



COMPETITION COMMISSION OF INDIA
(Combination Registration No. C-2017/04/502)

Dated: 03.10.2017

Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Vodafone India Limited, Vodafone Mobile Services Limited and Idea Cellular Limited

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 Representatives of the parties: M/s Shardul Amarchand Mangaldas & Co. for Vodafone India Limited and Vodafone Mobile Services Limited and M/s Trilegal for Idea Cellular Limited

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

1. On 17.04.2017, the Competition Commission of India (“**Commission**”) received a Notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”), jointly given by Vodafone India Limited (“**VIL**”), Vodafone Mobile Services Limited



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- (“VMSL”) (collectively “Vodafone India”) and Idea Cellular Limited (“Idea”) (collectively “Parties”).
2. The proposed combination contemplates merger and amalgamation of telecommunications businesses of VIL¹, VMSL and Idea by way of a scheme of amalgamation and arrangement under Section 230 to 232 and other applicable provisions of the Companies Act, 2013 (“Proposed Combination”). Following completion of the Proposed Combination, the shareholders of VIL (Vodafone Shareholders), the Aditya Birla conglomerate and public shareholders of Idea will respectively hold 45.10 percent, 26 percent and 28.90 percent of the equity share capital of the Merged Entity, on a fully diluted basis. The Aditya Birla conglomerate and the Vodafone Group have agreed to a mechanism to equalise their shareholdings over a period of time. The Merged Entity will continue to be listed on Indian stock exchanges and be jointly controlled and managed by the Vodafone Shareholders and the Aditya Birla conglomerate.
 3. The Notice was filed with the Commission pursuant to: (i) resolutions passed by the board of directors of VIL and VMSL each on 19.03.2017 and by the board of directors of Idea on 20.03.2017, approving the Proposed Combination; and (ii) execution of Implementation Agreement among *inter-alia*, VIL, VMSL and Idea on 20.03.2017 (“IA”); and (iii) Shareholders Agreement entered into by and between Idea Group Shareholders, Vodafone Group Shareholders, Idea, Mr. Kumar Mangalam Birla, and Vodafone International Holdings B.V dated 20.03.2017 (“SHA”).
 4. 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 03.05.2017, Parties were required to provide certain information/document(s) latest by 09.05.2017. The Parties filed partial response on 07.06.2017, after seeking extension of time. The Parties made further

¹ Excluding its 42 percent stake in Indus Towers Limited, international network assets and certain information technology platforms.



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submissions on 13.06.2017, 14.06.2017, 19.06.2017 and 03.07.2017 in continuation of their submissions on 07.06.2017. The Parties, *vide* email dated 29.09.2017 waived its confidentiality claim in respect of certain information/document(s).

PARTIES TO THE COMBINATION

5. VIL is a wholly owned subsidiary of Vodafone Group Plc, which is listed on London Stock Exchange and VMSL is a wholly owned subsidiary of VIL. Both VIL and VMSL are licensed telecom service providers (“TSPs”) and provide a range of telecommunication services in India. While VIL provides services in Mumbai circle, VMSL provides services across the other 21 telecom circles in India.
6. Idea, a part of Aditya Birla conglomerate and listed on Bombay Stock Exchange and National Stock Exchange, is a pan-India integrated TSP providing a range of telecommunication services across all 22 telecom circles in India.

COMPETITION ASSESSMENT

7. As stated above, the Parties are engaged in provision of telecommunication services in all telecom circles in India. On the basis of product overlaps between the Parties in India, the Commission identified following product segments for the purpose of competition assessment.
 - i. Retail Mobile Telephony Services;
 - ii. Enterprise Services;
 - iii. Internet Service Provider Services (“ISP Services”);
 - iv. National Long Distance Services (“NLD Services”);
 - v. International Long Distance Services (“ILD Services”);
 - vi. Provision of passive infrastructure services through telecom towers;
 - vii. Provision of passive infrastructure services over fibre optic network;
 - viii. Intra Circle Roaming Services (“ICR Services”); and
 - ix. Mobile wallet services.



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Retail Mobile Telephony Services

Relevant Market(s)

8. The Commission, in accordance with its decisional practice, observed that retail mobile telephony services can be classified on the basis of various criteria such as type of service, type of customer and type of access equipment. 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 product market is left open.
9. As regards relevant geographic market, the Commission decided that the same may be defined in terms of each of 22 overlapping telecom circles in India.

Assessment in terms of factors contained in Section 20(4) of the Act

Concentration analysis

10. The Commission noted that the issue of market shares and concentration is also dealt by the guidelines for transfer/merger of service licences on compromises, arrangement and amalgamation of companies, issued by Ministry of Communications and Information Technology, Government of India in 2014 (“**DoT Merger Guidelines**”). As per the DoT Merger Guidelines, in case of merger or acquisition or amalgamation proposals that result in market share in any service area exceeding 50 percent, the resultant entity should reduce its market shares to 50 percent within a period of one year from the date of approval of merger or acquisition or amalgamation (“**Market Share Caps**”). As regards holding of spectrum by a TSP, the Commission noted that the spectrum holding in a licensed service area is subject to cap of 25 percent of the total spectrum assigned and 50 percent of the spectrum assigned in a specific band. (“**Spectrum Caps**”). The Parties have submitted that they will comply with the Spectrum Caps and the Market Share Caps. However, in this regard, the Commission



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observed that assessment of a proposed combination would need to be based, independently of such guidelines, on factors as contained in Section 20(4) of the Act.

11. Accordingly, as a first step in assessment of the impact of the Proposed Combination on competition, the Commission examined the level of concentration in each market and impact of the Proposed Combination on the same. The Commission, in this regard, noted the market share estimates as provided by the Parties, in each telecom circle based on various relevant competitive metrics such as overall quantum of spectrum, total number of subscribers, net subscriber additions, gross revenue, gross revenue adjusted for revenue of Reliance Jio Infocomm Limited (“**Jio**”)².
12. The Parties submitted that, of the various market share estimates, the ones calculated in terms of net subscriber additions during 2016-2017 better reflect competitor’s actual (and therefore likely future) competitive effect in the market. The Commission observed that most of the market share estimates (including in terms of net subscriber additions) do not appear to be reflective of competitive constraints exercised by various TSPs on each other particularly because of a Jio’s promotion offer during 2016-2017. Under the circumstances, the Commission observed that the market share estimates based on (i) gross revenue for the FY 2016-17 (annualized on Q3 basis) as modified by considering Jio revenue based on ARPU of the Parties; and (ii) quantum of spectrum are better reflective of competitive constraints.
13. The Commission, considering revenue market shares, observed that market is highly concentrated with pre-combination HHIs exceeding 2000 in all telecom circles (except Haryana, Mumbai and Punjab where HHIs are more than 1800). The position of the Parties in various telecom circles can be tabulated as under:

² Since Jio did not report revenue for the period 2016-2017, the Parties estimated Jio’s revenue using their average ARPU.



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Table 1: Revenue based market shares of the Parties

Combined Market Share	Number and name of Circles
Less than 20%	2 [HP; J&K]
20% < 30%	6 [Assam; Bihar; Karnataka; NE; Odisha; Tamil Nadu]
30% < 40%	7 [Andhra Pradesh; Delhi; Kolkata; Mumbai; Punjab; Rajasthan; Uttar Pradesh (E)]
40% < 50%	3 [Madhya Pradesh; Uttar Pradesh (W); West Bengal]
More than 50%	4 [Gujarat; Haryana; Kerala; Maharashtra]

14. As a next step in competition assessment, the Commission examined the impact of the Proposed Combination on the level of concentration as reflected in incremental HHI. Such examination was undertaken for 14 telecom circles wherein the combined market share is estimated to be more than 30 percent. The Commission observed that the change in HHI are significant in respect of all the 14 telecom circles, ranging from around 400 in Andhra Pradesh to around 1500 in Kerala.
15. Based on the aforesaid, the Commission observed that the Proposed Combination is likely to result in significant combined market share of the Parties while also causing significant change in concentration in 14 of 22 telecom circles viz., Andhra Pradesh, Delhi, Gujarat, Haryana, Kerala, Kolkata, Madhya Pradesh, Maharashtra, Mumbai, Punjab, Rajasthan, Uttar Pradesh (E), Uttar Pradesh (W) and West Bengal.
16. The Commission noted that the spectrum holding of the Merged Entity may exceed Spectrum Caps in terms of total spectrum assigned in the telecom circles of Gujarat, Haryana, Kerala and Maharashtra. However, based on examination of spectrum holding of different TSPs in all telecom circles, the Commission noted that the spectrum seems to be fairly distributed between the various TSPs. Further, the Commission also noted that there is a significant quantity of unsold spectrum in each telecom circle which may also obviate any access issues.



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Examination of competitive constraints post the Proposed Combination

17. The impact of a proposed combination on competition also depends upon how the parties are placed in terms of closeness of competition. In this regard, the Commission directed the Parties to provide mobile number portability data. The Commission examined diversion ratios for the Parties based on porting data and observed that out of 14 telecom circles in which the Proposed Combination is likely to result in significant market shares and change in concentration, the Parties appear to be close competitors in 10 telecom circles namely Andhra Pradesh, Mumbai, Punjab, Uttar Pradesh (East), Uttar Pradesh (W), West Bengal, Gujarat, Haryana, Kerala and Maharashtra.

Buyer Power

18. The Commission noted that as submitted by the Parties, a comparison of the mobile subscriber base as per Telecom Regulatory Authority of India (1,035 million as of Jun'16) and the estimated number of unique mobile users in India by GSM Association (616 million as of Jun'16) indicates that approximately two third of customers tend to have multiple SIMs (known as multi-SIMing)³. Customers can therefore easily and quickly switch from a primary to a secondary SIM and vice versa, when the relative price of one of their SIM providers (or any of the services offered by them) increases or decreases, by changing the selection of the SIM in their handset.
19. Further, as a result of the Mobile Number Portability Regulations, 2009 (MNP Regulations), subscribers are able to switch their primary SIM / service provider seamlessly (with minimal or no charge and without any significant time taken or effort for switching), while retaining their existing mobile telephone number. In terms of TRAI Subscriber Report, as on 31.12.2016, more than 254 million subscribers have used the facility of Mobile Number Portability.

³ <http://www.gsma.com/mobileeconomy/india/>.



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20. The near zero switching cost ensures that there is price competition amongst the TSPs to retain customers. The presence of competitive constraints from buyer side are also reflected in the churn rates for the Indian retail mobile telephony services market in general and Parties' in particular. Considering that the post-paid segment accounts for an insignificant part of the overall retail mobile telephony services market in India, the Commission examined churn rate for the Parties in the pre-paid segment. The Commission noted that the churn rate of the Parties at pan India level is more than 60 percent and exceeds 50 percent for most of the telecom circles. The Commission observed that high churn rates imply rapid turnover of the customer base which indicates shifting consumer preferences and ease of switching. In a dynamic telecom market, both these factors impose an additional competitive constraint on the TSPs. The substantial churn is reflective of the constraints on the behaviour of TSPs from the buyer side beyond those posed by multi-SIMing and portability. Thus, the Commission is of the opinion that there is significant constraint on the TSPs from the buyer side in the mobile retail telephony services market.

Extent of competition likely to be maintained after the Proposed Combination

21. The retail mobile telephony services market, post the Proposed Combination would have at least five private TSPs including Bharti Airtel (including Telenor), RCOM & Aircel, Jio, Tata and the Merged Entity and one state owned TSP *i.e.*, BSNL/MTNL in all telecom circles.
22. The Commission examined the size and resources of these competitors and is of the opinion they are in a position to exercise adequate competitive constraints on the Merged Entity and to eliminate any likelihood of appreciable adverse effect on competition resulting from the Proposed Combination.



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Level of combination in the market

23. The Commission noted the submissions of the Parties as regards the state of telecommunications sector in India. The Parties submitted that the market is witnessing an increase in number of subscribers and significantly higher data usage. A growing base of mobile broadband users and potentially a multi fold expansion of per user data consumption requires significant investments by operators to build coverage, data capacities and quality. However, as opposed to above, the industry is currently faced with declining revenues and margins and high cumulative debt.
24. In this regard, the Commission took note of certain efficiencies resulting from the Proposed Combination, *inter-alia*, from consolidation of spectrum holdings, reduction in overlapping national infrastructure, de-duplication of fresh equipment etc. However, considering that the industry is witnessing a stage of consolidation, it becomes important to also assess the impact of reduction in number of competitors on the competition. In this regard, the Parties pointed out the number of TSPs and state of concentration in other countries. As submitted, out of 220 countries 213 countries have 4 or less operators, 6 countries have 5 TSPs and only India will have more than 5 TSPs. The Commission is of the opinion that reduction on number of competitors at this stage is not likely to have any adverse effect on competition in mobile telephony markets.
25. Based on the totality of factors particularly the buyer power and extent of competition likely to be sustained post the Proposed Combination, the Commission is of the opinion that despite the effect of increasing concentration in certain telecom circles, the Proposed Combination is not likely to have any appreciable adverse effect on competition in the market for retail mobile telephony services or any of its segments in any of the telecom circles in India.



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Enterprise services

26. Enterprise services are retail business communication services offered by to institutional/ corporate and business customers. Offerings in this broad category of services include fixed voice, fixed data, converged communications, Internet of Things offerings (IoT) and cloud collaboration. Fixed Voice services include (i) Primary Rate Interface (PRI); (ii) Session Initiation Protocol (SIP); and (iii) Toll Free Services. Fixed Data services include (i) MPLS/IPVPN; (ii) NPLC; (iii) IPLC; and (iv) ILL. Converged Communications include (i) Audio Conferencing; and (ii) Video Conferencing. IoT include (i) Managed Connectivity; and (ii) Location tracking.
27. Of the aforementioned enterprises services, the activities of the Parties overlap in few segments *viz.*, (i) Toll Free Services; (ii) MPLS/VPN; (iii) NPLC; (iv) ILL; (v) Audio Conferencing; and (vi) Location Tracking.
28. The Commission examined the market for enterprises services as a whole and various segments/sub-segments forming part of the enterprise services. The Commission observed that Idea does not have any significant presence in overall enterprise services segment or any of its sub-segments. Accordingly, the Proposed Combination is not likely to significantly change the level of concentration or cause any appreciable adverse effect on competition in India in the market for enterprise services.

ISP services

29. An Internet Service Provider is the industry term for a company that is able to provide customers with access to the Internet, typically from a computer. ISPs use fibre-optics, satellite, copper wire, and other forms to provide internet access to its customers. In India, there are several ISPs including the major TSPs, and wireline service providers, who have either an ISP license or a Unified License with ISP authorization.
30. The Commission observed that both Vodafone and Idea are amongst smaller players engaged in provision of ISP Services. The combined market share of the Parties is



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estimated to be around 4 percent, which is insignificant. Further, the market is characterized by presence of other significant competitors viz., BSNL, Airtel and Tata with market shares of around 42 percent 23 percent and 8 percent, respectively. Accordingly, the Proposed Combination is not likely to significantly change the level of concentration or cause any appreciable adverse effect on competition in India in the market for ISP Services.

NLD Services

31. National Long Distance as per the NLD Licence agreement is defined as “... *the carriage and delivery of switched bearer telecommunication service over a long distance network i.e., a network connecting different Short Distance Charging Areas (SDCAs)*”. These services are generally meant for captive consumption as most mobility operators use their own NLD services.
32. The customers of NLD Services include (a) different telecom operators to connect their customers either to: (i) other customers (for voice and data) or to the internet (for data); and (ii) to other parts of the Circle they are in, or to other parts of the country where that particular operator does not have its own network infrastructure; and (b) non-telecom operators.
33. The Commission observed that the combined market share of the Parties in India would be around 23 percent with Vodafone and Idea’s respective share being 13 percent and 10 percent. The Merged Entity would continue to face significant competitive constraints from other competitors such as (i) Airtel (including Telenor India), biggest player in this segment with a market share of around 30 percent; (ii) BSNL, with a market share of around 17 percent; (iii) RCOM-Aircel with a market share of around 15 percent and others.
34. In addition to the analysis of the Proposed Combination in terms of impact on competition in the market for NLD Services in India, the Commission also examined whether the Merged Entity would have ability or the incentive to foreclose the market



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at circle level. In this regard, the Commission noted that there are around 29 active providers of NLD Services in India (including all the major TSPs) with at least 9 operators in every circle. Further, there are no long term contracts for provision of NLD Services and the maximum lock in period for most of the contracts is 12 months. In view of the above, the Commission observed that the Merged Entity is not likely to have ability or incentive to foreclose the market and that the Proposed Combination will not materially result in the restriction of choices available to customers for the provision of NLD services. The Commission, therefore, is of the opinion that the Proposed Combination is not likely to cause any appreciable adverse effect on competition in the market for NLD Services in India.

ILD Services

35. International Long Distance as per the ILD Licence agreement (ILD Licence) is defined as “... *the network carriage service providing International connectivity to the Network operated by foreign carriers*”. These services are generally meant for captive consumption with the excess capacity being sold to other TSPs in the market.
36. The Commission observed that the combined market share of the Parties in India would be around 18 percent and would continue to face significant competitive constraints from other competitors such as (i) Airtel, biggest player in this segment with a market share of around 30 percent; (ii) RCOM-Airtel, with a market share of around 17 percent; (iii) Tata with a market share of around 9 percent and others.
37. In addition to the analysis of the Proposed Combination in terms of impact on competition in the market for ILD Services in India, the Commission also examined whether the Merged Entity would have ability or the incentive to foreclose the market at circle level. In this regard, the Commission noted that there are at least 8 ILD operators in every circle. Further, there are no long terms contracts for provision of ILD Services. In view of the above, the Commission observed that the Merged Entity is not likely to have ability or incentive to foreclose the market and that the Proposed Combination will not materially result in the restriction of choices available to



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customers for the provision of ILD services. The Commission, therefore, is of the opinion that the Proposed Combination is not likely to cause any appreciable adverse effect on competition in the market for ILD Services in India.

Provision of passive infrastructure services through telecom towers

38. The provision of retail mobile services requires passive infrastructure, through which the service providers' networks are operated. An important component of passive infrastructure is the provision of telecoms towers, on which telecoms operators install active telecoms infrastructure (e.g., antennae, radio access network and transmission systems). Tower operators construct and maintain telecoms towers, and lease the same to TSPs to operate their networks. Further, TSPs also have their own towers for captive purposes which they may lease out if they have excess capacity.
39. The Parties own standalone tower networks which they use to operate their own networks and also to host third party TSPs. Further, both Vodafone India and Idea hold 42 percent and 11.15 percent respectively in Indus Towers, a joint venture *inter alia* between entities of Bharti Infratel Limited, Vodafone India and Idea. However, in this regard, it has been submitted that prior to completion of the Proposed Combination, the Parties on an individual basis intend to explore options for the sale of their standalone tower assets and Idea intends to explore options for the sale of its 11.15 percent stake in Indus Towers to reduce leverage in the Merged Entity. Further, as a condition precedent to completion of the Proposed Combination, VIL will dispose its 42 percent stake in Indus Towers. The Proposed Combination has been assessed accordingly.
40. The Commission observed that both Idea and Vodafone have insignificant presence with their combined market share being less than 5 percent in terms of number of standalone towers and/or number of tenancies. The assessment does not change significantly even if Idea's share in towers/tenancies of Indus Towers is considered. Considering the specificities of telecom industry and extent of operations of the Parties, the Commission is of the view that the Proposed Combination is not likely to



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result in an appreciable adverse effect in market for provision of passive infrastructure services through telecom towers India.

Provision of passive infrastructure services over fibre optic network (backhaul)

41. Backhaul provides the physical connectivity that TSPs require to connect radio base stations attached to towers to their core networks, and enables customers' voice and data traffic to be handled appropriately. There are various forms of backhaul (of which fibre is one) that are used based on capacity requirements. By entering into backhaul agreements, TSPs are able to secure dark fibre in shared networks, which is required to create capacity bandwidth. Holders of fibre backhaul capacity provide wholesale end-to-end access to their networks, as well as managed services including fault monitoring and repair services, to TSPs, who operate their networks using this infrastructure.
42. The Commission observed that the Parties maintain their own fibre backhaul networks and are also active in the wholesale provision of fibre backhaul to other TSPs. The Commission considered the market share in terms of length of fibre network owned by the TSPs and non TSPs like Powergrid and RailTel. The Commission is of the view that the combined market share of the Parties is likely to be around 15 percent and the Merged Entity will continue to face competitive constraints from TSPs like BSNL, Jio, Airtel etc. Considering the specificities of telecom industry and extent of operations of the Parties, the Commission observed that the Proposed Combination is not likely to result in an appreciable adverse effect in market for provision of passive infrastructure services through telecom towers India.

ICR Services

43. ICR Service is an arrangement between two access service providers in a service area to provide their respective mobile customers with a facility for roaming on the other operator's network within the same service area. This is governed by the intra-circle



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roaming agreement, which operators may enter into on mutually agreed terms based on the relevant license conditions. Such wholesale agreements may be entered into between TSPs with respect to single or multiple service areas.

44. As stated, ICR agreements are mutually negotiated between the TSPs. The Commission observed that all of the major TSPs provide/avail ICR services and considering the presence of various TSPs, the extent of their operations, the Commission is of the view that the Proposed Combination is not likely to cause any appreciable adverse effect on competition in the market for provision of ICR Services.

Mobile Wallet Services

45. The Commission observed that Vodafone India is active in the market for retail mobile wallet services in India through its M-Pesa service, which was launched in 2012 in partnership with ICICI Bank Limited. Whereas, Idea is active in the market for retail mobile wallet services in India through Idea Money - a pre-paid wallet and mobile money account.
46. The Commission observed that the Parties do not have a significant presence in the market for mobile wallet services and that the market is characterized by presence of other significant competitors such as PayTM, Oxigen, Airtel Money, Mobikwik etc.
47. Based on the aforesaid, the Proposed Combination is not likely to cause an appreciable adverse effect on competition in the market for provision of mobile wallet services in India.
48. Considering the facts on record as per the details provided in the notice given under Section 6(2) of the Act, the assessment of the proposed combination on the basis of the factors stated Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under Section 31(1) of the Act.



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