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THE WAITING PERIOD IS OVER!: THE COMPETITION COMMISSION OF INDIA (AFTER MONTHSLONG WAIT) PUBLISHES THE APPROVAL ORDER RELATING TO GOOGLE'S USD 4.5 BILLION INVESTMENT IN RELIANCE JIO.

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Nearly 5 months after green-lighting Google International LLC's (Google) acquisition of 7.73% shareholding in Indian telecom disruptor, Jio Platforms Limited (Jio), the Competition Commission of India (CCI), has published its approval order.[1]

Google's reported USD 4.5 billion investment in Jio was one of many that took place in the summer of 2020. [2] Jio also has investments from Facebook, Inc[3] which acquired 9.99% of Jio's share capital.

Notably, the approval order highlights the CCI's concerns on the hot-button issues of:

- net neutrality; and
- data-sharing.

We have set out an overview of the CCI's competition assessment below.

The Parties

Google is an indirect wholly owned subsidiary of Alphabet Inc. Google's product portfolio includes, among others, "Chrome", "Google Drive", "Google Maps", "Google Play", "Android", and "YouTube".

Jio, a telecommunication operator, is a subsidiary of the homegrown conglomerate, Reliance Industries Limited (RIL). Jio made its foray in the Indian telco space in 2016 and operates digital applications. Jio also has controlling investments in certain technology-based companies.

(Google and Jio are collectively, Parties)

Proposed Combination

1 Combination Registration No. C-2020/09/775 of 11 November 2020.
2 See: https://www.businessinsider.in/tech/news/google-may-put-4-billion-into-indias-reliance-jio-months-after-facebook-invested-5-7-billion/articleshow/76957941.cms
3 Facebook Inc. acquired 9.99% of Jio through Jaadhu Holdings, LLC – an indirectly held wholly owned subsidiary.

The transaction envisaged the acquisition of 7.73% shareholding in Jio by Google. Resultantly, Google is now entitled to appoint a director and observer to Jio's board (Proposed Combination).

The Parties also devised a business collaboration to jointly develop and launch a low-cost smartphone with a customised operating system (OS), in India (Business Collaboration).

Competition Assessment of the Proposed Combination

The Parties have horizontal overlaps in the following services:

- online advertisement services;
- applications and web services (e.g., mobile browsers, streaming services, cloud storage services, etc.); and
- mobile OS.

Online advertising services

The CCI noted that Jio has an insignificant presence in the online advertising services market and is not a close competitor of Google. Further, while advertising is a primary revenue source for Google - less than 1% of Jio's revenue is attributable to advertising services. Therefore, the Parties would not be incentivised to coordinate in any of the plausible markets for online advertisement services.

Applications and web services

The CCI observed that market shares were not the only guiding parameters for competition assessment in "new age markets" (e.g., provision of mobile applications).

However, the Parties' low combined market share (<30%) and resulting negligible increase in market share, would not lend to any competition concerns. In any case, the characteristics of new age markets (i.e., multi-homing, low-switching costs, and zero price services) – would disincentivise any coordination between the Parties.

Mobile OS

The CCI examined whether the Proposed Combination would disincentivise Reliance Retail Limited[4] (RRL) from continuing the provision of "KaiOS" (RRL's proprietary mobile OS) in favour of Google's "Android". However, and to mitigate the CCI's potential competition concerns, the Parties undertook that:

- RRL would continue to sell phones which operated on KaiOS; and
- RRL would not degrade the quality of these phones to favour the new smartphones that would be launched pursuant to the Business Collaboration.

4 Reliance Retail Limited forms part of the RIL group of companies.

In view of the undertaking, the CCI concluded that the Proposed Combination would not cause any competition concerns in the market for the provision of mobile OS' in India.

Competition Assessment of the Business Collaboration

The CCI found that both Parties were significant players at different levels of the mobile eco-system. That is, Google (a leading developer and operator of mobile OS, "Android") and Jio (a leading telecommunication service provider). Therefore, the competition assessment of the Business Collaboration would focus on the markets for i) smart mobile devices; and the ii) smart mobile ecosystem (e.g., OS, handsets, mobile applications, etc.).

The CCI noted that while the Parties' smart mobile devices had not yet entered the market, the Indian smart mobile device market was highly competitive with the presence of significant brands, "Xiaomi", "Oppo", "Lava", "Samsung", etc. Therefore, the smartphone to be launched under the Business Collaboration would not raise any competition concern.

The CCI also examined whether the Business Collaboration would incentivise Google to foreclose competition or increase rivals costs by denying "Android" to third party original equipment / mobile manufacturers (OEM).

Google was determined to be unlikely to refuse "Android" to third party OEMs since such conduct would reduce Google's user base. This is because the primary stream of revenue for Google is from online search advertisements and therefore, its business model is geared towards increasing the user base for its online services. In any case, Google also undertook to continue to develop and maintain its OS and not degrade the quality of its OS' for third-party OEMs.

Competition assessment of the complementary overlaps

Net Neutrality

The CCI found that Google's product portfolio was complementary to the telecommunication services provided by Jio. Therefore, it examined whether the "net neutrality" of Jio's telecommunication network would be affected by the Proposed Combination. That is to say, whether Jio would be incentivised to offer preferential treatment to Google's applications (in the form of faster internet access, lower cost of access, etc.).

The Parties flagged that non-adherence with "net-neutrality" would be in contravention of Jio's telecommunication license – provided in terms of Indian telecommunication regulatory laws. The license conditions categorically prohibit both, tariff-based and content-based, discrimination. Further, the consequence of such non-compliance is severe, extending to the possibility of revocation of Jio's licenses.

The CCI also noted that the Proposed Combination was a partial acquisition and non-observance of net neutrality would be prejudicial to both, Jio and the investment by the Google. Therefore, the CCI did not find it necessary to examine the issue further.

Data-sharing

The CCI assessed the Proposed Combination from the lens of potential "data-backed market power" which may accrue to the Parties.

The CCI determined that the Parties were unlikely to pool / share their data bank for the purpose of monetisation. This was because the Proposed Combination was limited to an acquisition of 7.73% shareholding in Jio and did not result in Google having unrestricted access to Jio's data (or vice versa). Therefore, an assumption of full integration (including data-pooling) was not warranted. Accordingly, no detailed assessment on potential data-sharing was undertaken.

Comment

Unlike the approach adopted in some conduct-based investigations, the CCI's approval order in *Google/Jio* evidences the CCI's "wait-and-watch" approach in the technology-based markets.

The CCI's approach is guided by:

- the dynamic nature of such new-age markets, and
- reliance upon "undertakings" by transacting parties to not conduct themselves in a manner that would result in competition harm.

That said, the CCI forewarns Parties that any potential anticompetitive conduct (such as, anticompetitive agreements or abuse of dominant position) arising from the Proposed Combination, would be subject to the CCI's scrutiny under the rubric of conduct /enforcement provisions.

In any event, a five months long waiting period for a detailed version of a CCI approval order is unlikely to adversely impact either the ability or the incentive of tech-giants' investment interests!

Click here to access the order.

- *Rahul Singh (Partner), Radhika Seth (Senior Associate), and Alisha Mehra (Associate)*

For any queries please contact: editors@khaitanco.com

Mumbai
One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi
Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru
Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata
Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com