**ILD**”) etc. Airtel provides mobile telephony services in all telecom circles in India.
5. Telenor India, wholly owned by Telenor ASA, provides telecommunication services including retail mobile telephony services, NLD and ILD². Telenor India provides mobile telephony services in seven telecom circles in India, namely Andhra Pradesh, Bihar, Gujarat, Maharashtra, Uttar Pradesh (East), Uttar Pradesh (West) and Assam.

¹ Telenor Singapore owns and controls the entire issued and paid up share capital of Telenor India with Telenor South East Asia Investment Pte Ltd holding one share.

² As submitted, Telenor India has been licenced to provide ILD services in India. However, it has not commenced providing ILD service.



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Competition Assessment

6. As stated above, the Parties are engaged in provision of telecommunication services. On the basis of product overlaps between the Parties in India, the Commission identified three product segments, viz., (i) retail mobile telephony services; (ii) NLD and (iii) ILD for the purpose of competition assessment.

Retail Mobile Telephony Services

7. The Commission observed that retail mobile telephony services can be classified on the basis of various criteria such as type of service, type of customer and type of access equipment. However, considering the fact that the Proposed Combination is not likely to result in appreciable adverse effect on competition, for the reasons contained in the ensuing paragraphs, exact delineation of the relevant market is left open.
8. As regards relevant geographic market, the Commission decided that the same may be defined in terms of each overlapping circle, i.e., Andhra Pradesh, Bihar, Gujarat, Maharashtra, Uttar Pradesh (East), Uttar Pradesh (West) and Assam. However, as Telenor India has not commenced its commercial operations in Assam, competition assessment has been carried out only for six telecom circles, excluding Assam.
9. The Commission noted that although there are eight telecom operators in all the overlapping circles including the Parties, the retail mobile telephony services market is concentrated. The CR 4 is more than 65 percent and the pre-merger HHI is more than 2000 in all the overlapping circles. As regards the specific impact of the Proposed Combination on the level of concentration, the Commission observed that the incremental market shares range from 3.80 percent in Andhra Pradesh to 9.70 percent in Uttar Pradesh (West) and incremental HHIs range from 243 in Gujarat to 770 in Bihar which may be considered as significant³. The combined market shares

³ The incremental market shares and incremental HHIs are calculated on the basis of market shares in terms of gross revenue of the Parties and other operators in overall retail mobile telephony services market for the year 2016.



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of the Parties range from around 24 percent in Gujarat to around 57 percent in Bihar. The Commission noted that the combined market shares are also on a higher side in the markets of Andhra Pradesh (46 percent), Uttar Pradesh East (39 percent) and Uttar Pradesh (West) (31 percent).

10. As regards assessment in terms of market shares, the Commission noted that the issue of market shares is also dealt by the guidelines for transfer/merger of service licences on compromises, arrangement and amalgamation of companies, issued by Ministry of Communications and Information Technology, Government of India in 2014 (“**DoT Merger Guidelines**”). As per the DoT Merger Guidelines, in case of merger or acquisition or amalgamation proposals that result in market share in any service area exceeding 50 percent, the resultant entity should reduce its market shares to the limit of 50 percent within a period of one year from the date of approval of merger or acquisition or amalgamation. If the resultant entry fails to reduce its market share to the limit of 50 percent within the specified one year, then suitable action shall be taken by the licensor.
11. The Commission observed that the market share in Bihar telecom circle would be impacted by the DoT Merger Guidelines and that an undertaking has been submitted by Airtel regarding its compliance with the prescribed market shares as per the said guidelines. The Commission also observed that assessment of a proposed combination would need to be based, independently of such guidelines, on factors as contained in sub section (4) of Section 20 of the Act. Accordingly the Commission was of the view that further assessment in terms of factors specified in sub-section (4) of Section 20 is necessary in order to form an opinion on the impact of the Proposed Combination in the relevant market(s).
12. The Commission, accordingly, assessed how Telenor India is placed in terms of closeness of competition to Airtel and its overall effectiveness as a competitor. In this regard, the Commission noted the following:
 - i. Telenor India has a limited product offering. It is primarily engaged in providing 2G services (with its 4G operations restricted only to 50



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cities). Further, the Commission noted that Telenor India is only providing pre-paid services.

- ii. The Diversion Ratio (on the basis of porting requests, February 2017) from Airtel to Telenor India is negligible. As regards diversion from Telenor India to Airtel, it is noted that Airtel is not the most preferred operator for subscribers of Telenor India in the overlapping circles.
- iii. Telenor India does not seem to have requisite financial strength required to provide effective competition. In this regard, the Commission observed that Telenor India had a negative net worth exceeding Rs. 2,500 Crores as on 31.03.2016 and it did not acquire any additional spectrum at the last spectrum auction in 2016 citing high reserve prices as a reason. Further, the Commission observed that Telenor India has not been able to convert much of its 1.8 GHz spectrum to 4G and continues to use much of it for 2G services because of lack of resources even when the market trends are moving towards 4G services.

13. The aforesaid analysis reveal that Telenor India neither seems to be a close competitor of Airtel nor an effective competitor going forward.
14. Considering the aforesaid factors in totality, the Commission is of the opinion that the Proposed Combination is not likely to result in substantial change in competition dynamics in retail mobile telephony services in any of the overlapping telecom circles and accordingly does not raise unilateral or coordinated effects concerns.

NLD

15. The Commission assessed the impact of the Proposed Combination in the market for NLD in India. It observed that Airtel is a market leader, in terms of revenue derived by various telecom operators, with a share of around 27 percent and Telenor India is a small player in this market with market share less than 3 percent. Furthermore, the market continues to be competitive with presence of competitors such as BSNL



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(18 percent), RCOM - Aircel (16 percent), Vodafone (13 percent), Tata Communications (11 percent), Idea (10 percent) and others. In view of the same, the Commission observed that Airtel is not likely to have ability and incentive to restrict the supply of NLD services and cause any competition concern.

ILD

16. The Commission observed that Telenor India has not yet commenced provision of ILD services in India and therefore the overlap in this market is only potential. The Commission noted that though Airtel is a market leader, in terms of revenue derived by various telecom operators, with a share of around 29 percent, the market continues to be competitive with presence of competitors such as RCOM - Aircel (14 percent), Vodafone (11 percent), Tata Communications (7 percent), BSNL (5 percent) and others. In view of the same, the Commission observed that Airtel is not likely to have ability and incentive to restrict the supply of ILD services and cause any competition concern.

Existing customer-supplier relationships

17. As submitted by the Parties, Bharti group is engaged in the provision of passive infrastructure services (towers) and wholesale data services to Telenor India and to other third party operators on an arm's length basis in all the circles where Telenor India is active. Telenor India is not active in the market for provision of passive infrastructure services (towers) and wholesale data services. Accordingly, the Proposed Combination is not likely to change the existing competition dynamics.
18. Considering the facts on record, details provided in the Notice given under sub-section (2) of section 6 of the Act, undertaking given by Airtel regarding its compliance with the prescribed market shares as per the DoT Merger Guidelines and assessment of the proposed combination on the basis of factors stated in sub-section (4) of section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in



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India and therefore, hereby approves the same under sub-section (1) of section 31 of the Act.

19. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
20. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
21. The Secretary is directed to communicate to the Parties accordingly.