



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Case Comment: The Battle of Telecom Dominance: A Legal Showdown - Bharti Airtel Limited v Reliance Industries Limited & Another Case No. 3 Of 2017, CCI

Bharti<sup>a</sup>

<sup>a</sup>Symbiosis Law School, Pune, India

*Received 25 March 2024; Accepted 27 April 2024; Published 01 May 2024*

---

### INTRODUCTION

India is becoming one of the most attractive economies in the world holding an eminent stake in the commercial world of the 21st century and this makes it very crucial for the presence of healthy competition in the marketplace which will benefit the consumers and ultimately ensure growth among companies<sup>1</sup>. However, it is important for businesses to be driven by a robust legal framework that ensures ethical conduct to promote inclusiveness and professionalism, both internally within the organisation and externally in the market.

The Government of India has laid down several laws and policies to ensure fair competition and an ethical business environment for the companies to operate on a level playing field in the Indian markets.

---

<sup>1</sup> Case T-168/01 *GlaxoSmithKline Services Unlimited v Commission of the European Communities* [2006] ECR II-2969

India has witnessed intense competition in the telecom sector in the past decade. The revolution brought to the Indian telecom industry by Jio in 2016 had a huge impact. On one hand, users have benefited from Jio services while on the other hand, some companies have either been closed or are in a very weak financial position to survive the current wave that the telecommunication users in India demand. A lot of companies in the telecom industry have been shutting operations in India due to the severe impact of Jio.

The arrival of Reliance Jio, the merger of Vodafone-Idea and the aggressive marketing campaigns of Bharti Airtel strengthen the stiff competition that exists in the telecom sector.<sup>2</sup> This has pushed the telecoms to continuously improve their performance to gain an edge in the market share over their rivals. The war between the two major telecom companies namely Reliance Jio and Bharti Airtel was dragged to the Competition Commission of India in 2017 wherein Airtel alleged Jio of using unfair means and violative business practices to acquire a significant share in the telecom market of India. This case commentary provides a holistic view of the case between Airtel and Jio.

## FACTS OF THE CASE

Jio offered 'Jio Welcome Offer', a 4G LTE Telecommunication service, comprising free sim, data, voice, video, and all Jio applications and content, from September 5<sup>th</sup> to December 31<sup>st</sup>, 2016. The Telecom Regulatory Authority of India (TRAI) reduced the period of the offer till December 3, 2016, but Jio, however, continued to do so until December 31, 2016, against TRAI's directives. Following this, Jio introduced a 'Happy New Year Offer' that granted similar kinds of services.

Jio had 72.4 million subscribers as of December 31, 2016, surpassing the Informant and all other communications service providers in the mobile broadband user base indicating Jio's increasing dominance in the market. Jio provided telecom services below its average variable cost.

---

<sup>2</sup> Iain Morris, 'India needs U-turn to prevent Jio monopoly' (*Light Reading*, 03 November 2020) <<https://www.lightreading.com/asia/india-needs-u-turn-to-prevent-jio-monopoly/a/d-id/758142>> accessed 10 March 2024

## ISSUES INVOLVED

Bharti Airtel Limited, one of the top telecom service providers in India, filed the information under Section 19(1)(a) of the Competition Act 2002<sup>3</sup> against Reliance Industries Limited (RIL) and Reliance Jio Infocomm Limited.

### **Airtel claimed violation of the below-mentioned provisions of the Competition Act, 2002:**

- Predatory Pricing under Section 4(2)(a)(ii)
- Abuse of Dominance under Section 4(2)(e)
- Anti-competitive Agreements under Section 3(1)

## CONTENTION FROM THE INFORMANT'S SIDE

Airtel's primary concern was regarding the free services provided by Jio under various offers. No other providers offered free phone calls to their consumers, as per TRAI's prohibition on predatory pricing. Hence, Airtel claimed that this conduct of Jio is in contravention of Section 4(2)(a)(ii)<sup>4</sup> of the Competition Act, 2002<sup>5</sup> and this is only being done because of RIL's dominance because RIL is one of the country's largest private enterprises in terms of size, revenue, assets, and value. Thus, claiming abuse of dominance under the ambit of Section 4(2)(e) of the Act<sup>6</sup>. Moreover, RIL's support to Jio to recoup all its losses suffered because of free pricing was an anti-competitive agreement between RIL and Jio violating Section 3(1) of the Act<sup>7</sup>. Further, the Informant alleged that this 4G LTE telecommunication service will create a monopoly or near-monopoly situation in the market.

## CONTENTION FROM THE RESPONDENT'S SIDE

Whereas Jio contended that it is a new entrant in the telecom market, competing with established players like Airtel, Vodafone, Idea, etc., and that the 'relevant market' should be defined as the bouquet of all communication services supplied by multiple telecom carriers, not just 4G LTE

---

<sup>3</sup> Competition Act 2002, s 19(1)(a)

<sup>4</sup> Competition Act 2002, s 4(2)(a)(ii)

<sup>5</sup> *Competition Commission of India v Steel Authority of India & Anr* (2010) 10 SCC 744

<sup>6</sup> Competition Act 2002, s 4(2)(e)

<sup>7</sup> Competition Act 2002, s 3(1)

services. In addition, the learned Counsel rebutted the claims about RIL's leveraging its dominant position and anti-competitive agreement stating that merely making investments in a telecom start-up is not a dominating position or an anti-competitive agreement.<sup>8</sup>

## **CCI'S DECISION**

The Competition Commission of India (CCI) held that in a competitive market with established major players, it is not anti-competitive for a new entry to entice customers with attractive offers and plans. Thus, Jio has not violated Section 4(2)(a)(ii) of the Act. The Commission also held that RIL cannot be found in violation of Section 4(2)(e) of the Act simply because it has made large investments in Jio. Investments alone cannot be considered leverage of a dominant position, especially where RIL is not in the business of providing telecom services. Regarding the contradicting claims about the purported free services of Jio as a result of RIL's dominating position and Jio's alleged anti-competitive arrangement, the Commission found no evidence of a prohibited agreement under Section 3 of the Act in the Informant's facts and claims.

The Commission concluded that providing free services does not in itself create competition issues unless they are provided by a dominant firm in the relevant and are tainted with an anti-competitive intent to exclude rivals. Thus, the CCI found that Jio and RIL were not in violation of any law.

## **ANALYSIS**

### **ABUSE OF DOMINANCE<sup>9</sup>**

Airtel criticized Jio's free services as a result of RIL's strong position and financial strength that gave Jio unrestricted access to its money, therefore reducing competition in the relevant market and as a result, Jio was able to dominate the market and suffer losses by giving free services. The Commission acknowledged that free services are not the main criterion for competition concerns until supported by a robust firm, but it ignored the fact that the informant and other market players spent 8-10 years to achieve the position they were in.

---

<sup>8</sup> *Transparent Energy Systems Ltd. v TEECPRO Systems Ltd.* (2013) SCC OnLine CCI 42

<sup>9</sup> *Maharashtra State Power Generation Company Ltd. v M/s. Mahanadi Coalfields Ltd. & Anr* (2013) CompLR 910 (CCI)

In *Fast Track Call Cab (P) Ltd v ANI Technologies (P) Ltd. (2017)*<sup>10</sup>, the Commission stated that new entrants commonly engage in such practices to gain a foothold in the market, and hold them dominant based on simple observation of conduct may have unintended consequences. The Commission ignored RIL's participation in Jio's dominant performance in the telecom sector, arguing that Jio was not in a dominant position simply because it was a new participant.

However, in *Meru Travel Solutions Pvt. Ltd. v Uber India Systems Ltd*<sup>11</sup>, it was held that regardless of Uber being a new entrant; its pricing strategy hampered competition in that market, substantiating that predatory pricing can affect the competition even without the dominance of an entity.<sup>12</sup> The Commission should not have ignored this while ruling on the abuse of dominance. Section 4(2)(e) of the Act mentions that an enterprise is held to be dominant if it uses its dominant position in one relevant market to enter into other markets. Therefore, the CCI was not fair enough to interpret RIL's dominance.

## ISSUE OF PREDATORY PRICING

While dealing with the issue of predatory pricing accusations, the Competition Commission called the Informant inconsistent. Jio was alleged to be engaged in predatory pricing violating Section 4(2)(a)(ii) of the Act. Section 4 in the Act says that an enterprise is held liable for predatory pricing only if the enterprise is in a dominant position in that relevant market.<sup>13</sup> However, the Competition Commission has defined the word 'relevant market' narrowly as 'wireless telecom services'.

In *MCX Stock Exchange v National Stock Exchange of India Limited & Ors.*<sup>14</sup>, the CCI stated that in order to fulfil the recoupment condition of a predatory pricing claim, a claimant must first show that the scheme could drive out the competitor; second, the surviving monopolist must be able to raise prices to consumers long enough.

<sup>10</sup> *Fast Track Call Cab (P) Ltd v ANI Technologies (P) Ltd (2017) SCC Online CCI 36*

<sup>11</sup> *Meru Travel Solutions Pvt. Ltd. v Uber India Systems Ltd Case No 96/2015*

<sup>12</sup> 'CCI- How it Perceives Predatory Pricing' (AKM, 18 February 2017) <<https://www.akmlp.com/insights/cci-how-it-perceives-predatory-pricing/>> accessed 12 March 2024

<sup>13</sup> *Faridabad Industries Association v Adani Gas Limited Case No 71/2012*

<sup>14</sup> *MCX Stock Exchange v National Stock Exchange of India Limited & Ors (2011) SCC OnLine CCI 52*

Through providing free services, Jio displaced its competitors; managed to gain market share, and became India's largest wireless telecom and Internet Service Provider (ISP) in less than three years. However, Jio started competitively pricing its services because of the rivalry that existed in the market.

## **ANTI-COMPETITIVE AGREEMENT**

For the allegation that RIL and Jio have an anti-competitive agreement in violation of Section 3(1)<sup>15</sup> and that Jio is the leverage of RIL, the Commission ruled that Jio is an investment of RIL which is not in the business of providing telecom services or any related activities. Such investment to provide faster services to the consumers if labelled anti-competitive would discourage the growth in markets. Thus, the RIL and Jio are not in violation of Section 3(1) of the Act.

In *B.P. Khare, Principal Chief Engineer, South Eastern Railways v Orissa Concrete & Allied Industries Ltd. & Ors.*<sup>16</sup>, it was held that the conduct of bidders who entered into an anti-competitive agreement to influence the parties were intended to eliminate competition and manipulate the process of bidding by reducing the prices and thus, liable.

Anti-competitive agreement discourages entry and/or expansion, limiting market growth which has an adverse effect on competition. In the market, no company can survive by providing free services for six months while having no other source of income to offset the loss. But RIL ranked among the top 100 companies in the Fortune Global 500 list of the world's largest corporations, recouped all the losses of Jio to establish itself significantly in the telecom sector. The intention to eliminate competition can be seen well with the existence of only two players in the industry after Jio's arrival.

---

<sup>15</sup> Competition Act 2002, s 3(1)

<sup>16</sup> *B.P. Khare, Principal Chief Engineer, South Eastern Railways v Orissa Concrete & Allied Industries Ltd. & Ors* Case No 5/2011

## IMPACT OF CCI's DECISION

The Competition Commission of India's ruling has been a game-changer in the telecom industry and in digitalizing India.

Jio's low pricing has driven competitors to drastically reduce their tariffs, resulting in considerable losses. Airtel had a net loss of 54% the year after Jio launched, a figure that hasn't altered significantly. As a result, corporate debt has risen to unpayable levels. A wave of mergers and acquisitions has reduced market participants and reduced competition. Following Jio's arrival just three private players have survived: Bharti Airtel, Vodafone Idea, and Reliance Jio. However, there were nine telecom service providers operating in the nation in 2016. Jio has not only established itself but also nearly monopolized in the Telecom Industry.

On the other hand, Jio charged basic and nominal prices and cut down the prices sharply making it affordable for the common people and giving India one of the world's cheapest Internet connections. The intensity of digitalization took up once Jio entered the market. India was stuck on the 2G and 3G services for decades and Jio took only three years to build a 4G service. Jio was the rationale behind the expansion of internet and telecommunications services to every part of India. Also, working from home has been the hottest trend during the pandemic, when people were confined to their homes due to the virus and the global recession. Jio and other telecom service providers have kept India moving even during the Covid-19 crisis. With Reliance Jio's affordable internet service, even the rural areas are now digitally connected and keeping up with the rest of the globe.<sup>17</sup>

## CONCLUSION

Competition is a companion to growth and India is a growing economy. The steep competition in the telecommunication services industry may also raise similar disputes among the telecom players in the future.

---

<sup>17</sup> Aditya Gupta et al., 'The Effect on the Telecom Industry and Consumers after the Introduction of Reliance Jio' (2019) 9(3) International Journal of Engineering and Management Research 118-137 <<http://dx.doi.org/10.31033/ijemr.9.3.16>> accessed 12 March 2024

The arrival of Jio has concentrated the competition between Airtel, Vodafone-Idea and Jio wherein even Vodafone-Idea is out of the race now. Although the benefits Jio has given to the users and the digitalisation that took place in India, Reliance and Jio are still not allowed to break the laws made for the welfare of businesses. The three-way split in the market because of RIL's dominance is legally unfair and violative of ethical business practices.

The outcome of the dispute between the two telecom giants, Bharti Airtel and Reliance Jio, is a matter of great concern for the future of competition law in India. The Competition Commission of India decided the dispute by interpreting the literal sense of the provisions under the Act making it very restricted and confined to a certain extent. Rather the CCI should be broad in its sense and look at the practicality of the situation between the parties. The ignorance of its previous judgements and the allegations regarding the abuse of dominance and predatory prices under Section 4 and anti-competitive agreements under Section 3 will have to be carefully interpreted.

The Competition Act, 2002 aims to sustain and promote competition and to prevent practices from creating an adverse effect on competition in the market. And to protect the very purpose of the Commission and the requirement of a penal statute, the CCI should be fair and reasonable. The CCI's inconsistent interpretation of the provisions of the Act has played a significant role in the rivalries and the present case will be laid as a foundation for future decisions in the jurisprudence of this area of competition law.

The practice of doing business in India should be growth-friendly to ensure a lot of advantages and benefits for companies to do business. Economic prosperity along with business ethics and fairness in the market should be fundamental to the Indian economy.