



03.10.2017

**Notice given by Reliance Jio Infocomm Limited pursuant to an inquiry under sub-section (1) of Section 20 of the Competition Act, 2002 (“Act”)**

**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. G. P. Mittal  
Member

**Legal representative of the parties:** M/s Vinod Dhall and TT&A and M/s Khaitan & Co

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

1. On 07.06.2017, the Competition Commission of India (“**Commission**”) received a notice given by Reliance Jio Infocomm Limited (“**RJIO**” / “**Acquirer**”), pursuant to Commission’s directions issued under sub-section (1) of Section 20 of the Act.
2. The combination relates to acquisition, in 800 MHz frequency band, by RJIO of the (i) right to use of certain spectrum; and (ii) option to acquire right to use of certain spectrum, from Reliance Communications Limited (“**RCOM**”) and Reliance Telecom Limited (“**RTL**”). For the purpose of the combination, following agreements have been entered into by RJIO:



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- i. Spectrum Trading Agreement dated 18.01.2016 with RCOM (“**Trading Agreement**”) for acquisition of (i) 3.75 MHz spectrum each in telecom circles of Andhra Pradesh, Delhi, Gujarat, Maharashtra, Punjab, and West Bengal; (ii) 5 MHz spectrum each in telecom circles of Kolkata and Uttar Pradesh (West); and (iii) 1.25 MHz spectrum in Uttar Pradesh (East);
- ii. Option Agreement dated 18.01.2016 with RCOM (“**RCOM Option Agreement**”) for acquisition of [...] and
- iii. Option Agreement dated 18.01.2016 with RTL (“**RTL Option Agreement**”) for acquisition of [...].

(The transactions contemplated under the Trading Agreement, RCOM Option Agreement and RTL Option Agreement are together referred to as the “**Combination**”).

3. The right to use spectrum, being subject matter of the Trading Agreement, was transferred with effect from 17.05.2016 pursuant to the approval of the Department of Telecommunication, Government of India (“**DoT**”). On 23.05.2016, RJIO exercised its option to acquire the right to use a part of spectrum being subject matter of RCOM Option Agreement (i.e. 3.75 MHz in Karnataka, Kerala and Tamil Nadu and 2.50 MHz in Rajasthan). On 06.07.2016, the DoT changed the allotment of the right to use this spectrum from RCOM to RJIO. No further options as envisaged in the RCOM/RTL Option Agreements have been exercised by RJIO till date. RJIO submitted that exercise of remaining option rights would, *inter-alia*, depend on its business considerations, capacity requirements etc. and it is not possible at this stage to foresee if and when, and in what quantities, the remaining options would be exercised.
4. RJIO, a wholly owned subsidiary of Reliance Industries Limited, is engaged in provision of telecommunication services in India. As of date of entering into the Combination, RJIO was testing its network for providing mobile telephone services in India.



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5. RCOM is incorporated in India and is listed on Bombay Stock Exchange and National Stock Exchange. RTL is a wholly owned subsidiary of RCOM. RCOM (including RTL), directly and/or through its other subsidiaries, is engaged in provision of telecommunication services in India.
6. In terms of Regulation 14 of Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* letter dated 11.07.2017, the Acquirer was required to provide certain information / document(s) latest by 14.07.2017. The Acquirer filed its reply on the due date. RJIO, *vide* letter dated 21.09.2017 and email dated 22.09.2017, submitted its revised confidentiality claim in respect of certain information/document(s).
7. The Commission observed that the National Telecom Policy, 2012 envisaged moving towards liberalisation of spectrum to enable use of spectrum in any band to provide services in any technology as well as to permit spectrum pooling, sharing and later, trading to enable optimal utilisation of spectrum through appropriate regulatory framework. In this regard, DoT issued various guidelines from time to time, including guidelines for Trading of Access Spectrum by Access Service Providers *vide* Communication No.: L-14006//05/2015-NTG dated 12.10.2015 (“**Spectrum Trading Guidelines**”). The Combination has been effectuated in accordance with the Spectrum Trading Guidelines.
8. The Commission further observed that the Spectrum Trading Guidelines requires buyer of spectrum to be in compliance with the prescribed spectrum caps declared from time to time. At present, the spectrum holding in a licensed service area is subject to cap of 25 percent of the total spectrum assigned and 50 percent of the spectrum assigned in a specific band. (“**Spectrum Caps**”).
9. Considering that the transactions envisaging acquisition of right to use of spectrum do not involve assignment of subscriber base, the Commission noted that the competition assessment in such cases need to focus primarily on concerns that may emanate from spectrum holding of the acquirer and that of other telecom service providers (“**TSPs**”).



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10. The Commission noted that RJIO's spectrum holding, post-acquisition (of spectrum pursuant to Trading Agreement and options exercised pursuant to RCOM Option Agreement), is within the Spectrum Caps prescribed by the DoT. In this regard, the Commission is, however, of the view that the assessment of the Combination would need to be based on factors as given in sub section (4) of Section 20 of the Act, independently of such guidelines / Spectrum Caps. Accordingly, the Commission examined spectrum holding of different TSPs in all telecom circles relevant for the Combination. The Commission is of the opinion that spectrum holding of RJIO in 800 MHz band and its overall spectrum holding, post-acquisition, when examined along with the spectrum holding of other TSPs, is not likely to result in an appreciable adverse effect on competition in any of the markets that may be affected by the Combination. In its assessment, the Commission also considered spectrum which may be acquired pursuant to exercise of RCOM/RTL Option Agreements. However, in this regard, the Commission is of the opinion that given the significant uncertainty surrounding the exercise of further option rights, capability of each spectrum acquisition transaction to affect market dynamics and fast changing competition dynamics, the approval of the Commission is subject to the condition that any future acquisition(s) of the spectrum under the RCOM/RTL Option Agreements not completed within one year from the date of the decision of the Commission would require fresh filing, if applicable under the provisions of the Act.
11. Considering the facts on record, details provided in the notice and assessment of the 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 Combination is not likely to have an appreciable adverse effect on competition in India and, therefore, the Commission, hereby, approves the Combination under sub-section (1) of section 31 of the Act, subject to the condition regarding future acquisition(s) of spectrum under the RTL/RCOM Option Agreements as stated above.
12. This order is issued without prejudice to any proceedings under Section 43A of the Act.



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13. This order shall stand revoked if, at any time, information provided by the Acquirer is found to be incorrect.
14. The Secretary is directed to communicate to the Acquirer accordingly.