



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2018/05/568)

29th June, 2018

Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Bharti Infratel Limited, Indus Towers Limited, Aditya Birla Telecom Limited and the shareholders of Vodafone India Limited

CORAM:

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U. C. Nahta

Member

Mr. G. P. Mittal

Member

Legal Representative: AZB & Partners and S & R Associates.

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

1. On 14th May, 2018, the Competition Commission of India (hereinafter referred to as the “**Commission**”) received a notice jointly given by Bharti Infratel Limited (“**BIL**”), Indus Towers Limited (“**Indus**”), Aditya Birla Telecom Limited (“**ABTL**”) and the shareholders of Vodafone India Limited (“**VIL**”). (Hereinafter, BIL, Indus, ABTL and VIL are collectively referred to as “**Parties**”)



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2. The proposed combination relates to the merger of Indus with, and into, BIL. The notice of the proposed combination has been filed under sub-section (2) of Section 6 read with sub-section (c) of Section 5 of the Competition Act, 2002 (“**Act**”) pursuant to the execution of (i) Implementation Agreement entered into and amongst VIL, BIL, VIL Shareholders, Airtel, ABTL, Idea Cellular Limited (“**ICL**”), Indus, and Vodafone International Holdings B.V. and (ii) Shareholders’ Agreement entered into and amongst VIL Shareholders, Airtel, and the Idea Group, each executed on 25th April 2018.
3. Currently, BIL and VIL each hold 42 per cent of the equity share capital of Indus; ABTL (a wholly owned subsidiary of ICL) holds 11.15 per cent of the equity share capital and P5 Asia Holding Investment (Mauritius) Limited (“**PEP**”) holds 4.85 per cent of the equity share capital of Indus. Bharti Airtel Limited (“**Airtel**”) together with its wholly-owned subsidiary Nettle Infrastructure Investments Limited (“**Nettle**”) currently holds approximately 53.5 per cent of the shares of BIL and rest of the shareholding of BIL is with the public shareholders.
4. The proposed combination involves merger of Indus with and into BIL.
5. The Idea Group and PEP has the right to require BIL to purchase their respective shareholdings in Indus for cash prior to the effective date of the merger. If the Idea Group and PEP fail to exercise such right, they will receive new shares of the Merged Company in consideration for their shares in Indus in accordance with the same merger ratio as applicable for the Vodafone Group.
6. Accordingly, as a result of the proposed combination, Airtel (along with Nettle) will hold between 33.8 per cent and 37.2 per cent of the shares of the Merged Company. The Vodafone group will hold between 26.7 per cent and 29.4 per cent of the shares of the Merged Company. The Idea Group will hold between zero per cent and 7.3 per cent of the shares of the Merged Company. PEP will hold between zero per cent and 3.3 per cent of the shares of the Merged Company. Public shareholders will hold between 29.3 per cent and 32.3 per cent of the shares of Merged Company.



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7. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulation, 2011 (“**Combination Regulations**”), certain clarification(s)/information *inter alia*, relating to delineation of market and market shares were sought from the Parties on 21st May, 2018 and response to the same was received on 28th May, 2018 after seeking extension of time. Further, in terms of Regulation 19 of the Combination Regulations, certain information was sought from the Parties on 7th June, 2018 and response to same was received on 15th June, 2018 after seeking extension of time.
8. BIL, a public limited company listed on the BSE Limited (‘**BSE**’) and the National Stock Exchange of India Limited (‘**NSE**’), is engaged in the business of acquiring, building, owning and operating telecom towers and related infrastructure. It provides access to telecom towers to telecom service providers (“**TSPs**”) on a shared basis and caters to all major TSPs. It has around thirty-nine thousand telecom towers located in 11 telecom service areas (‘**Circles**’)¹ namely Assam, Bihar, Haryana, Himachal Pradesh, Jammu and Kashmir, Madhya Pradesh and Chhattisgarh, North East, Odisha, Rajasthan, Uttar Pradesh (East) and Uttar Pradesh (West).
9. The Vodafone Group Shareholders are the equity shareholders of VIL, and are each, in turn, wholly owned indirect subsidiaries of Vodafone Group Plc, which is listed on the London Stock Exchange (LSE). The Vodafone Group Shareholders do not hold interests in any company other than their direct (and, where applicable, indirect) shareholding in VIL (and their proposed interest in Indus). While VIL provides telecom services only in the Mumbai Circle the Vodafone Mobile Services Limited (“**VMSL**” – a VIL’s wholly owned subsidiary) provides telecom services across the other 21 telecom circles in India.
10. ABTL is a wholly owned subsidiary of ICL (listed on NSE and BSE) which is a Pan-India integrated telecom service operator providing retail mobile telephony services across all 22 telecom circles.

¹ Department of Telecommunications (DoT), Government of India has divided the country into 22 telecommunications service areas.



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11. Indus, incorporated in 2007, is a joint venture between the Bharti, Vodafone and Idea group. It is engaged in the provision of passive infrastructure services through telecom towers in India and offers these services to various TSPs and other wireless services providers (such as broadband service providers). It has around one lakh twenty-three thousand telecom towers located in 15 telecom circles namely Haryana, Uttar Pradesh (East), Uttar Pradesh (West), Rajasthan, Delhi, Mumbai, Maharashtra & Goa, Gujarat, Andhra Pradesh, Karnataka, Kerala, Tamil Nadu & Chennai, Punjab, West Bengal, and Kolkata. As per the information available in the public domain, out of the total twelve Directors on the Board of Indus, four each are nominated by BIL and VIL, two by ABTL and remaining two are independent member. Out of the total four Directors nominated by BIL on the Board of Indus, one is the Chairman of the Board of Directors of Indus and other is Chairman of the Board of Directors of BIL.
12. It is known that Telecom infrastructure in India is primarily divided into two broad categories: (i) active infrastructure which includes spectrum, switches and microwave equipment and, (ii) passive infrastructures which *inter-alia* constitutes telecom towers along with the facilities for power back-up. It has been stated that in terms of characteristics and intended use, passive infrastructure and active infrastructure are complementary products for provision of telecom services. Further, passive infrastructure can be provided on a sharing basis to different telecom operators in the same circle. With regard to the telecom towers, it is observed that two categories of entities are allowed to create such infrastructure namely, IP-I registration holders and telecom service providers. While IP-I registrant is allowed to provide infrastructure throughout India, the telecom service providers can provide such infrastructure only in the state in which they hold license.
13. In this regard, as per the information provided in the notice and other documents on record, Parties are present in 22 circles and are in the business of providing passive infrastructure services. BIL's and Indus' activities overlap in four telecom circles in India, namely: (i) Haryana (ii) Uttar Pradesh (West) (iii) Uttar Pradesh (East) and (iv) Rajasthan. However, the exact delineation of relevant market is being left open



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as it is observed that the proposed combination is not likely to raise competition concerns in any plausible definition relevant market in India.

14. On the basis of the information available on record, it is noted that the market share in the telecom tower market may be computed on a number of parameters such as number of towers, tenancies, vacant tenancies etc. The market share of Indus for various parameters for the year 2017 was in the range of 25-35 percent and post combination the combined entity's market share would be in the range of 40-50 percent. Regarding the presence of both Indus and BIL in the provision of passive infrastructure services to telecom operators, it is observed that there are around 700 IP-I service providers registered with the DoT thereby indicating that there is no significant legal or regulatory barrier to enter into the business of providing passive infrastructure services.
15. In this regard, the Commission, also notes that TSPs are not required to obtain separate IP-I registrations to own, operate and share passive infrastructure in the circles within which they are authorised to operate thus allowing them to build their own towers. Further, due to the trend towards consolidation in the mobile telephony service segment and consequent decrease in the number of players, each of the player exerts countervailing buyer power over passive infrastructure providers.
16. The Commission also notes that already 75-85 percent of the total tenancies of the Parties are with Ariel, Vodafone and Idea.
17. In addition to certain TSPs, there are other significant independent tower companies like Ascend Telecom (Ascend), American Tower Corporation (ATC), GTL Infrastructure Ltd. (GTL), Power Grid Corporation of India Limited (PGCIL) and Tower Vision present within the market.
18. As regard vertical relationships, it is observed from the information submitted by the Parties that the tower companies have no ability to vertically foreclose TSPs due to the non-discriminatory treatment requirement built into their IP-I registration certificate.



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19. 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 combination on the basis of factors stated in sub-section (4) of Section 20 of the Act, the commission is of the opinion that proposed combination is 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.
20. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
21. The information provided by the Parties shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.
22. The Secretary is directed to communicate to the Parties accordingly.