



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2020/06/747)

24th June, 2020

Notice under Section 6(2) of the Competition Act, 2002 filed by Jaadhu Holdings LLC

CORAM:

Mr. Ashok Kumar Gupta
Chairperson

Ms. Sangeeta Verma
Member

Mr. Bhagwant Singh Bishnoi
Member

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

A. BACKGROUND

1. On 1st June, 2020, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), filed by Jaadhu Holdings LLC (**Jaadhu**), an indirect wholly owned subsidiary of Facebook, Inc. (**Facebook**). The Notice was given by Jaadhu in relation to its proposed acquisition of approximately 9.99% of the equity share capital in Jio Platforms Limited (**Jio Platforms**), a subsidiary of Reliance Industries Limited (**RIL**).
2. The Notice was given pursuant to execution of an Investment Agreement (**Investment Agreement**), between RIL, Jio Platforms, Jaadhu and Facebook on 21st April 2020, *****
*****. The parties also contemplated a *****



*****. Additionally, WhatsApp Inc. (**WhatsApp**), another subsidiary of Facebook, Jio Platforms and Reliance Retail Limited (**RRL**), both subsidiaries of RIL, proposed to enter into a Master Services Agreement (**MSA**).

3. The Commission, *vide* its letter dated 8th June, 2020, issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 required Jaadhu to remove certain defects in its Notice as well as furnish certain additional information. In response, Jaadhu filed its submissions dated 12th June, 2020.

B. PARTIES TO THE PROPOSED COMBINATION

4. Jaadhu was incorporated in March 2020 under the laws of the State of Delaware, USA, and is currently stated to be not engaged in any business in India. As stated earlier, it is an wholly owned subsidiary of Facebook, which is a publicly traded company listed on NASDAQ, with its headquarters in California, USA. The Facebook group offers various products and services in the market for social networking and advertisement. Globally, Facebook's main products / services include Facebook, Messenger, Instagram, WhatsApp, Oculus, Workplace and Portal. Facebook generates virtually all its revenue from selling advertising placements to marketers on its products/ services.
5. Jio Platforms is a company incorporated in India and a subsidiary of RIL. Jio Platforms owns and operates digital applications and holds controlling investments in certain technology related entities. Jio Platforms also holds 100% of the issued and outstanding share capital of Reliance Jio Infocomm Limited (**RJIO**), a public limited company incorporated in India. RJIO is a licensed telecommunication operator, providing mobile telephony services to users across India.



C. PROPOSED COMBINATION

(i) Share acquisition in Jio Platforms

6. As per the terms of the Investment Agreement, Jaadhu would acquire approximately 9.99% of the fully diluted equity share capital in Jio Platforms. Pursuant to the Investment Agreement and SHA, Jaadhu would also be entitled to appoint a director on the Board of Directors of Jio Platforms and an observer to attend board meetings. Further, subject to maintaining certain ownership thresholds, Jaadhu will also have certain affirmative rights in relation to buyback and redemption of shares, IPO, amendment to constitutional documents that adversely affects the rights or obligations of Jaadhu, investment into new line of business beyond a financial limit, related party transactions beyond a financial limit, borrowing beyond a financial limit and winding-up or liquidation of Jio Platforms. Additionally, Jaadhu would also be entitled to receive information relating to financial performance of Jio Platforms and those required for tax and other compliances.

(ii) Commercial arrangement between WhatsApp, Jio Platforms and RRL

7. The parties have also contemplated a commercial arrangement under MSA to be executed between WhatsApp, Jio Platforms and RRL. The primary purpose of MSA is that WhatsApp would develop an electronic chat feature to connect users with JioMart, a new e-commerce marketplace of RRL. It is stated in the Notice that JioMart has been established with a view to connect customers with Kirana stores and other small and micro local Indian businesses.

D. ASSESSMENT OF THE PROPOSED COMBINATION

8. The Proposed Combination would be an active investment by Jaadhu in Jio Platforms as well as a strategic tie-up between their groups whereby JioMart would use WhatsApp as one of the communication channels for its retail business. Jaadhu has clarified that the parties would continue to operate independently after the Proposed Combination.



The competition assessment in the instant case would focus on whether the considerable influential interest of Jaadhu in Jio Platforms, including its access to the specified information, would result in any appreciable adverse effect on competition in the businesses where the products and/ or services of the parties are similar or vertically related or complementary to each other. It would be further relevant to assess the effect of the contemplated business collaboration on the competitive landscape of the concerned businesses.

9. Based on the submissions of Jaadhu, the Commission observes that the activities of the Facebook group and Jio Platforms are similar in consumer communication applications and advertisement services. Further, the social interaction applications of Facebook group, particularly WhatsApp chat/ instant messaging application, and the telecommunication services offered by RJIO, a wholly owned subsidiary of Jio Platforms, are complementary to each other. Taking these activities of the parties and the nature of the Proposed Combination into consideration, it is relevant to examine the following aspects:
 - 9.1. Any potential effects on competition in the markets where the products of the parties are similarly placed *i.e.* consumer chat applications and advertisement services;
 - 9.2. Whether WhatsApp, one of the prominent consumer communication applications in India and its proposed digital payment application, being proposed as the channel of communication and payment in JioMart, is likely to raise competition concern in the business relating to e-commerce and/or digital payment applications; and
 - 9.3. The ability and incentives of both the Facebook group and Jio Platforms including RJIO, to discriminate between competitors in their respective



businesses. In particular, whether the parties have the ability to access each other's resources and consequently enjoy any undue advantage.

D I. Horizontal Overlaps *i.e.* similarly placed businesses

(i) Consumer Communication Applications

10. Telecommunication services have been undergoing phenomenal changes with the ongoing technological evolution. Internet access, smart phones and data revolution through telecom infrastructure have taken the industry to new heights resulting in multiple communication and content offerings to subscribers at attractive price ranges. Without doubt, the user experience with modern wireless communication services is completely different from the traditional voice calls and short messaging services (SMS). Telecom Service Operators (TSPs) have increasingly become data service providers and their revenue from traditional voice call and SMS has shrunk considerably. Mobile telephony services have now become one of the important gateways to access internet content, apart from being the connection for traditional and/or web based communication.

11. Data revolution resulting in TSPs earning more revenue from data services has made them focus on content and communication applications businesses also. TSPs have either ventured into these businesses themselves or tied-up with players who offer such platforms independently. For instance, Jio Platforms offers telecommunication services (through its wholly owned subsidiary RJIO) as well as several digital services including music and TV content (JioSaavn, JioTV, JioNews, JioChat, JioBrowser, JioCloud, JioGames and MyJio). Jio Platforms also offers JioChat, a messaging and calling application available on android phones, iPhones and JioPhones. Features of JioChat include instant messaging, voice calling, video calling, video conferencing, rich messaging (including sharing of files, emoticons, pictures, videos, voice notes and



stickers), sharing of short video stories and connecting with brands through channels. Similarly, Facebook group offers two similar communication applications viz. WhatsApp and Messenger. The purpose of these applications are comparable with certain differences in their features and all of them are available to the user free of cost. Thus, the activities of the parties are similar in the domain of consumer communication applications.

12. Jaadhu has submitted that there is no need to specifically define a relevant market in respect of consumer communication applications as the Proposed Combination is only a minority acquisition. The parties would continue to operate independently and therefore, the Proposed Combination would not alter the competitive landscape in any potential relevant market in any manner. Without prejudice to such submission, it has also submitted that Jaadhu firmly believes that it competes in the overall broader '*market for user attention*'. Facebook group (and Jio Platforms) compete broadly with all digital products and services that seek to capture user attention, which can be through a number of different services such as social networking, messaging, gaming, content viewing and sharing, music, amongst many others. Without prejudice to the above submissions, Jaadhu has further submitted that the Commission, in *Vinod Gupta v. WhatsApp Inc.*¹, had adopted a narrower market definition by covering consumer communication applications only. For such narrower market, Jaadhu has given submissions to suggest that the Proposed Combination is not likely to raise any competition concern. It has further submitted that it would be unrealistic to segregate consumer communication applications based on functionality or platform.
13. The Commission observes that JioChat, Messenger and WhatsApp are all consumer communication applications that primarily enable users to interact with each other. The purpose and features of these applications serve the particular purpose of interaction between individuals or groups and thus, it may not be appropriate to consider the relevant market as all user attention products/ services. Further, consumer

¹ Order dated 1st June, 2016 in Case No. 99 of 2016



communication applications can be segmented based on *functionality* – messaging, voice call and video call; *platforms* – applications meant for desktop, smartphones, tablets, mobile devices, *etc.*; and *operating systems* (OS) - proprietary applications and those that run over different mobile operating systems.

14. In *Vinod Gupta* case (supra), the Commission dealt with alleged abuse of dominant position by WhatsApp. While defining the relevant market, the Commission noted that “‘WhatsApp’, an instant communication app for smartphones using standard cellular mobile numbers, is a platform for communication through texting, group chats and voice and video calls. It is noted that instant communication apps cannot be compared with the traditional electronic communication services such as text messaging, voice calls *etc.* as provided by various telecommunication operators. It is so because unlike traditional modes of communication, instant messaging using communication apps are internet based and provide additional functionalities to the users. For example, users of communication apps can see when their contacts are online, when they are typing or when they last accessed the application. Further, instant communication apps can be used through smartphones only whereas traditional electronic communication services can be used through any mobile phone. There are also differences in the pricing conditions in both the abovesaid modes of communication. ‘WhatsApp’ is a free to download communication application which does not charge any fee from its users for providing the services and just uses internet connection on the device to send instant messages, connect voice calls *etc.* Further, text messaging through traditional modes can be done between people who do not use the mobile service of the same service provider, whereas instant messaging services typically require you and your contacts to be on the same communication application platform. Thus, the Commission is of the view that the relevant product market in this case may be considered as **‘the market for instant messaging services using consumer communication apps through smartphones’**” (emphasis added).



15. WhatsApp initially commenced its operations in 2010 with only instant messaging services. Its application later added voice call feature in 2015 and video call feature in 2016. Over time, several communication application developers have made their applications compatible across platforms and operating systems with most of the functionalities. The industry however continues to have applications like Facetime and iMessage that run only in the proprietary operating system of the developer viz. Apple (ios). Subtle differences in features and functionalities may be observed across communication applications and yet most of them have converged to allow all the following modes of social interaction: (a) instant messaging - real-time short text messaging, generally including presence, *i.e.* the ability to detect other users' availability; (b) Voice over Internet Protocol or VoIP calls - the delivery of voice services over networks, rather than through Telecom Services and (c) video calls - which enable users to interact using synchronised video and voice transmissions, from the very same app / platform.
16. The Commission observes that all the three consumer communication applications of the parties viz. WhatsApp, Messenger and Jio Chat offer similar functionalities and are available free of cost. It has been stated that applications like Duo and Hangout of Google, Snapchat, Wechat, imessage and FaceTime of Apple, Telegram and Viber also offer similar combination of functionalities and are available free of cost. These are seemingly the result of convergence in the consumer communication applications market. Thus, for the purpose of assessment of the Proposed Combination, it may not be relevant to further segment consumer communication applications based on functionalities.
17. Jaadhu has claimed that the market for consumer communication applications is competitive with presence of several players and different entries from time to time. Instances of Houseparty, Truecaller, Snapchat and Telegram being downloaded in an unprecedented manner during COVID 19 times has been cited to reflect lack of entry barriers in the market for consumer communication applications. Drawing reference to market research reports and internal estimates, it has also been claimed that



approximately *** consumer communication applications were used on each smartphone in February 2019, of which *** were non-Facebook group applications. Several applications being available free of cost and multi-homing behaviour of consumers are alluded to as facts reflecting ease of switching. Several other arguments have also been made to suggest that the Proposed Combination is not likely to cause any appreciable adverse effect on competition in the market for consumer communication applications in India.

18. As regards the share of the parties, Jaadhu has estimated the Monthly Active User (MAU) of WhatsApp and Messenger to be ***** and for JioChat to be *****. These translate to a share of [45-50]% and [0-5]% respectively, during February, 2019. The term MAU has been defined by Facebook group as “*a registered Facebook user who logged in and visited Facebook through its website or a mobile device, or used its Messenger application (and is also a registered Facebook user), in the last 30 days as of the date of measurement*”. Jio defines MAU as “*MAU is counted based on unique users who have used the app in that month*”. Jaadhu has also pointed out certain limitations on the above estimate as well as the chances of competitors’ share being underestimated.
19. The Commission observes that ever since telecommunication networks were equipped to offer seamless data services, there has been a rise in use of over-the-top (OTT) communication service providers. This is a typical new age market characterised by dynamic and rapid evolution. OTT chat applications brought a revolution in personal communication space disrupting SMS market, which today largely serves communications related to regulated financial transactions, law enforcement, public bodies and bulk commercial messages. It is apparent that specific functionality was the identity of some of the applications in the past. For instance, Skype was known for video calling and WhatsApp was popular for instant messaging/ chat. However, all communication applications, which started with a specific functionality added other features and most of them today are seen to offer all functionalities including personal chat, group chat, video call and voice call. These additions were done within short



intervals and appear to have been propelled by the demand for a composite communication application, innovation and competition. Skype and WhatsApp might not have been perceived as competitors initially but both of their applications today have similar functionalities. Thus, a realistic competition assessment should factor-in the stage of evolution and convergence in the industry and identify players who are competing with similar focus and incentives.

20. The estimate of the parties stated above shows that WhatsApp is the leading player in the market for consumer communication applications. The combined share of WhatsApp and Messenger in consumer communication application is [45-50] % and JioChat commands [0-5] % market share. Although Facebook has a considerable share, the same may not be an appropriate metric to gauge its market position given the above discussed market dynamics.
21. The Commission notes that the impugned market is characterised by the presence of big tech giants like Microsoft and Google as well as start-ups emerging as significant competitors within a reasonable period of time. Sudden rise of apps like Hike and Houseparty indicates that consumer communication applications market does not exhibit significant entry barriers. While WhatsApp is the largest consumer communication network, the industry also has the presence of comparable innovators offering similar applications free of cost. Considering these market attributes, it appears that the parties do not have incentives to engage in any anti-competitive conduct in the market for consumer communication applications in India.

(ii) Advertising services

22. Facebook provides advertising services: (a) on some of its own platforms (*i.e.*, on Facebook, Instagram and Messenger, but not on WhatsApp); and (b) to a limited extent on certain participating third-party mobile apps, through Facebook Audience Network (FAN). The most commonly used advertisement products of Facebook are: (i) *Ads*



Manager: A self-service advertising platform, which assists advertisers with the launch and management of their single targeted advertising campaigns using a variety of factors such as demographics, interests and past customer behaviour and (ii) *Business Manager*: Similar to Ads Manager, Business Manager enables advertisers to create and manage multiple advertising accounts for separate campaigns. Facebook also provides ready access to a range of informative materials, portals and e-learning courses across its platforms as selling aids. It has been stated in the Notice that these products aim to ensure that advertisers are in a position to make well-informed decisions on whether, how much, and how best to use Facebook's advertising services.

23. Jio Platforms also offers advertising services on its own apps/ websites or mobile devices (JioSaavn, JioTV, JioNews, JioChat, JioBrowser, JioCloud, JioGames and MyJio). However, it does not provide advertising services on third party platforms. It has been stated in the Notice that Jio Platforms had earned only *** ** crore in FY 2020 and *** ** crores in FY 2019 from advertisement services and it does not sell any specific selling aids.
24. Jaadhu has submitted that there is no need to specifically define a relevant market in respect of advertisement services as the Proposed Combination is only a minority acquisition. The parties would continue to operate independently and therefore, the Proposed Combination would not alter the competitive landscape in any potential relevant market in any manner. Without prejudice to such submission, Jaadhu has submitted that advertising is a large, diverse segment made up of many forms and mediums such as billboards, radio and television spots, print advertising, online advertising, *etc.* It has been further submitted that the purchasers of advertising services (*i.e.*, advertisers) procure advertising space, often across mediums, to promote a product, service, or cause. It has been submitted that the mediums for conveying advertisements have expanded in the recent years and now include a wide range of platforms including print, television, radio, billboards, cinemas, *etc.*



(commonly referred to as offline mediums of advertising) and also apps, websites, emails, *etc.* (commonly referred to as online mediums of advertising).

25. Jaadhu has however submitted that there is no need to segregate online and offline advertisements as the purpose and end-use of advertisements across all mediums is the same and these different segments are substitutable from both demand and supply side perspectives. Creating awareness of brands, products, services and ideas amongst customers / potential customers; persuading target customers to buy products or avail services and/or reinforcing/ maintaining the demand for products and services, all are indicated as intended uses of any advertisement. Further submissions have been made regarding fluidity between different mediums of advertising, including from a supply side perspective. Without prejudice to the above submissions on relevant market for advertising services, Jaadhu has also given submissions and details for a narrower market like online advertisement services and a further narrower market for online display advertisement services. The estimates given by Jaadhu for these three different alternative markets *viz.* advertisement services, online advertisement and online display advertisement are as under:

Table 1 Advertising Services in India for FY 2019

Name of Enterprise	Sales (INR Cr.)	Market Share (%)
Facebook	****	***
Jio	****	****
Star India	****	****
Google	****	****
Bennett Coleman	****	****
Zee Entertainment	****	****
Sony Pictures	****	****
Viacom18	****	****
Others	****	****
Total	****	****



Table 2 Online Advertising in India for FY 2019

Enterprise	Sales (INR Cr.)	Market Share %
Facebook	****	****
Jio	****	****
Google	****	****
Hotstar	****	****
Amazon Ads	****	****
Flipkart	****	****
InMobi	****	****
Others	****	****
Total	****	****

Table 3 Online Display Advertising in India for FY 2019

Enterprise	Sales (INR Cr.)	Market Share %
Facebook	****	****
Jio	****	****
Google	****	****
Hotstar	****	****
Amazon Ads	****	****
Flipkart	****	****
InMobi	****	****
Others	****	****
Total	****	****

26. The Commission observes that advertisement is a marketing measure to increase awareness and sales of a given product or service. Advertisements can be classified into several categories depending upon the medium of advertisement and its ability to target a particular set of customers. For instance, online advertisements can be customised to attract a specific class of users based on parameters such as age, location, search and purchase history. However, such targeted advertisements are not possible in case of offline advertisements. Further, online advertisement platforms can also provide monitoring services to measure the number of views and interested users that could help in deciding further rounds of advertisement to most interested users. Ability to track interest user(s)/ group, amount of wasted circulation and pricing mechanism (cost per



click or cost per impression) are relevant factors in differentiating online and offline advertisements.

27. Online advertisements can further be broadly classified into search and non-search advertisements. A search advertisement is a response to the search query of a user. Non-search advertisements on the other hand are display or text advertisements to users who are identified based on pre-determined parameters. While both forms of advertisements target specific viewers, targeting could be more precise in case of search advertisement. Jaadhu has submitted that the distinction between search and non-search advertisement is reducing as display advertising can also target end-customers that have already shown an interest in the given products by factoring in their online history and behaviour. These tools enable advertisers to target display advertising on the basis of interest of the end-customer, much in the same way as search advertising. The wide availability of data and sophisticated tools for data and behavioural analysis allow any ad-supported platform – whether it focuses on search or display advertising (or both) - to target and re-target end-customers.
28. The Commission is of the view that the market definition for advertisement services may be left open as the Proposed Combination is not likely to increase concentration in any of the plausible relevant markets for advertisement services. The revenue of Jio Platforms from advertising services is only *** ** crore and *** ** crore in the preceding two financial years. Even in the narrowest possible market viz. market for online display advertisement services, the revenue of Jio Platforms for FY 2018-19 translates into only ***** of the total market. While earnings from advertisement is the main stream of revenue for Facebook, revenue of Jio Platforms from advertisement services is insignificant and constitutes less than 1% of its total revenue. The Commission also observes that online advertisement space features the presence of Google, which as per the data provided by Jaadhu, has a significant market position.



29. Keeping the above factors in mind, the parties do not appear to have incentives to engage in anti-competitive conduct in any of the plausible relevant markets for online advertisement services. The transaction documents do not envisage any collaboration between the parties in respect of advertisement business. The above assessment suggests that the Proposed Combination is not likely to raise competition concern..

D II. Business Collaboration between JioMart and WhatsApp

30. As per the MSA, Jio Platforms, RRL and WhatsApp propose to enter into a commercial arrangement. Te relevant features of this MSA from a competition point of view are as under:

30.1. WhatsApp will provide electronic chat services to RRL and its customers who use WhatsApp services, in relation to JioMart, a new entrant in the ecommerce space. This would enable WhatsApp consumers to access JioMart, shop products offered therein and also make payment using WhatsApp Pay, as and when WhatsApp Pay is launched, as one of the payment methods. It has been stated that for commercial reasons, JioMart/ RRL is entering into this arrangement only with WhatsApp and not with other third party chat service providers. *****

 *****; and

30.2. *****



31. In this regard, the Commission observes that JioMart is a recent entrant in the e-commerce business and WhatsApp Pay is the proposed UPI based digital payment feature within WhatsApp application. Being entrants, the primary rationale of the business collaboration appears to be penetration into their respective businesses using each other's market presence/ growth as well as the wide user base of WhatsApp chat application. Hence, it would be relevant to examine the effects of such business collaboration on the competitive landscape of the businesses relating to e-commerce and UPI based digital payment applications in India.

(i) E-commerce

32. It has been stated in the Notice that JioMart is a new entrant, created with a view to digitize Kirana stores and other small and micro local Indian businesses, and help them compete with large e-commerce players. WhatsApp will be one of the several channels to access JioMart. The other channels to access JioMart include: (a) JioMart website; (b) JioMart mobile app; (c) physical visit to the merchant store; (d) Jio's MyJio App; (e) JioChat; and (f) other modes of communications like e-mail and telephone. Products that are in the inventory of local Kirana stores as well as products that can be supplied from a JioMart warehouse will be made available to consumers on JioMart. Consumers will have the option to choose a preferred Kirana store for home delivery or for in-store pick up.

33. The Commission notes the submission of Jaadhu that "...WhatsApp is free to offer its services as a third party chat service provider to other market participants in the downstream segment. Indeed, WhatsApp is incentivized to continue to offer its services to other market participants, as JioMart is a new and small e-commerce retail provider". Further, e-commerce platforms in India are largely accessed through their



respective applications and websites. These platforms have not used chat as the primary channel for consumer interface and thus the chat or instant messaging services provided by WhatsApp to JioMart cannot be considered as an essential input for e-commerce business.

34. Jaadhu has submitted that apart from retailing, JioMart has taken the theme of digitizing Kiranas as well as operating its warehouse to supply goods to consumers and that the success of JioMart is dependent upon Kirana stores and other small and micro local Indian businesses entering into arrangements with JioMart and WhatsApp.
35. The Commission notes that as a part of their e-commerce business, Amazon and Flipkart also offer groceries and daily essentials. Further, the platforms run by Big Basket and Grofers specifically focus on groceries and daily essentials. The recent focus of tech giants and e-commerce players to establish their platform for kirana aggregation and/or operate their own warehouses to supply groceries and daily essentials suggests that they all anticipate a digital revolution in the said space and are gearing themselves to grab the resultant opportunities.
36. JioMart is an entrant in e-commerce space. Given the presence of entrenched incumbents like Amazon and Walmart-Flipkart and other valuable contenders, the business collaboration between the parties does not raise any competition concern in any of the plausible relevant markets in e-commerce space, in India.

(ii) UPI based digital payment applications

37. WhatsApp Pay, the proposed UPI based digital payment feature would be integrated into WhatsApp chat application, upon receiving relevant regulatory approval. Upon such integration, WhatsApp will be a composite application for consumer communication as well as UPI based digital payments. However, the Commission notes that the enabling UPI based digital payment feature in WhatsApp chat application and



issue, if any, arising therefrom are outside the purview of the Proposed Combination. By way of the business collaboration, the parties propose to use WhatsApp as one of the communication channels between JioMart and its consumers. The combination specific issue relating to UPI based digital payment application market would be the effect of linking JioMart with the composite WhatsApp application (both chat and UPI based digital payment application).

38. UPI is an instant real-time payment system designed by National Payment Corporation of India (NPCI) to facilitate inter-bank transactions on a mobile platform. NPCI explains UPI as, *“a system that powers multiple bank accounts into a single mobile application (of any participating bank), merging several banking features, seamless fund routing & merchant payments into one hood. It also caters to the “Peer to Peer” collect request which can be scheduled and paid as per requirement and convenience.”* One of the important features of UPI is the instant interoperability between banks, which makes it convenient and popular amongst internet users. From a functional point of view, UPI payments happen with the interaction between payment service providers (PSPs) and banks. While PSPs provide interface to the transacting parties, their respective banks would perform the function of debit and credit.
39. Although banking entities alone interact with UPI switch, non-banking entities could partner with a banking entity (already enabled on UPI) and develop their own PSP application. Several technology companies have shown interest in developing such third party application that would act as the interface for consumers to conduct UPI based digital payment. Users are not bound to use the application of their own bank and can chose application of any bank or any third party. WhatsApp proposes to enter into this third party application space for facilitating UPI based digital payments between users. Jaadhu has submitted that payment functionalities of WhatsApp (WhatsApp Pay) is still in the beta phase, and has not been launched commercially in India as WhatsApp awaits certain regulatory approvals.



40. The Commission observes that the market for UPI based digital payment applications is a typical new-age market with dynamic industry attributes and rapid evolution. Presently, Google Pay, PhonePe and Paytm are the known UPI payment applications in India. While Paytm is an early mover in this segment, Google Pay and PhonePe are backed by their respective group's strong presence in adjacent business verticals like e-commerce and consumer search engine.
41. The Commission further observes that JioMart is a recent entrant into e-commerce space and is aspiring to penetrate the market through different means including the business collaboration with WhatsApp. The primary focus of JioMart during the initial stages of its business would be to build a network with sufficient number of buyers and sellers. Jaadhu has submitted that RRL is not restricted from displaying other payment methods and customers are free to use other methods to make payment, including other digital payment services, and cash. During the formative phase of the business, limiting digital payment only to WhatsApp Pay is likely to affect the transaction volumes/liquidity of the JioMart network. Nevertheless, it would be relevant to assess the UPI transactions market as WhatsApp Pay is likely to be launched upon obtaining necessary regulatory approvals
42. There has been a phenomenal increase in the amount of UPI transactions in the recent times. As per the information available on the website of NPCI, a total of 12,518 million UPI transactions for a value of INR 21,317 billion, were conducted in India during the FY 2019-20 compared to 5353 million transactions for a value of INR 8770 billion during FY 2018-19². With the surge in UPI transactions, Google Pay, Paytm and PhonePe have become the known UPI based digital payment applications. The said figures and the progressive growth trend of UPI Payments in India suggest that, the overall value and quantum of UPI based digital payments to JioMart (an entrant in e-commerce space) through WhatsApp Pay (an entrant in digital payment applications space) is not likely to be significant. Thus, the Proposed Combination is not likely to

² Available at www.npci.org.in



cause appreciable adverse effect on competition in any of the plausible relevant markets for UPI based digital payment application business.

D III. Net neutrality and data integration

(i) Net Neutrality

43. The telecommunication sector has been evolving seamlessly with the ongoing technological upgradations. Smartphone and data revolution have completely changed the user experience and the modern mobile telephony services are completely different from the services of conventional TSPs. Technological upgradation to 4G technology and rise of content and communication OTTs have changed the profile of TSPs to data service providers. TSPs are gearing to provide 'triple play' (voice, video and data) and 'quad play' (voice telephony, television, fixed line and mobile internet) services. Seamless data connectivity and increasing demand for internet-based applications and content have resulted in synergetic cooperation between TSPs and OTT application developers. TSPs now offer innovative tariff packages for a bundled voice, data and OTT services. Tie-ups between OTT players and TSPs have become a normal industrial phenomenon in telecommunications business.
44. Apart from being dependent on the efficacy of telecom infrastructure, OTT/ content providers can also establish localised servers nearer to the users to ensure faster access by them. Such arrangements nearer to the user helps them minimise the latency that would otherwise result from the increased distance between the internet user and the parent server of the OTT/ content provider. Content/ OTT providers either establish their own infrastructure or avail services of third party content delivery networks (CDNs). The content providers read the geographies where their content is largely accessed and place sufficient number of caching servers in such locations and connect them to the telecommunication networks. These caching servers are synchronised with the parent server and are responsible for monitoring the frequently accessed content, caching them and delivering it to the nearby users as and when demanded. These servers



are located nearer to the users (also called as edge platforms) and their primary purpose is to accelerate website load time and reduce bandwidth consumption. Each CDN caching server typically holds multiple storage drives and high amounts of RAM resources.

45. Keeping in mind the way telecommunication industry has evolved in the recent times, and the aforesaid backdrop, the Commission notes that the product lines of Facebook group and telecommunication services such as those offered by RJIO, are complementary to each other. In this context, it becomes relevant to examine whether the Proposed Combination would lead to any preferential treatment to Facebook applications or content in RJIO's network. In telecommunications parlance, it needs to be examined whether the 'net neutrality' of RJIO's telecommunication network is likely to be affected in view of the Proposed Combination.
46. Jaadhu has submitted that if a specific OTT service provider (such as Facebook) was to be provided preference in terms of allowing faster access speeds, lower cost of access or similar arrangements, any such arrangement would be plainly forbidden by the license condition of RJIO. Further, the consequences for violating these license conditions would be serious, as breaches of net neutrality obligations could invite severe consequences, including revocation of the license granted to the TSP. Accordingly, it has been submitted that the legal framework already in place in India, prohibits RJIO from providing any preferential treatment to Facebook's content/ apps either before or after the Proposed Combination. It has been further submitted that no term in the Proposed Combination documents provides for any preferential treatment by RJIO to Facebook, or violates net neutrality obligations.
47. The Commission observes that the potential for a TSP to give preference to a particular content has to be seen in light of the consequences of non-compliance of net neutrality obligation as well as the incentives for making a content more accessible only in a particular telecom network. When attempts were made to devise programmes that gave



access to particular OTT applications on a discriminatory tariff basis, TRAI promulgated Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, which provide as under:

- (a) No service provider shall offer or charge discriminatory tariffs for data services on the basis of content;
- (b) No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of charging discriminatory tariffs for data services being offered or charged by the service provider for the purpose of evading the prohibition in this regulation;
- (c) Reduced tariff for accessing or providing emergency services, or at times of public emergency is permitted; and
- (d) Financial disincentives for contravention of the Regulations.

48. The regulatory framework was further strengthened in 2018 by the Department of Telecommunications (**DoT**) to prevent any form of content based discrimination. The Unified License conditions applicable to TSPs were amended to impose specific compliances, the relevant extracts of which are as under:

- (i) *A Licensee providing Internet Access Service shall not engage in any discriminatory treatment of content, including based on the sender or receiver, the protocols being used or the user equipment.*
- (ii) *The Licensee is prohibited from entering into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory treatment of content.*



(iii) For the purpose of this provision:b) “Discriminatory treatment” shall include any form of discrimination, restriction or interference in the treatment of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.”

49. The Commission notes that the Proposed Combination is a partial acquisition and non-observance of net neutrality obligation may be prejudicial not only to the licensee (*i.e.* RJIO) but also to the investment made by the Jaadhu. Further, given the above telecom regulatory instruments governing net neutrality obligations of TSPs, the Commission does not find it necessary to separately examine the issue further.

(ii) Potential data sharing between the parties

50. Most of the data driven businesses are multi-sided platforms where one or more sides of the platform is designed to attract user presence and the other sides are used for monetizing the data relating to user behaviour. For instance, Facebook application is a social media platform. One side of its platform offers free services to users for social interaction and on the other side, the monitored behaviour of the users is used as an input to offer advertisement services (targeted display ads). As noted earlier, the social media and other applications of Facebook group are popular amongst internet users and Facebook is expected to have access to rich data regarding user behaviour. Facebook has submitted that it has a data policy that explains the nature of information collected by Facebook and how it is being used. It *inter alia* explains data sharing with third party partners.

51. Jio Platforms including RJIO, on the other hand, is also in a position to collect and possess consumer data. The privacy policy of RJIO defines Non-Personal Information as information that does not identify the user or any other individual, and includes session, web beacons and usage and transaction data, aggregate log data and aggregate information. It further states that RJIO uses this information, *inter-alia*, to tailor its



services to the interests of its users, to measure traffic within its services, to improve the quality, functionality and interactivity and let advertisers know the geographic locations from where its users/ visitors come. The privacy policy further provides that the information provided by the users will be used for a number of purposes connected with RJIO's business operations including (a) verifying the identity, access, privileges assigned and relationship with the user; (b) provisioning of products/services, testing or improvement of services, recommending various products or services; (c) communicating about bills, invoices, existing or new offers, content, advertisements, surveys, key policies or other administrative information; (d) analytics and reviews for improvement of RJIO's services; (e) improving user experience while using RJIO's services by presenting tailored advertising, products and offers; and (g) other usages that users may consent to.

52. Business combination between entities having access to user data can be analysed from the perspective of data backed market power. The assessment in such instances needs to focus on the incentives of parties to pool or share their databank and monetize such data in possible means.
53. In the instant matter, it is noted that the Proposed Combination is an acquisition of 9.99% stake in Jio Platforms by Facebook group. This may not result in unrestricted access to each other's resources including user data. Nevertheless, the parties may have incentives to engage in mutually beneficial data sharing. In this regard, Jaadhu has submitted that *"there is no data to be shared as part of the Proposed Transaction"* (i.e. proposed acquisition of shares in Jio Platforms by Jaadhu). It has been further clarified in the response dated 12th June, 2020 by Jaadhu that:

*"It is clarified that data sharing is **NOT** the purpose of the Proposed Commercial Arrangement, nor will either side be acquiring ownership of the other's data pursuant to the Proposed Commercial Arrangement. However, for implementation of the Proposed Commercial Arrangement, WhatsApp and JioMart (which is owned by RRL and operated by Jio Platforms) will receive or send limited data. This data is:*



- (i) *being provided only for the purpose of facilitating e-commerce transactions on JioMart. Its use is limited, proportionate and solely for the purpose of implementing the Proposed Commercial Arrangement. Further, ***** the MSA explicitly prohibits the Commercial Arrangement Partners from using confidential information received from the other party for their own business purposes, or from disclosing it to third parties, *****.*
- (ii) *neither exclusionary, inimitable nor rare, and substitutes exist...; and*
- (iii) *processed in accordance with applicable law and parties’ data policies.”*

54. The Commission observes that RJIO is a prominent telecommunication player in India with more than one-third of wireless subscribers on its network. The group entities of Jaadhu viz. Facebook Group, on the other hand, are the second leading player in online advertisement space and leading player in online display advertisement services. The user data possessed by Jio Platforms including RJIO and Facebook Group are complementary to each other given the symbiotic interface between telecommunication business and OTT content/ application users. Thus, any anti-competitive conduct resulting from any data sharing in the future could be taken up by the Commission under Sections 3 and/or 4 of the Act having due regard to the dynamics of the concerned markets and position of the parties therein.

55. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act. The Commission also notes that the parties confirm that the Proposed Combination does not contemplate any non-compete covenants.



56. This order shall stand revoked if, at any time, the information provided by Jaadhu is found to be incorrect.
57. The information provided by Jaadhu is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.
58. The Secretary is directed to communicate to the Jaadhu, accordingly.