



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2017/10/531)

Dated: 16.11.2017

Notice under Section 6 (2) of the Competition Act, 2002 given by Bharti Airtel Limited

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

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

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

1. On 16.10.2017, 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**”).
2. The proposed combination envisages acquisition of 100 percent of the consumer mobile business currently run by Tata Teleservices Limited (“**TTSL**”) and Tata Teleservices (Maharashtra) Limited (“**TTML**”) (“**Tata CMB**”) by Airtel (“**Proposed Combination**”). The Notice was filed with the Commission pursuant to execution of a binding term sheet, by and between Airtel, TTSL, TTML and Tata Sons Limited on 12.10.2017 (“**Acquisition Agreement**”). Airtel submitted certain additional information/clarification(s) vide emails dated 26.10.2017, 03.11.2017 and 07.11.2017 and 10.11.2017.



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3. 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.
4. TTSL, a part of Tata Group, is engaged in the business of wired telephone service, wireless telephone service and Internet and broadband services in a number of telecom circles in India. TTML is an associate company of TTSL and is a telecom service provider in Maharashtra.
5. The Commission observed that the Proposed Combination envisaged acquisition of consumer mobile business or retail mobile telephony business of Tata companies by Airtel.
6. 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 product market is left open.
7. As regards relevant geographic market, the Commission decided that the same may be defined in terms of each overlapping circle, i.e., Karnataka, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, UP (East), UP (West), Punjab, Haryana, Gujarat, Delhi, Kolkata, Kerala, Odisha, Bihar, Rajasthan, West Bengal, Himachal Pradesh, Mumbai and Maharashtra.

Assessment in terms of factors contained in Section 20(4) of the Act

Concentration analysis

8. The Commission noted that the issue of market shares and concentration is also dealt in the guidelines for transfer/merger of service licences on compromises, arrangement and



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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 50 percent within a period of one year from the date of approval of merger or acquisition or amalgamation (“**Market Share Caps**”). As regards holding of spectrum by a TSP, the Commission noted that 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**”). The Parties have submitted that they will comply with the Spectrum Caps and the Market Share Caps. However, in this regard, the Commission observed that assessment of a proposed combination would need to be based, independently of such guidelines, on factors as contained in Section 20(4) of the Act.

9. The Commission, considering revenue market shares¹, observed that market is highly concentrated with pre-combination HHIs exceeding 2000 in all telecom circles (except Haryana, Mumbai and Punjab where HHIs are more than 1800). The position of the Parties in various telecom circles can be tabulated as under:

Table 1: Revenue based market share of the Parties in overlapping circles

Combined Market Share	Number and name of Circles
Less than 20%	1 [Kerala]
20% < 30%	1 [Gujarat]
30% < 40%	9 [Tamil Nadu; Haryana; UP (East); UP (West); Madhya Pradesh; Maharashtra; Mumbai; West Bengal; Kolkata]
40% < 50%	3 [Delhi; Punjab; Rajasthan]
More than 50%	5 [Himachal Pradesh; Karnataka; Andhra Pradesh; Bihar; Odisha]

10. As a next step in competition assessment, the Commission examined the impact of the Proposed Combination on the level of concentration as reflected in incremental HHI. Such

¹ The market shares, incremental market shares, HHIs 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 quarter ending 30.06.2017.



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examination was undertaken for 17 telecom circles wherein the combined market share is estimated to be more than 30 percent. The Commission observed that the change in HHI is significant in respect of all the telecom circles (except West Bengal and Himachal Pradesh), ranging from around 168 in Rajasthan to around 958 in Karnataka.

11. The Commission noted that the spectrum holding of the Acquirer may exceed Spectrum Caps in terms of total spectrum assigned in Bihar telecom circle. However, based on examination of spectrum holding of different TSPs in all overlapping telecom circles, the Commission noted that the spectrum seems to be fairly distributed between the various TSPs. Further, the Commission also noted that there is a significant quantity of unsold spectrum in each telecom circle which may also obviate any access issues.

Likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market

12. The Commission assessed as to how Tata CMB 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. Tata CMB has a limited product offering. It is engaged in providing 2G and 3G services. Tata CMB does not include 4G services and as submitted, it does not intend to invest in spectrum and network for introducing 4G services;
 - ii. The Diversion Ratio from Airtel to Tata CMB is negligible. As regards diversion from Tata CMB to Airtel, it is noted that though there is significant diversion, Airtel is not the only preferred operator and there is equally significant diversion to Vodafone and Idea; and
 - iii. The market share of Tata CMB has been steadily declining in almost all the overlapping telecom circles. The same is also reflected in the revenue and EBIDTA of Tata CMB. [...]

The aforesaid analysis reveal that Tata CMB neither seems to be a close competitor of Airtel nor an effective competitor going forward.



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Buyer Power

13. The Commission in its earlier decision in combination of Idea and Vodafone's telecommunication business² had observed that there is significant constraint on the TSPs from the buyer side in the mobile retail telephony services market. The observation was based on factors such as multi-SIMing, ease of substitution due to option of mobile number portability and significant churn rates. The Commission noted that the same assessment also applies in the instant case.

Extent of competition likely to be maintained after the Proposed Combination

14. The retail mobile telephony services market, post the Proposed Combination would have four private TSPs including the Aircel, RJio, Vodafone-Idea and the Acquirer and one state owned TSP *i.e.*, BSNL/MTNL in all telecom circles.
15. The Commission examined the size and resources of the competitors and is of the opinion that they are in a position to exercise adequate competitive constraints on the Acquirer and to eliminate any likelihood of appreciable adverse effect on competition, if any resulting from the Proposed Combination.

Level of combination in the market

16. The Commission observed that telecom sector is witnessing a stage of consolidation and therefore, it become important to also assess the impact of reduction in number of competitors on the competition. In this regard, the Commission is of the opinion that keeping in view its observations on the effectiveness of Tata CMB as a competitor going forward, the Proposed Combination is not likely to cause a significant change in competition dynamics.
17. 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

² Combination Registration No. C-2017/04/502 filed by Vodafone and Idea.



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in retail mobile telephony services in any of the overlapping telecom circles and accordingly does not raise unilateral or coordinated effects concerns.

18. Considering the facts on record, details provided in the Notice given under Section 6(2) of the Act and assessment of the Proposed Combination on the basis of factors stated in Section 20(4) 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 India and therefore, hereby approves the same under Section 31(1) of the Act. This order is, however, issued without prejudice to the proceedings under Section 43A of the Act.
19. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.
20. The information provided by the Acquirer 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 Acquirer accordingly.