



21.06.2017

**Notice given by Bharti Airtel 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 Seth Dua and Associates

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

1. On 15.05.2017, the Competition Commission of India (“**Commission**”) received a notice given by Bharti Airtel Limited (“**Airtel**”/ “**Acquirer**”), pursuant to Commission’s directions issued under sub-section (1) of Section 20 of the Act.
2. The combination relates to acquisition by Airtel of the Right to Use of 2×5 MHz Spectrum in the 1800 MHz band in each of 6 licensed services areas, namely, Bihar, Gujarat, Haryana, Madhya Pradesh, Uttar Pradesh (East) and Uttar Pradesh (West) from Videocon Telecommunications Limited (“**Videocon**”) (“**Combination**”). For the purpose of the Combination, Airtel and Videocon entered into an Agreement to Transfer the Right to Use Spectrum dated 16.03.2016 (“**Spectrum Trading Agreement**”). The Right to Use of the aforesaid Spectrum was transferred with effect



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from 18.05.2016 pursuant to the approval of the Department of Telecommunication, Government of India (“DoT”) vide letter dated 20.05.2016..

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. Videocon, a public limited company, incorporated in India, at the time of entering into Spectrum Trading Agreement, was primarily engaged in provision of retail mobile telephony services (in Haryana, Gujarat, Madhya Pradesh, Bihar, UP (East) and UP (West) telecom circles), NLD, ILD and passive infrastructure services relating to provision of telecom towers on rent to other telecom operators.
5. 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.
6. 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% of the total spectrum assigned and 50% of the spectrum assigned in a specific band. (“**Spectrum Caps**”).
7. 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



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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”).

8. The Commission noted that Airtel’s spectrum holding, post acquisition, 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 covered in the Combination. The Commission is of the opinion that spectrum holding of Airtel in 1800 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.
9. 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 same under sub-section (1) of Section 31 of the Act.
10. This order is issued without prejudice to any proceedings under Section 43A of the Act.
11. This order shall stand revoked if, at any time, information provided by the Acquirer is found to be incorrect.
12. The Secretary is directed to communicate to the Acquirer accordingly.