



21.06.2017

Notice jointly given by Bharti Airtel Limited and Bharti Hexacom 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 jointly given by Bharti Airtel Limited (“**Airtel**”) and Bharti Hexacom Limited (“**Bharti Hexacom**”) (collectively “**Bharti Group**”/ “**Acquirers**”), 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 20 MHz Spectrum in the 2300 MHz band of BWA Spectrum in each of 8 licensed services areas,



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namely, Andhra Pradesh, Assam, Bihar, Jammu and Kashmir, North East, Tamil Nadu, Odisha and West Bengal from Aircel Limited (“**Aircel**”), Aircel Cellular Limited (“**Aircel Cellular**”) and Dishnet Wireless Limited (“**Dishnet**”) (collectively “**Aircel Group**”) (“**Combination**”) (hereinafter Bharti Group and Aircel Group are collectively referred to as the “**Parties**”).

3. For the purpose of the Combination, the Parties entered into eight separate Spectrum Trading Agreements each dated 08.04.2016. The Right to Use of the aforesaid Spectrum for 6 licensed service areas, namely, Assam, Bihar, Jammu and Kashmir, North East, Tamil Nadu and West Bengal was transferred with effect from 17.06.2016 pursuant to the approval of the Department of Telecommunication, Government of India (“**DoT**”) vide letter dated 04.07.2016. The Right to Use of the aforesaid Spectrum for Odisha and Andhra Pradesh was transferred with effect from 30.06.2016 and 16.11.2016 respectively pursuant to the approval of DoT vide letters dated 08.08.2016 and 16.11.2016 respectively.
4. Airtel 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. Bharti Hexacom, a subsidiary of Airtel, is licenced to provide telecom services on a pan India basis.
5. Aircel is incorporated in India and is directly and through its wholly owned subsidiaries, engaged in the businesses of providing mobile telephony services *i.e.* voice and/or data services, NLD services, ILD services, value added services, wireless data and fixed wireless, mobile banking and data or internet service. Dishnet and Aircel Cellular are wholly owned subsidiaries of Aircel.
6. 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



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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.

7. 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**”).
8. 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(s) and that of other telecom service providers (“**TSPs**”).
9. 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 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 the spectrum holding of Airtel in 2300 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.
10. 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.
11. This order is issued without prejudice to any proceedings under Section 43A of the Act.
12. This order shall stand revoked if, at any time, information provided by the Acquirers is found to be incorrect.



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13. The Secretary is directed to communicate to the Acquirers accordingly.