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COMPETITION & ANTITRUST



CCI approves acquisition of 9.99% stake in Jio Platforms by Jaadhu Holdings

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Competition Commission of India (CCI) on June 24, 2020 approved Jaadhu Holdings LLC (**Jaadhu**) acquisition of 9.99% stake in Jio Platforms Ltd (**Jio Platforms**) (**Transaction**), digital arm of Reliance Industries Ltd (**RIL**). CCI's approval came about two months after the two companies signed the deal on April 22, 2020. A detailed order of CCI regarding this approval is expected to be released soon.

The deal

Pegged at USD 5.7 billion (INR 43,574 crore) this deal is the single largest FDI transaction in India and the largest investment for a minority stake in a technology company anywhere in the world.

The parties

Jaadhu is an indirect wholly owned subsidiary of Facebook, Inc. (**Facebook**), USA based social-networking giant. Jaadhu is a newly incorporated company formed in March 2020 under laws of State of Delaware, USA. As on date of Transaction, Jaadhu is not engaged in any business in India or anywhere in the world.

Facebook is a publicly traded company listed on NASDAQ¹, with headquarters in California, USA. The Facebook group offers various products and services that help people connect to their friends and family, find communities, and grow businesses. Facebook primarily operates via three platforms: facebook.com, Instagram and WhatsApp.

Jio Platforms is a company organized and existing under laws of Republic of India, and a subsidiary of RIL. Jio Platforms owns (directly or indirectly) and operates digital applications and holds controlling investments in certain technology related entities. Jio Platforms also holds 100% of issued and outstanding share capital of Reliance JiInfocomm Ltd (**RJIL**), which is a public limited company incorporated in India, and is licensed telecommunications operator, providing telecommunications services to users across the country.

Summary of Combination

Notification form filed by parties under Regulation 13(1A) of CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 with CCI stipulates that Transaction is a minority, non-controlling share acquisition which falls under Section 5(a) of the Competition Act, 2020 (**Act**) and does not alter competitive landscape in any potential relevant market.

The purpose of the combination as stipulated in the Notification Form includes a separate commercial arrangement between Jio Platforms, WhatsApp Inc., and Reliance Retail Ltd (**RRL**) pursuant to which JioMart plans to integrate certain WhatsApp services with JioMart (**Proposed Commercial Arrangement**).

Parties also submitted that CCI need not define any relevant markets in this Transaction and without prejudice to arguments in Notification Form regarding market definition, parties have considered following two common segments to aid assessment of Transaction by CCI:

¹ National Association of Securities Dealers Automated Quotations exchange

- Consumer Communication Applications
- Advertising Service

Accordingly, there is no significant horizontal overlap in either of these extremely dynamic segments, characterized by low entry barriers, ease of entry and switching, and a large number of competitors.

It was also submitted that the Transaction and Proposed Commercial Arrangement are pro-competitive, beneficial to consumers, 'Kirana' stores and other small and micro local Indian businesses and shall take forward the vision of Digital India.

Business and market impact

RJIL has emerged as India's largest telecom player with over 388 million subscribers within 3 years of its launch. Facebook has over 328 million users in India accessing its social network every month, while WhatsApp is present on over 400 million smartphones and is the most used messaging platform in the country².

The two companies – RJIL and Facebook – are 'data elephants' in terms of controlling private data of Indians, and the combined reach of RJIL, Facebook and its messaging app WhatsApp would provide undue advantage against rivals, be it other technology giants like Google and Amazon or even local start-ups. The combined reach of the two companies will now include the following platforms³:

Industry	Platform
Social Media	Facebook, Instagram, WhatsApp, Jio Chat
Digital Payment Platforms	Jio Money, Facebook Libra, WhatsApp Pay
Entertainment	Jio Saavn, Jio Cinema, Jio TV, Facebook Watch
AR/VR	Jio Holoboard (Tesseract), Facebook Oculus
E-commerce	Ajio, Facebook Marketplace, WhatsApp for Business Accounts, Jio Mart
Other areas	Jio Phone, Jio Fibre

The Act viz-a-viz CCI's Approval

CCI, formulated under the Act, aims at encouraging competition and protecting Indian markets against anti-competitive practices. The Act prohibits anti-competitive agreements, abuse of dominant position and regulates combinations (M&As) with a view to ensuring that there is no adverse effect on competition in India. CCI's assessment primarily involves identifying any existing or potential overlaps between combining parties and examining effect of combination on ability of other players to effectively compete in India. Section 20 sub-section (4) of the Act lists factors that CCI must consider in order to conclude if there is any appreciable adverse effect on competition because of the proposed combination.

It is evident that both the companies have business ventures competing with each other viz.

- WhatsApp and Jio Chat
- Ajio and Facebook Marketplace
- Jio Pay and WhatsApp pay
- Jio TV and Facebook Watch

Therefore, combination of these companies may potentially destroy fair competition in at least some of verticals. Furthermore, RJIL plans to integrate JioMart and WhatsApp to integrate small and medium scale 'Kirana' businesses, which seems to be an attempt to penetrate into another market segment by using the dominance of WhatsApp.

While the detailed order in respect of CCI's approval for the Transaction is awaited, it will be interesting to further analyse the aspects examined by CCI in respect of granting approval for Jaadhu's acquisition of 9.99% stake in Jio Platforms.

² Source: The Economic Times

³ Source: The Economic Times