



COMPETITION COMMISSION OF INDIA

(Combination Registration Numbers: C-2018/01/550-553)

7th March, 2018

Notice(s) filed under Section 6 (2) of the Competition Act, 2002 by Reliance Jio Infocomm Limited.

CORAM:

Mr. Devender Kumar Sikri

Chairperson

Mr. Sudhir Mital

Member

Mr. Augustine Peter

Member

Mr. U.C. Nahta

Member

Mr. G.P. Mittal

Member

Legal Representative: (1) Khaitan & Co.
(2) Cyril Amarchand Mangaldas

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

1. This single order shall dispose four separate notices filed by Reliance Jio Infocomm Limited (“**RJIO**”/ “**Acquirer**”) on 24th January, 2018 with the Competition Commission of India (hereinafter, referred to as the “**Commission**”). The notices have been filed by the Acquirer pursuant to execution of Master Agreement (“**MA**”) dated 28th December, 2017,



amongst RJIO, Reliance Communications Limited (“**RCOM**”), Reliance Telecom Limited (“**RTL**”) and Reliance Infratel Limited (“**RITL**”) (hereinafter, RCOM, RTL and RITL are collectively referred to as “**RCOM Entities**” and RJIO and RCOM Entities are collectively referred to as “**Parties**”).

2. The notices have been filed under sub-section 2 of Section 6 read with sub-section (a) of Section 5 the Competition Act, 2002 (“**Act**”).

3. The proposed combination in each of the notice relates to acquisition by RJIO of four different classes of assets from RCOM Entities, namely:

- a) Proposed Combination 1 (filed under Combination Registration No. (C-2018/01/550): Acquisition by RJIO of entire optical fibre network, which *inter alia*, includes optical fibre of length exceeding 1,75,000 kilometres and last mile fibre connectivity assets, of RCOM Entities (“**Transaction 1**”);
- b) Proposed Combination 2 (filed under Combination Registration No. (C-2018/01/551): Acquisition by RJIO of telecom towers assets, which *inter alia*, includes telecom towers exceeding 40,000 towers, along with all applicable underlying rights in relation to such telecom towers and all associated infrastructure facilities, equipments, contracts, approvals, records *etc* from the RCOM Entities (“**Transaction 2**”);
- c) Proposed Combination 3 (filed under Combination Registration No. (C-2018/01/552): Acquisition by RJIO of certain frequencies in 800 MHz, 900 MHz, 1800 MHz and 2100 MHz bands in various licensed service areas (“**LSAs**”) and all wireless network radio and core equipment (along with applicable underlying rights) for operation of any wireless spectrum in the said bands. from the RCOM Entities (“**Transaction 3**”); and
- d) Proposed Combination 4 (filed under Combination Registration No. (C-2018/01/553): Acquisition by RJIO of various Media Convergence Nodes (“**MCN assets**”) exceeding 200 MCN assets and other ancillary equipment to support telecom business operations from the RCOM Entities (“**Transaction 4**”).



4. In relation to filing of separate notices, the Commission noted that all four transactions are independent and that none is contingent upon any other transaction.

5. 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 13th February, 2018, certain information(s) / clarification(s) were sought from the Acquirer. Response to the same was received on 16th February, 2018. Acquirer also submitted information, *inter alia*, relating to market size and MCN assets *vide* emails dated 7th March, 2018 and 8th March, 2018.

6. RJIO, a subsidiary of Reliance Industries Limited is, *inter alia*, engaged in provision of 4G wireless telecommunication services and holds wireless spectrum in 800 MHz, 1800 MHz and 2300 MHz bands in 22 telecom service areas (“**TSA**”) in India.

7. RCOM, an entity belonging to the Reliance Anil Dhirubai Ambani Group and listed on both Bombay Stock Exchange (“**BSE**”) and National Stock Exchange (“**NSE**”), is, *inter alia*, engaged in providing wireless telephony services, DTH and IPTV services. RTL, a subsidiary of RCOM, provides wireless telephony services in various TSAs. RITL, a subsidiary of RCOM, is *inter alia*, engaged in providing passive infrastructure telecom services such as telecommunication towers and optic fibre cable. It is stated that post combination, RCOM will continue to provide only 4G services on a Pan-India basis under spectrum sharing arrangement with RJIO.

COMPETITION ASSESSMENT

OFC Assets (Proposed Combination 1)

8. OFC Assets comprise infrastructure that are used by telecom operators to provide mobile telephony services, data, broadband services *etc* by using digital data signals.



9. It is stated that post the proposed combination, RCOM Entities will continue to use OFC Assets to the extent of their current usage. It is also stated that RJIO uses its OFC Assets for captive purposes.

10. The Commission noted that in the previous combination cases relating to OFC Assets, competition assessment was carried out vis-à-vis market for “*provision of passive telecom infrastructure services (i.e., through fibre optic network) in India*”. However, the exact market definition in the instant case is being left open as the Proposed Combination is not likely to raise any competition concern.

11. The Commission observed that RJIO has a perpetual indefeasible right of use of RCOM Entities’ optical fibre cable network. Parties’ combined market share in the market for provision of passive telecom infrastructure services (i.e., through fibre optic network) in India is 20-25 percent. Further, there are other major players such as Bharti/Airtel (15-20 percent), Vodafone/Idea (20-25 percent), BSNL (10-15 percent) and Tata Teleservices (5-10 percent) present in the relevant market. Apart from above, there are other players such as Powergrid and RailTel, providing similar services.

Tower Assets (Proposed Combination 2)

12. The Parties are engaged in the provision of mobile telephony services which require telecoms towers, one of the passive infrastructure. Telecom tower operators construct and maintain and lease the same to Telecom Service Providers (“TSPs”). Further, TSPs also have their own towers for captive purposes which they may also lease out.

13. It is stated that RJIO uses its telecom towers for captive purposes and that post the Proposed Combination 2, existing third party tenancies on the telecom towers of RCOM Entities will continue.

14. The Commission noted that in the previous combination cases relating to telecom towers, competition assessment was carried out for “*provision of passive telecom infrastructure (specifically telecom towers) in India*”. However, for the purpose of present



case, the exact market definition is being left open as the Proposed Combination is not likely to raise any competition concern.

15. It is observed that RJIO has more than 40,000 towers and there are no tenancies on any of its towers. Further, RCOM Entities also have more than 40,000 towers out of a total of ~ 4,50,000 telecom towers in India and have 5-10 percent market share.

16. It is also observed that there are other existing players such as Indus (25-30 percent), Bharti Infratel (5-10 percent), ATC (10-15 percent), Vodafone (0-5 percent) and Ascend (0-5 percent) which will give competitive constraints to the Acquirer.

WIRELESS SPECTRUM (Proposed Combination 3)

17. The Proposed Combination 3 involves acquisition by RJIO of the wireless spectrum from RCOM Entities. RCOM Entities have spectrum in 800 MHz, 900 MHz, 1800 MHz and 2100 MHz frequency bands in various TSAs whereas, RJIO holds spectrum in 800 MHz, 1800 MHz and 2300 MHz across 22 TSAs.

18. The Commission noted that in the previous combination cases relating to acquisition of right to use wireless spectrum, competition assessment was carried out for *“the right to use a given spectrum in a specific licensed service area in India”*. 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 being left open.

19. It has been stated that wireless spectrum assets being acquired by RJIO from RCOM Entities pertain to 800 MHz frequency band in 8 TSAs, 900 MHz frequency band in 2 TSAs, 1800 MHz frequency band in 7 LSAs and 2100 MHz frequency band in 13 TSA. Therefore, RJIO and the Wireless Spectrum of RCOM Entities being acquired by RJIO overlap in 800 MHz frequency band across 8 TSAs and in 1800 MHz frequency band across 7 TSAs.

20. 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, Department of Telecommunications ('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.

21. 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 TSA is subject to cap of 25 percent of the total spectrum assigned and 50 percent of the spectrum assigned in a specific band.

22. 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.

23. Acquirer has submitted that its spectrum holding, post-combination, 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, as submitted by the Acquirer, in all TSAs relevant for the Combination. The Commission is of the opinion that spectrum holding of RJIO in intra TSA as well as 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 Proposed Combination.

MCN ASSETS (Proposed Combination 4)

24. With regards to the proposed combination relating to acquisition of the MCN assets from RCOM Entities by RJIO, it has been stated that the notice has been given by Acquirer in abundant caution as the turnover attributable to the MCN Assets is below INR 1000 Crore



and as such transaction qualifies for *de minimis* exemption, in terms of Ministry of Corporate Affairs notification dated 27th March, 2017.

25. The Acquirer has submitted that MCN Assets comprise of certain land, buildings and telecom equipment utilised for the provision of telecom services and are intrinsically integrated with the telecom business. MCN Assets are essentially complementary assets and/or equipment required by a TSP to provide telephony services.

26. MCN assets are required by the telecom operators for provision of telephony services but no specific turnover can be assigned to it. The MCN Assets on a standalone basis do not perform any revenue generation activities and are merely used to support the provision of telecom business. In light of the above, the Commission is of the view that entire turnover of the mobile telephony business ought to be attributed to these assets.

27. It is also submitted by the Acquirer that all TSPs hold MCN assets, which are used as ancillary equipment on captive basis to support telecom business operations. MCN assets are being used by RCOM Entities captively.

CONCLUSION

28. Considering the facts on record, details provided in the notices given under sub-section (2) of Section 6 of the Act and assessment of the proposed combinations on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that proposed combinations are not likely to have an appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves them under sub-section (1) of Section 31 of the Act.

29. This order shall stand revoked if, at any time, the information provided by the Acquirer is found to be incorrect.

30. The information provided by the Acquirer shall be treated as confidential in terms of and subject to provisions of Section 57 of the Act.



COMPETITION COMMISSION OF INDIA
(Combination Registration Numbers: C-2018/01/550-553)



*Fair Competition
For Greater Good*

31. The Secretary is directed to communicate to the Acquirer accordingly.