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JIO- A STUDY OF ITS 'ALLEGED' DOMINANCE AND THE IMPACT ON TELECOMMUNICATI ON MARKET

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JIO- A STUDY OF ITS 'ALLEGED' DOMINANCE AND THE IMPACT ON TELECOMMUNICATION MARKET

By: Yashika Kuntela

ABSTRACT

The telecom industry of India is the world's second largest market in terms of voice and internet subscribers. This market being oligopoly is dominated by few players namely Airtel, Idea and Vodafone. However, the entire marketing ecosystem faced disruption with the introduction of new competitors. The one company that has transformed the entire telecom market within a few years of its incorporation is none other than "Reliance Jio Infocomm Limited (RJIL)" also known as 'Reliance Jio or Jio'. This research paper focuses on Jio's incorporation, its history and the marketing strategies adopted to penetrate the telecom market. Subsequently, this paper also reveals the monetary impact of Jio on already established players in the market. Lastly, why Jio was not considered a dominant player is also answered through this research.

1. INTRODUCTION

The telecom industry of India is the world's second largest market when it comes to subscriptions and internet subscribers.¹ The one company that has transformed the entire telecom market within a few years of its incorporation is none other than “*Reliance Jio Infocomm Limited (RJIL)*” also known as ‘*Reliance Jio or Jio*’ (herein referred to as Jio). After a few years of its incorporation in Mumbai, it took approximately two years to become the dominant player in the market. Jio being a subsidiary of ‘*Reliance Industries Limited*’ (herein referred to as RIL) has dominated the telecom sector and has proved to be a game changer with its advanced digital services including OTT platforms, Voice over LTE (Long-term Evolution), 4G optical fibre, all IP network and mobile video network. Several existing players alleged ‘Jio’ of using anti-competitive practices, unethical business policies, giving deep pocket discounts, predatory pricing, and abuse of dominant position and that such practices have resulted in gaining enormous market share, consumer base as well as profits. This research paper tries to analyse the position of Jio in context of performing malpractices and violation of the principles of Competition Act, 2002.

1.1 Background of ‘Reliance Jio Infocomm Limited’ or ‘Jio’:

The inception of Jio could be traced back from the year 2007. It was originally incorporated under the name of ‘Infotel Broadband Services Limited’ or ‘IBSL’ under the companies act, 1956 as registrar of companies of Himachal Pradesh Chandigarh and Punjab.² Subsequently, Reliance Industries acquired 96% stake in IBSL and converted into a public company renaming it as ‘*Reliance Jio Infocomm Limited*’³ on 22nd January 2013. It was later registered with the registrar of companies at Nariman Point, Mumbai, Maharashtra on 21st Oct 2013. The company was granted Unified License by Department of Telecommunications (DoT) to render telecom services over all 22 telecom circles in India. At present the parent company ‘Reliance Industries’ is holding 75% stake in Jio and rest has

¹ Indian Brand Equity Foundation Report 2020 available at <https://www.ibef.org/industry/telecommunications.aspx#:~:text=India%20ranks%20as%20the%20world,reach%20636.73%20million%20in%20FY19.>

² Disclosure Statement, Bombay Stock Exchange, Reliance Jio Infocomm Limited, Jan 20, 2015 available at: bseindia.com/downloads/ipo/2015127141059im%20reliance%20jio.pdf.

³ Corporate Identity No. U72900MH2007PLC234712, Ministry of Corporate Affairs, Registrar of companies, Mumbai available at http://forestsclearance.nic.in/writereaddata/Addinfo/0_0_81131122912141Scan-Registration.pdf.

been sold to various investors.⁴ Now, it is the only private player with BroadBand Wireless Access Spectrum all over the 22 telecom circles within India and 4th Generation fast internet connectivity. As on September 30, 2016, RIL had 94 subsidiaries⁵ including Jio India, Jio UK and Jio USA. The increasing growth and successful penetration of Jio in the telecom market could be established from the fact that Jio recorded a net profit of 723 crores⁶ in the FY 2017-18 as compared to 2964 crores in FY 2018-19.⁷

2. THE STRATEGY TO PENETRATE TELECOM MARKET

Reliance Jio Infocomm launched the services for customer usage on September 5, 2016. Initially the company offered free data and voice call services till 31st December 2016. However, the free services continued till 31st March 2017. The open free services as well as marketing strategies, therefore, exposed threat to rival telecom players. The unlimited offers disrupted the entire telecom industries within a few months. However, the legality of free services could be corroborated from section 3⁸ 'The Telecommunication Tariff Order, 1999' issued by TRAI (Telecom Regulatory Authority of India). This provision gives absolute liberty to service providers to determine and fix tariffs for telecommunication services. By exploiting the liberal provisions of TRAI, the company managed to cross 16 million⁹ subscribers within the first month of its operation. It further created a world record by becoming the only company to gain maximum subscribers in the shortest duration of time. In the battle to underpower the existing dominant players, Jio acquired 269.2 MHz spectrum in the 800 MHz, 1800 MHz and 2300 MHz bands¹⁰ in the auction conducted by the Department

⁴ RIL closes four Jio stake sale deals, receives Rs 30,062 cr from investors, *available at* https://www.business-standard.com/article/companies/reliance-sells-6-13-stake-in-jio-to-four-new-investors-gets-rs-30-062-cr-120071100257_1.html.

⁵ Reliance Industries Limited- Subsidiaries and Major Associates *available at* <https://www.ril.com/DownloadFiles/List%20of%20Subsidiaries%20and%20Major%20Associates%20as%20on%20March%2031%202016.pdf>.

⁶ Reliance Jio Infocomm Limited, Financial Statement 2017-2018.

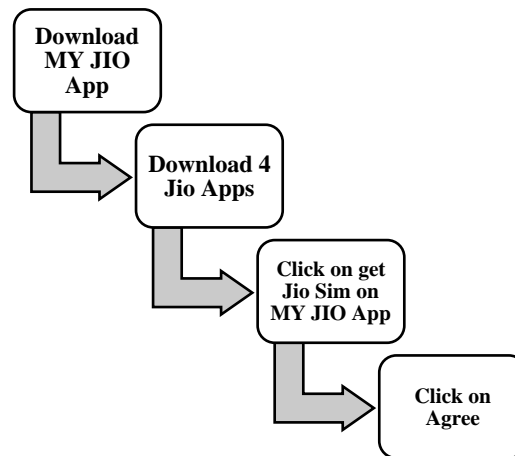
⁷ Reliance Jio Infocomm Limited, Financial Statement 2018-2019 *available at* <https://www.ril.com/DownloadFiles/FinancialStatementOfSubsidiaries1819/Reliance%20Jio%20Infocomm%20Limited.pdf>.

⁸ S. 3 states that "Where the Authority has, for the time being, forbore from fixing tariff for any telecommunication service or part thereof, a service provider shall be at liberty to fix any tariff for such telecommunication services."

⁹ Jio Press Release, 9 Oct 2016. *available at* <https://jep-asset.akamaized.net/jio/press-release/636183292579903975SQ.pdf>.

¹⁰ Jio Press Release, 6 Oct 2016 *available at* <https://jep-asset.akamaized.net/jio/press-release/636149864865749467BF.pdf>.

of Telecommunications, Government of India. Jio through its marketing and promotional strategies has also tried to side-line the software business market. To avail the free offer of Reliance Jio the subscriber has to follow the following steps:



The company has adopted forward and backward integration strategy¹¹ to make their way in the software sector also.

3. THE RISE AND DOMINANCE OF JIO OVER COMPETITORS

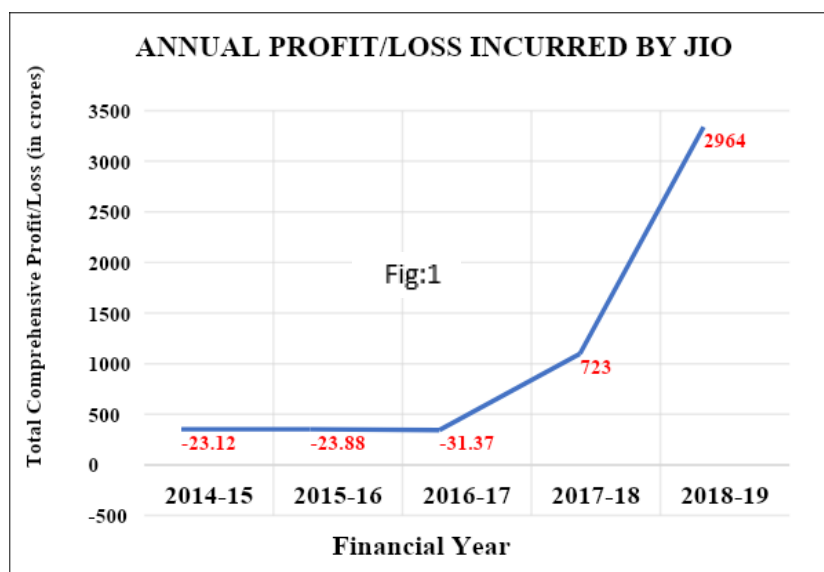
Telecommunication is an oligopoly market i.e. a few service providers control majority market share. Jio while stepping into the telecom market offered free services over internet and phone calls until 31st December 2017. Post the successful launch of Jio, the existing competitors immediately dropped down their tariff plans with a view to secure their market share and to retain existing customers over switching to Jio. Vodafone offered a data plan of 10 GB over 4G mobile data at the cost of 1 GB data.¹² Airtel on the other hand offered 15GB data packs for 90 days at Rs. 1495.¹³ Idea was also in the race to maintain its existing position in the market. Idea offered 2G/3G data services at Rs. 649 for 5GB.

3.1 Analysis Jio account of profit/loss:

¹¹ Forward integration means buying part of the process that occurs after the company's manufacturing process whereas backward integration means buying the supply chain that occurs after the company's manufacturing process.

¹² Reliance Jio 4G vs Airtel vs Vodafone: Which operator offers best 'free' 4G data plan till December 31; which one to buy, available at <https://www.financialexpress.com/industry/technology/reliance-jio-4g-airtel-vodafone-best-free-4g-data-plans-till-december-31-which-one-to-buy-data-tariff-war-india-all-you-need-to-know/393417/>.

¹³ Id.



Jio's procured free services for during its initial months of operation and hence incurred losses. However, such losses (or investments) have turned out to become tremendous profit for Jio and its parent company. Providing free services at beginning and later switching onto paid subscriptions is not an unknown marketing strategy in the digital industry. Jio to impart free service over voice call and internet has incurred a continuous loss of crores of rupees before its launch for the public. The Figure 1 shows graphically, the trend of total comprehensive profit/loss of Jio from the year 2014 to 2019. In the year FY 2014-15, the company incurred a loss of Rs. 23 crores approximately¹⁴. The trend of loss continued another two years straight in FY 2015-16 and FY 2016-17 i.e. Rs 23.88 crores¹⁵ and Rs 31.37 crores¹⁶, respectively. Jio also recorded losses in the financial year 2016-17, the year it has launched its services for consumers. The rise of Jio began in the FY 2017-18 when it established its position in the market. The success could be evidenced by huge profit of Rs. 723 crores¹⁷. This roar continued in FY 2018-19 when Jio made a profit of Rs 2964 crores¹⁸. It is hereby concluded that the company recovered all its losses borne from 2014 to 2017. The recovery rate in 2017-18 has been 8 times of the losses until the end of FY 2017.

3.2 Analysis of Account of Profit of Rival Competitors: Airtel and Idea

¹⁴ Annual Report, Reliance Jio Infocomm Limited 2014-15.

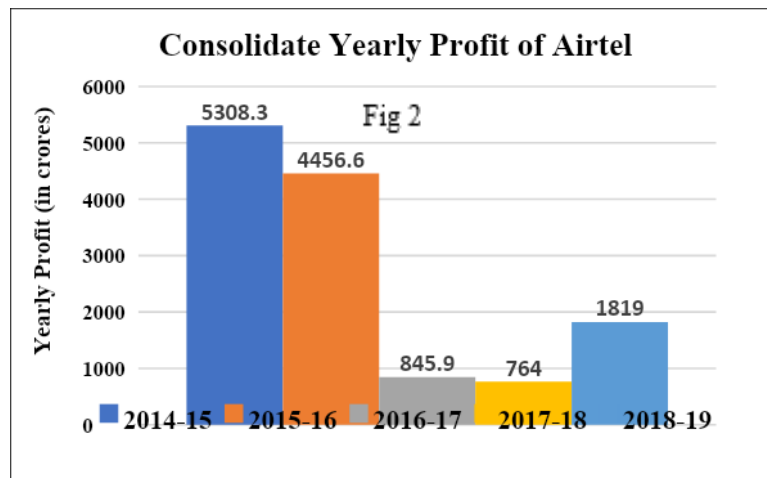
¹⁵ Annual Report, Reliance Jio Infocomm Limited 2015-16.

¹⁶ Annual Report, Reliance Jio Infocomm Limited 2016-17.

¹⁷ Annual Report, Reliance Jio Infocomm Limited 2017-18.

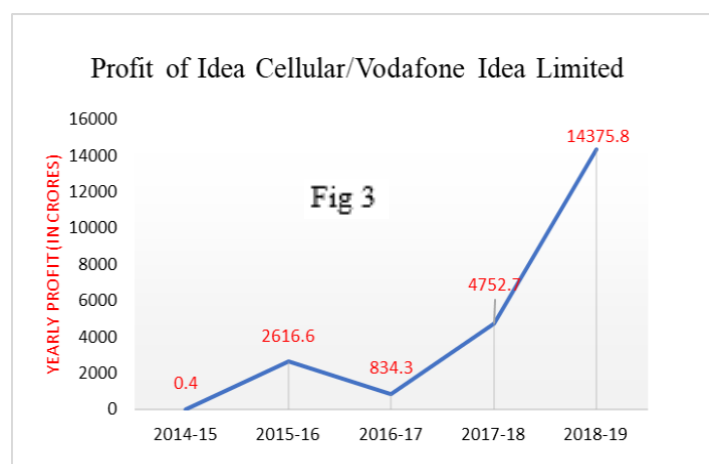
¹⁸ Annual Report, Reliance Jio Infocomm Limited 2018-19.

To secure the edge in the market, an entrant shall penetrate the market along with eliminating established players. Jio has left no stone unturned for the same.



Source: Annual Financial Report

The dominant position in the telecom market was held by Bharti Airtel, Idea and Vodafone before Jio stepped in. The total comprehensive profit of the rival companies i.e. Airtel and Idea has been presented graphically through figure 2 and 3 respectively. Airtel being one of the dominant players in the market till 2016 suffered a huge diminution of profit share in the FY 2016-17 (Ref Fig 2). The profit in FY 2016-17 had fallen up-to 5 times of the profit in FY 2015-16. The dip in the profit could be corroborated with the introduction of free services by Jio. It was the first time Airtel recorded the highest loss in the past few years. The profit



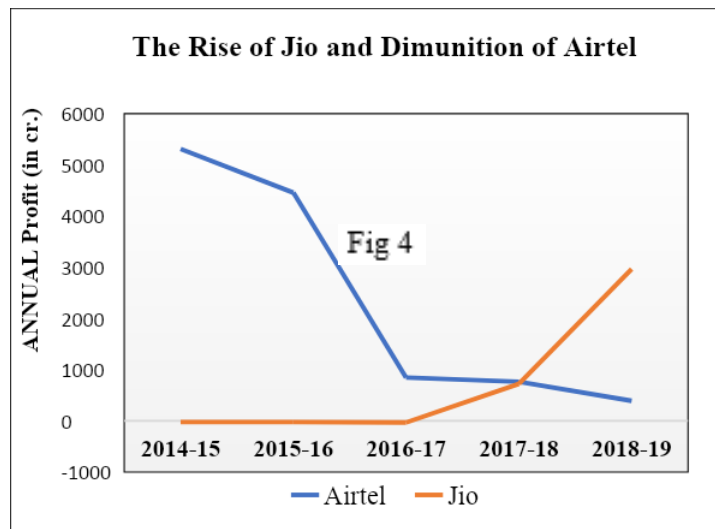
Source: Annual Financial Report

of airtel could be summarized as- Rs. 5308 crores in FY 2014-15¹⁹, 4456.6 crores in FY 2015-16²⁰, 845.9 crores in FY 2016-17²¹, 764 crores in FY 2017-18²² and lastly 1819 crores in FY 2018-19²³ (Ref Fig 2).

In case of Idea, a dip in the profit statement of FY 2016-17 could be demarcated similar to that of Airtel (Ref Fig 3). Idea, being one of the entities holding a great portion of market share has also undergone loss in the FY 2016-17. The graphical representation of profit of Idea (or Idea Vodafone Limited after merger in 2018) is given under Figure 3. The profit of idea fell from 26166 crores in FY 2015-16²⁴ to 834.3 crores in the year 2016-17.²⁵ The loss has forced Idea to merge with Vodafone Limited in the year 2018. The merger has been proved to be beneficial as the company recorded a profit of Rs 14375 crores in FY 2018-19²⁶.

3.3 The Rise of Jio and Diminution of Airtel:

Airtel being one of the oldest telecom service providers in telecommunication sector is in on the ‘head to head’ competition with Jio since its incorporation. The comparative analysis through graphical representation of profit share of both the corporates have been done in the Figure 4. After the introduction of Jio in the year 2016, the annual profit of Bharti Airtel



¹⁹ Annual Financial Report, Bharti Airtel Limited, 2014-15.

²⁰ Annual Financial Report, Bharti Airtel Limited, 2015-16.

²¹ Annual Financial Report, Bharti Airtel Limited, 2016-17.

²² Annual Financial Report, Bharti Airtel Limited, 2017-18.

²³ Annual Financial Report, Bharti Airtel Limited, 2018-19.

²⁴ Annual Financial Report, Idea Cellular Limited, 2015-16.

²⁵ Annual Financial Report, Idea Cellular Limited, 2016-17.

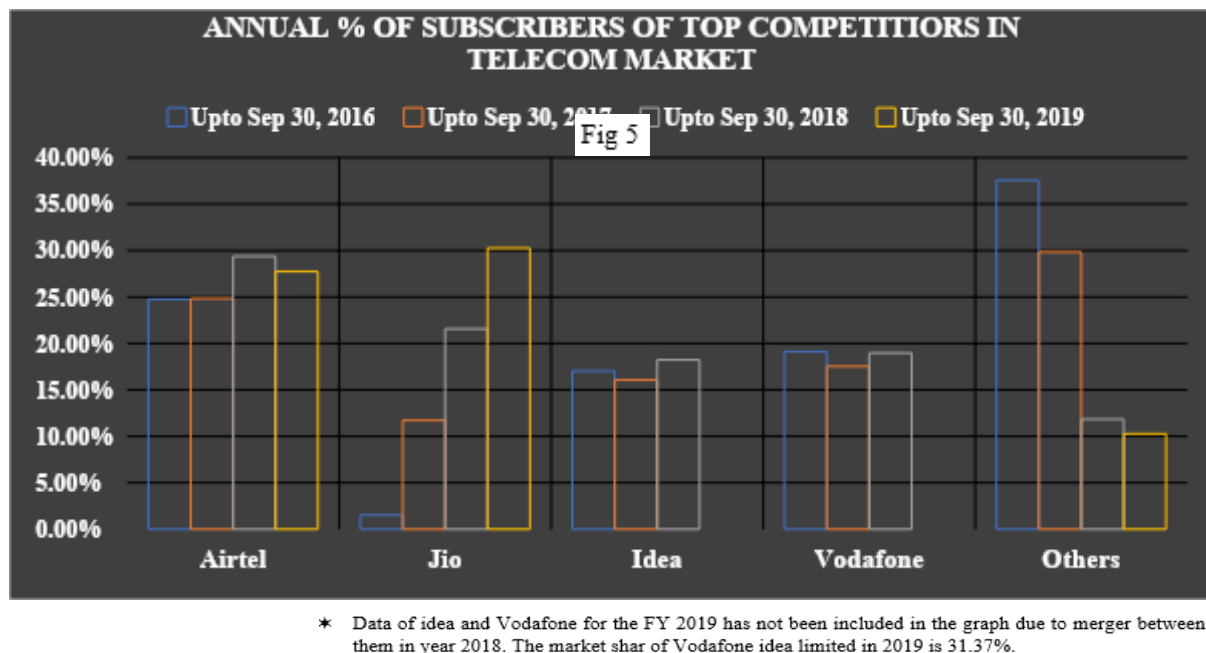
²⁶ Annual Financial Report, Idea Vodafone Limited, 2018-19.

declined for two consecutive financial years whereas the profit margin of Jio has been seen climbing up. This graph suggests the direct or indirect impact of Jio on Airtel.

Source: Annual Financial Report

3.4 Analysis of Annual Subscribers of Top Competitors in the market after penetration of Jio:

The annual share of subscribers one corporate has been increased i.e. Jio continuously whereas a steadiness could be seen in various other competitors of the market. The base line has been taken from September 30 as Jio has been registered on the subscribers' chart for the first time by TRAI. (Ref Fig.5). It can be concluded through data that it is only the subservient who lost their share of subscribers.



Source: TRAI²⁷

4. THE LEGAL BATTLE BETWEEN AIRTEL AND JIO AND ITS BACKGROUND

Legal battle broke out between Bharti Airtel Limited (herein referred to as informant) and Reliance Jio Infocomm Limited (herein referred respondent) in the case namely *Bharti Airtel Limited v Reliance Industries and Reliance Jio Infocomm Limited*²⁸ whereby the informant

²⁷ Monthly report, Telecom Regulatory Authority of India

²⁸ *Bharti Airtel Limited v Reliance Industries and Reliance Jio Infocomm Limited*, Competition Commission of India, Case No. 3 of 2017.

sued respondent and its Holding company RIL under section 3 and 4 of Competition Act, 2002. The allegations levelled by the informant were:

- i) That the action of respondent by offering free services since 5th Sep 2016 amounts to predatory pricing in contravention to the provisions of section 4(2)(a)(ii) of the Act
- ii) That the respondent and its holding company (RIL) has entered into an anti-competitive agreement as the later has allowed the former an unfettered access of its funds which has caused and is likely to cause an appreciable adverse effect on the competition and thus falls under section 3(1) of the act.

Broadly the primary issue present in this case was:

- Whether the respondent (i.e. Reliance Jio Infocomm Limited) was at a *dominant position* while rendering free services and whether it has *abused such a dominant position* by violating S-4(2)(a)(ii) of the Act?

Dominant position means “*a position of strength, enjoyed by an enterprise, in the relevant market in India....*”²⁹ The term relevant market means “*the market which may be determined by the commission with reference to the relevant product market³⁰ or the relevant geographic market³¹ or with reference to both the markets*”³²

The question that came before CCI was:

- a) What is the relevant geographical market of Reliance Jio?
- b) What is the relevant product market of Reliance Jio?

To determine the relevant geographic market CCI heard both Informant and the Opposition Party. The Informant (Airtel) argued that the relevant geographical market is “*whole of India*” as the opposite party (Jio) is providing 4G LTE services of telecommunication ‘*in India*’. However, CCI rejected this argument and interpreted ‘***that each of the 22 telecom circles in***

²⁹ The Competition Act, 2002 s. 4

³⁰ See S. 2(t) of Competition Act, 2002: “*relevant product market*” means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use”.

³¹ See S. 2(s) of Competition act: “*relevant geographic market means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogeneous and can be distinguished from the conditions prevailing in the neighbouring areas*”.

³² The Competition Act, 2002 s. 2(r).

India becomes distinct geographical market and not one single market'. The *ratio decidendi* given by CCI was³³:

- *That a consumer located in a particular place is not likely to avail telecommunication services from any other territory. Further,*
- *A subscriber calling another subscriber located within the same telecommunication circle, irrespective of the physical distance between the two, is treated as a local call and any call terminating in other service areas is a long-distance call viz. Subscriber Trunk Dialling (STD).*
- *India has been divided into 22 circles for such purpose and separate auctions have been conducted for each circle.*
- *It further appears that telecommunication service providers determine circle wise tariff.*

On the question to determine the relevant product market, the informant contended that “providing 4G LTE services of telecommunication”/ “providing 4G LTE services using 4G technology” is the relevant product market in the present case”. On the other hand the O.P (Jio) contended that “it is not appropriate to confine the relevant product market to 4G LTE services, rather the relevant market should be defined as the bouquet of all telecommunication services offered by different telecom operators and there is no difference between 4G, 3G and 2G technologies.” CCI on this question accepted Opposite Party’s argument and held that the relevant product market in this case would be ***“provision of wireless telecommunication services to end users”*** The *ratio decidendi* given by CCI was³⁴:

- It is not appropriate to confine the relevant product market to 4G LTE services, rather the relevant market should be defined as the bouquet of all telecommunication services offered by different telecom operators.
- More importantly, the cost of 3G and 4G compatible mobile handsets and the tariff for 3G and 4G telecommunication services appear to be largely similar
- It may also be relevant to point out that DoT grants uniform and same licence to all telecommunication service providers i.e. Unified Access Licence and it does not differentiate between service providers based on the technology deployed by them.

After determining the relevant market (i.e. relevant geographical market and relevant product market), the question came for the assessment whether O.P is enjoying a dominant position

³³ *Bharti Airtel Limited v Reliance Industries and Reliance Jio Infocomm Limited* (Case No. 3 of 2017).

³⁴ *Ibid*

in the relevant market. CCI on this issue took note that the O.P. (Jio) does not have even the market share higher than 7% in each of the 22 telecommunication circles. CCI quoted: “...it is difficult to construct a dominant position being possessed by OP-2 with 6.4% market share, which presupposes an ability to operate independently of the market forces to affect its consumers or competitors.” Therefore, it can’t be said that Jio is enjoying a dominant position in the said relevant market. And hence, being devoid of dominant position, the question of abuse of dominance does not arise under section 4 of the Competition act, 2002. The acts of the Jio cannot attract section 4(2)(a)(ii) as the condition precedent of being dominant has not been fulfilled. “....in view of the foregoing discussion, the Commission is of the considered view that no prima facie case of contravention of Section 4(2)(a)(ii) of the Act is made out against OP”.

AFTER IMPACT

The Telecom Regulatory Authority of India amended the Telecommunication Tariff Order, 1999 through its 63rd amendment order, 2018. The authority included provisions such as “predatory pricing”³⁵, “relevant market”, “relevant product market” and “relevant geographical market”. The definition of relevant product market and relevant geographical market under this order stands completely different as provided under competition act, 2002. Relevant Product market is defined as “the market in respect of a Distinct Telecommunication Service for which the licensor grants license to the telecom service providers”.³⁶ A relevant geographical market is defined as “market comprising the respective license service area for which the licensor grants license to the telecom service providers to provide Distinct Telecommunication Services.”³⁷

CONCLUSION:

Jio has used ultimate marketing strategies and techniques to penetrate the telecom market by providing free services for a few months. It has been revealed through this research that all existing dominant players with high market shares suffered huge losses especially in the FY 2016-17. However, Jio escaped from the liability of abusing its dominant position due to different relevant geographical markets of 22 telecom circles in India. CCI expressly observed

³⁵ The Telecommunication Tariff 63rd Amendment Order, 2018 S. 3(C).

³⁶ The Telecommunication Tariff 63rd Amendment Order, 2018 S. 3(e).

³⁷ *ibid*

that Jio had not possessed a dominant position and thereby question of abuse of dominant position does not arise. However, later in 2018, the telecommunication tariff order, 1999 has been amended by its 63rd amendment act to define the relevant geographical as well as product market in cases where predatory pricing of tariff comes into question.

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