MERGER AND ACQUISITION IN TELECOM SECTOR : LEGAL ASPECT

A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS

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CERTIFICATE

This is to certify that, the present dissertation titled "**Merger and Acquisition in telecom Sector: Legal Aspect"** submitted by Sankalpa Rajpurohit in partial fulfilment for the award of the degree of Masters of Laws from BBD University, Lucknow.

The matter presented in this dissertation incorporates the findings of independent research work carried out by the researcher herself. The matter contained in this dissertation has not been submitted elsewhere for the award of any other degree in this format.

I recommend that it should be placed before the Board of examination for valuation.

Place: Lucknow

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DECLARATION

I **SANKALPA RAJPUROHIT**, do hereby declare that this dissertation on "**MERGER AND ACQUISITION IN TELECOM SECTOR: LEGAL ASPECT"** is the result of the research undertaken by me in the course of LL.M. Programme at BBD University, under the guidance and supervision of MS. MUDITA TRIPATHI.

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LL.M. (Corporate and Commercial Laws)

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LIST OF ABBREVIATIONS

AB Group	Aditya Birla group
BSE	Bombay Stock Exchange
CA	Companies Act
CCI	Competition Commission of India
CCEA	Cabinet Committee of Economic Affairs
DoT	Department of Telecommunication
DIPP	Department of Industrial Policy and Promotion
EPS	Earnings per share
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act
FIPB	Foreign Investment Promotion Board
HHI	Herfindahl Hirschman Index
loT	Internet of Things
ICR	Intra Circle Roaming
ILD	International Long Distance
ISP M&A	Internet Service Provider Mergers & Acquisitions
NLD	National Long Distance
NOC	Non Objection Certificate
NSE	National Stock Exchange
NTP	National Telecom Policy
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate
Tribunal	
P/E	Price to Earning ratio
PRI	Primary Rate Interface

SEBI	Securities and Exchange Board of India
SDCA	Short Distance Charging Areas
SIP	Session Initiation Protocol
TRAI	Telecom Regulation Authority of India

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CHAPTER 1

INTRODUCTION

1.1 STATEMENT OF THE PROBLEM

The researcher aims to study the Merger between Vodafone India and Idea Cellular in order to analyse its impact and contribution to the Indian economy. The analysis so made is on the basis of the legal and regulatory framework of Mergers in Telecom sector in lieu of the laws laid down in the country.

1.2 INTRODUCTION

The corporate world is undergoing a paradigm shift, from expansion and diversification to ever-increasing mergers and acquisitions. The merger waves began in 1883 following the depression that ended that year. The first merger wave came due to the economic expansion that occurred at the time. The initial trend was dominated by a few 'bumpers' deals involving capital gains. However, today the whole picture is undergoing a sea change. Companies have started realizing that in the increasingly competitive, changing, and challenging environment; M&A's can boost the value of their business. Mergers and Acquisitions have become a critical mechanism that is being adequately used to broaden the emerging low-cost market, especially markets which have large number of skilled workers and to acquire established brands. This helps them counter competition and acquire new consumers, get state of the art technology, improve bottom lines, etc. It is no wonder that the corporate world is fast realizing that M&As are here to stay.

• CONCEPT OF MERGER- AN OVERVIEW

A merger is a tool used to increase the long-term profits of the companies by expanding their operations. These operations are carried out with mutual consent between the merging companies. Sherman and Hart (2006) define Merger as "a *combination of two or more companies in which the assets and liabilities of the selling firm(s) are absorbed by the buying firm. Although the buying firm may be a considerably different organization after the merger, it retains its original* identity."[1]The 'Merger' has no stated definition so far under any legislation in India; however, the term 'amalgamation' is used in Indian laws in reference to merger. Section 2(1A) of the Income Tax Act defines "an *amalgamation as the merger of two or more companies with another, or the merger of two or more companies to form a new company, in such a way that all the assets and liabilities of the amalgamating companies become the assets and liabilities of the amalgamated company."*[2] *Shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies become the shareholders of the amalgamated company*,"[3] Thus, in simple way, it can be understood that merger is basically the combination of two or more companies with an object to combine their operations.

Merger may take different forms but the ones commonly practiced are:

1. HORIZONTAL MERGER: Under this, two companies having same product line and market merge to be in direct competition. The basis of this merger is the speculation that it will provide synergy and allow enhanced cost efficiencies to the new business. Some popular horizontal mergers include- Daimler-Benz and Chrysler, Ford, and Volvo, etc.

Though popular, horizontal mergers have a flip side too. They generate large entities that cause ripple effects in the sector and sometimes throughout the economy. Such mergers are perceived as anti-competitive as they open an unfair competitive advantage to the new entity over its competitors. Hence, most countries regulate large horizontal mergers by enacting competition acts; this does not mean that these mergers are always bad. They are encouraged when the resulting benefits outweigh the ill effects of reduction in competition.

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1 Sherman, A. J., & HART, M . A., Mergers and Acquisitions from A to Z, (New York: Amacom 2nd Ed. 2006).

2 Income Tax Act, 1961 Section 2(1A)

3 ibid

2. VERTICAL MERGERS- Vertical mergers are usually mergers of non-competing companies where one's product is a necessary component of the others. The basic objective of a vertical merger is to get rid of costs of searching for vendors, contracting prices, payment collection, advertising and communication and coordinating production. Such mergers achieve pro-competitive efficiency benefits. Vertical integration can lower transactions costs. Lead to synergic can improvements in design, production, and distribution of the final output/product and thus enhance competition. Some examples of such mergers are Apple and Intel, Usha Martin, and Usha Beltron, Reliance Industries Limited and Reliance Petrochemicals Limited and so on.

Due to the flip side of vertical mergers, regulatory authorities do favour them. In many cases, such mergers are granted approval subject to certain conditions, such as the merged entity being directed to stay away from activities that are anti-competitive to the extent that they could harm public interest. This is because all antitrust laws work on the maxim *'the protection of competition, not competitors.*

Thus, anti-competitor's theory states that vertical mergers create barriers in the market by foreclosing rivals from access to needed inputs in the market and/or raise the prices in the market or reduce the quality of the product.[4] Such strategies make it difficult for new firms to enter the market.

3. CONGLOMERATE MERGER- Conglomerate merger are mergers involving firms in different or unrelated business activity. Such mergers are preferred by the firms that plan to boost up their product lines. Firms choosing such merger have a supremacy over wide range of activities in various industries that require different skills in specific managerial functions, such as research, applied engineering, production, and marketing. The most common examples are- News Corporation, Sony, Walt Disney, etc.

[4] www.Learnmerger.com

The flip side conglomerate mergers are that contributing to aggregate increase in economic power often results in possible non-economic effects due to an increase in the general economic concentration. Critics also fear that such economic concentration would lead to corresponding aggression in political power by fewer but more powerful conglomerate firms, placing major decisions-both political and economic, in the hands of a few individuals or firms that have direct accountability to the general public.[5]

4. ACCRETIVE MERGER- Accretive mergers occur when a company with a high price-to-earnings ratio (P/E) purchases a company with a low P/E. As a result, EPS of the acquiring company increases.

In an all-stock deal, if a company acquires a target with lower P/E ratio, it must be accretive to earnings. Here the target company's earnings are lower and the acquirer can add these to its own earnings and still achieve a higher earning rate. This is because the merger results in operational and financial synergies and boosts the earnings of the acquiring company. For example, when RIL approved the merger with IPCL, the swap was decided to be one share of RIL for every five shares of IPCL. This was believed to be EPS accretive for the shareholders of RIL.

5. DILUTIVE MERGER- A Dilutive merger is one where EPS of the acquiring company falls after merger. Since the EPS declines, the acquiring company's share price also declines, as the market expects a decrease in the company's future earnings. The expected decline could be because the market forces feel the merger would destroy value and would not result in synergies post-merger. Dilutive merger occurs when the P/E ratio of the acquiring firm is less than that of the target firm. For example- copper mining company Phelps Dodge International Corp. entered a dilutive merger with Canadian nickel miners Inco and Falconbridge in 2006.

[5] Hearing on Acquisition and Mergers by Conglomerates of Unrelated Business 1978

• LEGAL FRAMEWORK

1. Company Act

The Act of 2013 provides for establishment of The National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT") to ease to out the restructuring activities of the companies. Mergers and schemes of arrangements between companies are governed under Section 230 to 234 of Companies Act, 2013. These provisions are worded with a wide range so as to regulate all possible restructuring and settlement of the corporate, which can possibly occur between its members and creditors.

A. <u>Procedure under the Merger Provisions</u>

Since a merger essentially involves an arrangement between the merging companies and their respective shareholders, each of the companies proposing to merge with the others) must make an application to the Company Court having jurisdiction such company for calling meetings of its respective shareholders and/or creditors.[6] The Court may then order a meeting of the creditors/shareholders of the company. If the majority in number representing 3/4th in value of the creditors and shareholders' present and voting at such meeting agrees to the merger, then the merger, if sanctioned by the Court, is binding on all creditors/shareholders of the company. The Merger Provisions constitute a comprehensive code in themselves, and under these provisions Courts have full power to sanction any alterations in the corporate structure of a company. For example, in ordinary circumstances a company must seek the approval of the Court for effecting a reduction of its share capital. However, if a reduction of share capital forms part of the corporate restructuring proposed by the company under the Merger Provisions, then the Court has

[6] The High Court of each Indian State will usually designate a specific bench of the High Court as the Company Court, to which all such application will be made. Upon the constitution and notification of National Company Law Tribunal, the competent Authority for the filing this application will be the NCLT and not Company Court.

the power to approve and sanction such reduction in share capital and separate proceedings for reduction of share capital would not be necessary.

B. Applicability of Merger Provisions to foreign companies.

The provisions under the 2013 act recognize and permit a merger/reconstruction between a foreign company and Indian company. However, the mentioned provisions do not permit an Indian company to merge into a foreign company and also, it is subjected to rules made by the Government of India.

2. Takeover Code and Listing Agreement

The M&A transactions in India of India ("SEBI") involving listing entities are regulated by The Securities and Exchange Board on recognized stock exchanges. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (in short - Takeover Code) regulates both the direct and indirect acquisition of shares, voting rights and control in listed companies that are traded over the stock market. Acquisition of shares or voting rights of a listed company, entitling the acquirer to exercise 25% or more of the voting rights in the target company or acquisition of control, obligates the acquirer to make an offer to the remaining shareholders of the target company. The offer must be to further acquire at least 26% of the voting capital of the company.[7]

SEBI has also notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations") which have replaced the erstwhile Listing Agreements (entered into by a company with a recognised stock exchange). These hold importance when the merger takes place of the company listed on the stock exchange(s).

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[7] The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations. 2011. Regulation 3 read with Regulation 7

All obligations under different Listing Agreements including of equity shares, Indian Depository Receipts, have now been consolidated under the Listing Regulations. In case, a Court approved scheme of merger / amalgamation/reconstruction has been altered, SEBI has amended the conditions for the listed companies which they have to obey in the manner so prescribed. Following are the key changes that have been introduced by the Listing Regulation and table highlighting the comparison between the conditions prescribed under the listing agreement and Listing Regulation:

Sr. No.	Particulars	Listing Agreement	Listing Regulation
1.	Filing of scheme stock exchange	Listed companies have to file the scheme with stock exchange at least one month prior to filing with the court.[8]	Listed companies have to file the scheme with stock exchange for observation letter or no objection.[9]
2.	Compliance with securities law	Listed companies shall ensure that the scheme does violate or override the provisions of any securities law/stock exchange requirements.[10]	Listed companies shall ensure that the scheme does violate or override or limit the provisions of any securities law/stock exchange requirements.[11]

8 Listing Agreement Clause 24(f)

9 SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, Regulation 37 (1)

10 Listing Agreement Clause 24(g)

11 SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, Regulation 11

3.	Pre- and post-merger Shareholding	Listed companies have to disclose the pre and the post-merger shareholding to the shareholders.[12]	The listed entity shall have to disclose the details with the stock exchange as per the disclose agreement of stock exchange .[13]
4.	Auditors Certificate	Listed Companies have to file with a stock exchange an auditor's certificate to the effect that the accounting treatment contained in the scheme is in compliance with all the Accounting Standards specified by the Central Government in Section 211 (3c) of the Companies Act 1956. [14]	There is no corresponding provision under the Listing Regulation.
5.	Corporate action pursuant to Merger	Listed Companies have to disclose to public if the listed company is proposing to undergo acquisition, merger, de-merger, amalgamation restructuring scheme of	Listed companies have to disclose to Stock Exchange of all the events which will have bearing on the performance/ operation of the listed

12 Listing Agreement Clause 24(h)
13 SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, Regulation 69(2)
14 Listing Agreement Clause 24(i)

		arrangement, spin off or selling division of the company , etc.[15]	entity as well as price sensitive information.[16]

3. *Foreign Direct* Investment

Foreign exchange transactions are regulated by The Foreign Exchange Management Act, 1999 ("FEMA"), and the rules and regulations thereunder. In India, the Reserve Bank of India is accountable for the formulation and enforcement of foreign exchange regulations. The regulation for Foreign direct investment is stated under FEMA and the Foreign Direct Investment ("FDI") Policy, formulated by the Department of Industrial Policy and Promotion of the Ministry of Commerce and Industry of the Government of India. Under the FDI Policy, which provides for sector-specific regulations, in the form of investment caps, requirements for investment, and sectors in which FDI is prohibited (such as gambling, atomic energy and investment in India either under the agricultural activities), an overseas investor can make an 'automatic route' [i.e., without requiring any prior approval from the Foreign Investment Promotion Board ("FIPB "), Government of India] or under the 'approval route' (i.e., requiring prior approval of the FIPB, Government of India). Any inflow that is covered under the 'approval route' and is more than INR 5,000 Crore (INR 50bn) requires a prior approval, of the Cabinet Committee on Economic Affairs ("CCEA"), a special committee formed to framework of the Government of India.

4. Competition/Anti-trust laws

Anti-trust issues are governed by the Competition Act, 2002 in India, which replaced the Monopolies and Restrictive Trade Practices Act, 1969. The Competition Commission of

[15] Listing Agreement, Clause 36(7)
[16] SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015, Regulation 58

India ("CCI") has notified the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 ("Combination Regulations"), which regulate 'combinations' such as mergers and acquisitions which likely to cause an appreciable adverse effect on competition in the relevant market in the country.

5. Income-tax Act

The Income-tax Act, 1961 govern the M&A transactions relating to service tax, value-added tax/sales tax, and stamp duty on certain instruments.

1.2.1 REASONS FOR TAKING THE STUDY

The researcher has taken up the following study because:

i. Vodafone-Idea merger is the latest and the largest telecom merger so far in India.
ii. There is not much content and information regarding the mergers post 2010 in the telecom sector.
iii. The current merger, since it involves the top second and third largest service operators, is the most eyed and hyped one especially after the entry Reliance Jio in the market.
iv. To study the impact and contribution of the merger on the Indian economy since it is speculated to be the largest merger.

1.3 OBJECTIVES

The following objectives will help the researcher to study well the merger of Vodafone-Idea in light of various laws followed by its impact on Indian economy. The aim of my study is :

- To study the concept and legal framework of mergers in India.

- To study and analyse the Vodafone-Idea merger.
- To study the role of Competition Commission in the merger and thus, its impact on Indian telecom market.
- To study the role various regulatory authorities involved in the merger.
- To study and analyse the overall impact of the merger on various stakeholders.

1.4 UTILITY & SIGNIFICANCE OF RESEARCH

The significance, importance and utility of the research are to study and analyse the impact of Vodafone-Idea merger on the Indian economy along with studying various laws in order to make it useful for study material for future academicians and students. Also, giving an interrelation of these laws with the merger. However, an attempt has been made to analyse the effect of the merger in the economic and trade related domain. This research shall upgrade the thoughts in the minds of the reader about the various aspects associated to a merger and how various legislations play a separate role in the case of merger.

1.5 Hypothesis

i) What is the concept and legal framework of Mergers followed in India?
ii) What are the key aspects and highlights of the Vodafone-Idea merger?
iii) What was the role of Competition Commission of India in the merger?
iv) What has been the role of various regulatory authorities in approving the merger and what impact will the merger have on the economy?
v) What will be the contribution and overall impact of the merger to the economy?

1.6. RESEARCH METHODOLOGY

The main ingredients to this aspect are the tools of data collection and the different process involved for the research. This study shall take into consideration the contemporary developments of telecom mergers under the purview of several regulatory bodies through different literary sources available. The doctrinal method or the traditional method of research is preferably the as it is best suited extensive analysis of arrangement and systemization of legal provisions, juristic writings, and administrative rules, study of legal institutions, academic abstracts, bibliographic databases, discussion, texts, encyclopedias, approach which is to be followed in order to fulfil the research proposal method to carry out this research. There shall be an CCI reports, and concepts on Mergers & Acquisitions along with legal periodicals in order to have a thorough legal reasoning or rational deduction. The aftermath of reading shall fetch the analyzing feature to the formulation of new conclusion in this study. In order to achieve the objectives, the process on impact analysis has been a check upon an established or newly conceived legal provision, rule, or regulation. The legislative action has a need to study for law reform or to check the impact of laws; it is an integral part of the society. The effect of custom laws in the society has to be analyzed in the case to assess the working of the legal order as per the expectation. It will also monitor the success and failure of such provision and might be revised to give the law a dynamic setup.[17] The interactive process shall also be implemented as it is to study the process of interaction between the other factors and forces along with the law's operative in the society. These forces are spread over a vast territory where the change in one part of the system is liable to bring about corresponding changes in other parts too. With respect to the help of several CCI reports, committee reports, articles and books, an analysis would be drawn in relation to the Vodafone-idea Merge in India.

1.7. REVIEW OF LITERATURE

Books & Research Papers

1. MERGERS AND ACQUISITIONS (2014) by Rajendra S. Aurora, Kavita Shetty and Sharad R. Kale is an effort to fulfil the needs of future and practicing managers in getting appropriate insights into this complex subject. The book addresses both conceptual issues and their practical applications. It gives an insight depth explanation of the concepts,

[17] Julius Stone , Social Dynamics of Law and Justice, 9 (1996)

processes, , issues and pitfalls involved in M&As using a lucid style. It further elaborates them with appropriate examples and professionally researched case studies. It also discusses the legal and accounting angles of M&As and the human resource and integration issues involved. The book divided in to nine chapters. Each chapter captures a different aspect of M&A.

However, Chapter 3 & 5 is relatable to my research as it captures the concept and legal issues involved in M&A. chapter 3 gives the insight about the concept, genesis, and types of M&As, motives behind M&A, process involved and ways and means of financing. It also gives insight into M&As on the domestic front. While chapter 5 covers all the legal provisions pertaining to M&As, such as provisions of Companies Act 2013; SEBI (Buyback of Securities) Regulations; Listing Agreement norms; Foreign Exchange Management Act 1999, Competition Act 2002, etc.

Company Law by Avatar Singh (Sixteenth Edition) : it highlights the key aspects involved in The merger of Companies and gives a notion and alternate aspect to the project of Merger in different Sectors across Business including Vertical and Horizontal Merger and acquisitions

MERGERS AND ACQUISITIONS IN INDIAN TELECOM SECTOR: A STRATEGIC ANALYSIS (2017) is research paper written by Mahesh Dilip Chawla wherein he stated that Telecom Regulatory Authority of India (TRAI) and Department of Telecommunications (DoT) has played a vital role during the post liberalization period to change the business environment in the Indian telecom sector. Over the time, this sector has seen a massive shoot up more reading its performance in India. The telecom companies have selected for Mergers and Acquisitions (M&A) has become a go-to option for the telecom companies in order to strategically improve and increase their performances. The reason and object of the study is to know the overall strategic impact of M&A in the telecom industry. The author in this paper discusses about 10 M&A deals

in the BSE-listed Indian telecom companies during a timeframe from 2000 to 2010 to determine the effect of M & As in this sector and how they have brought about changes, if any, in the business performance of the acquirer companies. The aim of this research paper is to measure the Mergers and Acquisitions in Indian telecom sector.
Thus, this paper gives an overview about the M&A happened during that timeframe and its impact on the Indian economy.

Articles:

1. In one of the articles- COMPETITION COMMISSION APPROVES VODAFONE INDIA IDEA CELLULAR MERGER, on the official of NDTV, it describes the process related to the investigation involved and approval given by the Competition Commission of India. It further states the role of the firms involved in the whole transaction and also describes the process involved at every phase.
2. MERGER OF VODAFONE INDIA AND IDEA: CREATING THE LARGEST TELECOMS OPERATOR IN INDIA is the official press release by Idea cellular wherein it states the key highlights of the merger. The press release states down in detail, various aspects related to the current merger and how will the new entity work post merge.
3. The article- THE INDIAN TELECOM SECTOR published by the Telecom Practice Team of Nishith Desai Associates, talks about the legal and regulatory framework of M&A Indian telecom sector. The article's various aspects such as Indian Telecom Authorities, Telecommunication Law & Regulations, Spectrum management, Foreign Investment in telecom sector and so on. One of the important parts of the Article is its annexure B which states the cases wherein the Supreme Court cancels the telecom license of 122 operators.

1.8. SCOPE OF RESEARCH

The research aims upon the Competition Act, Income Tax Act and Company act provisions in regulating mergers in India, drawing focus on the Vodafone- Idea Merger. The scope of research would include the analysis of Vodafone-Idea Merger in the aspects of Competition act, Income Tax Act, and Company Act along with its impact on Indian

Economy. In furtherance, it will evaluate recent amendment which lays the basis of the research.

CHAPTER 2

DEAL SEALED: VODAFONE-IDEA MERGER

2.1 ABOUT VODAFONE

Vodafone is one of the world's largest telecommunications groups and provides a range of services including voice, messaging, data and fixed communications. "Vodafone has mobile operations in 26 countries, partners with mobile networks in 49 more, and fixed broadband operation* in 17 markets. As of 31 December 2016, Vodafone had 470 million mobile and 14-3 million fixed broadband customers,"[18] More information can be found on its official website i.e. www.vodafone.com.

2.2 ABOUT ADITYA BIRLA GROUP

The Aditya Birla (AB) Group is a USS41 billion conglomerate with operations in more than 36 countries. The Aditya Birla Group has been operating in India and globally for over 5 decades. "Its businesses range among others, mobile telecommunications, metals and mining, cement, carbon black, textiles, garments, chemicals, fertilizers, life insurance and financial services industries."[19] More information can be found on its official website i.e. www aditvabirla.com.

2.3 ABOUT IDEA CELLULAR

Idea Cellular is the third largest wireless operator in India; it is listed on the National Stock Exchange (NSE), and the Bombay Stock Exchange (BSE) in India. Idea is part of the Aditya Birla Group, which is one of the largest business groups in India. For the last twelve months to December 31 , 2016, Idea Cellular reported revenue of INR 369 Billion (US$5.5

18 www.vodafone.com (11 April 2018)

19 www.adityabirla.com (11 April 2018)

billion) and EBITDA of INR 114 Billion (US$ 1.7 Billion). More Information can be found on its Official website i.e. www.ideacellular.com.

Idea cellular that is closely-held by Kumar Mangalam Birla have sep forward with proposition to merge with Vodafone India. This could lead to the biggest company considering the amount of subscribers base catered by each of the players. The merger can leave Bharti Airtel off its hook from being on the top from past fifteen years. Several aspects come into play while developing an understanding about various attributes of merger and also the impact such merger might create on the customers as well as on the telecom industry.

Storm of Jio

The Reliance Jio Infocomm Ltd. (Jio) has taken the telecom sector of India by a storm. Within 7 months of its initiation of full-fledged commercial operations, Jio has attracted close to 100 million subscribers to rise and become the fourth largest telecom network of the country, behind Airtel, Vodafone and Idea. This exponential growth has been fuelled by aggressive marketing in the cloak of abovementioned offers, providing consumers with a vast array of free services, broad enough to inculcate anything under the roof that the other competitive telecom companies have to offer. This transformation has been surrounded with a lot of hue and cry before institutions like the Telecom Regulatory Authority of India (TRAI) and Competition Commission of India (CCI). While TRAI has not provided any relief to the bleeding telecom sector by clearly stating that the offers did not amount to predatory pricing, the CCI remains the last resort for the players to stop this all consuming newly found juggernaut of Jio. In wake of disappointments from these resorts, the competitors have now taken course to mergers. The first in these spate of mergers involved the Reliance Communications-Aircel deal, which was soon followed by the announcement of the acquisition of Telenor by Bharti Airtel. But the biggest flutter was created when Vodafone India and Idea, the second and the third largest operators in the Indian telecom industry decided to merge to form India's biggest telecom network in terms of subscriber base.

The pre-Jio era: Rise, fall and rise of the telecom sector

The telecom sector gradually opened up in 2007, after the removal of restrictions on the number of operators that a telecom circle could have. This, coupled with granting of second generation (2G) and third generation (3G) wireless technology spectrum, sparked intense competition and significant price wars between a large number of players. However, a period of turbulence ensued for the sector when the infamous 2G spectrum scam hit headlines, wherein allegedly the Telecom Ministry allocated the 2G spectrum licences without due process. The Supreme Court subsequently in Centre for Public Interest Litigation v. Union of India[20] quashed the 2G licences granted by the Telecom Ministry in 2012. The cancellation of these licences resulted in significant drop of foreign investment, with some operators choosing to quit the market.[21] These developments ensued a hit on profit margins that telecom firms enjoyed. This trough gradually flattened out and over the last three years the companies nursed back to health with the effective implementation of the National Telecom Policy (NTP) of 2012 and introduction of spectrum sharing and trading norms in 2015. The rebounded sector also started seeing gradual rollout of fourth generation (4G) spectrum by major market players over the course of 2015-2016.[22]

The advent of Jio

Post the 2005 split of Reliance Group, due to existence of a non-compete clause with Reliance ADAG, the Mukesh Ambani led Reliance Industries Ltd. (RIL) did not have the

20 (2012) 3 SCC 1.

21 Etisalat to shut shop in India; 16.7 lakh subscribers to be affected, India Today (New Delhi, 22-2-2012) http://indiatoday.intoday.in/story/etisalat-india-operation-2g-licences/1/174854.html

22 Balwant Singh Mehta, Performance of Mobile Phone Sector in India, Economic and Political Weekly (New Delhi, 8-4-2017)

opportunity to re-enter the telecom sector up until 2010. Thereafter, RIL acquired 95% stake in Infotel Broadband Services, which had 4G broadband spectrum in all 22 circles and subsequently in January 2013 rebranded the entity as "Reliance Jio Infocomm Limited".

Jio did not have much 2G and 3G infrastructure at its hand, thus causing difficulties for ensuing voice calls since 4G is a purely data based technology. However, the amendment to Unified Access Services Licence Agreement in April 2016 allowed Jio to employ Voice over LTE (VoLTE) services. Jio launched its services through a beta rollout in December 2015, followed by a full-fledged rollout in September 2016. The rollout was supplemented with the "Welcome" offer, providing users with free 4 GB data/day till 31-12-2016 along with free voice calls and text messages. The "Welcome" offer was succeeded by an almost identical "Happy New Year" plan till 31-3-2017. With these offers, close to 100 million subscribers opted to join the Jio bandwagon in a period of seven months. This gala of free services did not end here and the company again introduced "Summer Surprise" offer for its users, which sought to offer three months of complementary data and voice services on a single recharge of Rs 303. TRAI however blocked this offer on the count that the offer was not compliant with its regulations. Jio soon countered with "Dhan Dhana Dhan" offer, whose mere difference was an increase of Rs 6 in the signing up charge (i.e. Rs 309).

The free-pricing model of Jio has caused substantial competitive concerns regarding its "predatory" nature. The telecom firms, primarily Bharti Airtel, have approached TRAI and CCI with complaints over the pricing model which has helped Jio to accumulate almost 10% of the market share in unparalleled time. Concerns have also been raised regarding both the extension of the free pricing offer through the "Happy New Year" plan and free voice calling. Airtel in its complaint to CCI and TRAI contended that Jio was attempting to bind the consumers to its free calling services, alleging that this will make it unprofitable for competitors to battle out on such a low price. It even contended that RIL was using its dominant position in other markets to recoup losses that it would suffer in this initial seven-month period. Eventually, with the competitors being eliminated from the market, Jio shall seek to either increase prices or charge for voice calling. If the abovestated analysis of recoupment is proven before the CCI, it would satisfy the two-pronged test for predatory pricing as laid down in MCX Stock Exchange Ltd. v. National Stock Exchange of India Ltd.[23] Vodafone, Idea and Airtel also contended to TRAI that voice calling could not be priced below 14 paise/minute.[24] TRAI held that the pricing model of Jio is non-predatory in nature, though it chose to stay silent on reasons in public. It rejected the contentions on the arbitrarily set threshold of 14 paise/minute, stating instances wherein the complainant companies had themselves breached the threshold. The only means of help left with the telecom firms exist now with CCI and the Telecom Disputes Settlement Appellate Tribunal (Tdsat), where the firms have challenged TRAI's decision to allow Jio to extend its free-pricing model from December 2016 to March 2017.

Mergers — The last resort of survival

Since the advent of Jio, the Indian telecom sector has undergone a period of significant consolidation with almost four mergers being completed or in process. The period started with the acquisition of MTS India by Reliance Communications in November 2015. This was soon followed by the merger of Aircel Communication with Reliance in September 2016. Both these deals have received the approval of the CCI.[25] Airtel followed suit by announcing the acquisition of Telenor India. Rumours are also circulating on Tata Telecommunications merging into the Reliance-Aircel-MTS conglomerate and BSNL and MTNL merging to form one government-controlled entity in the sector.

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23 2011 SCC OnLine CCI 41.

24 Anandita Singh Mankotia, TRAI to reject Bharti Airtel, Vodafone India and Idea Cellular claims that calls can't be priced less than 14 p/min, The Economic Times (30-3-2017) http://economictimes.indiatimes.com/news/economy/policy/trai-to-reject-bharti-airtel-vodafone-india-and-idea-cellular-claims-that-calls-cant-be-priced-less-than-14-p/min/articleshow/57902750.cms?from=mdr

25 Reliance/SSTL, Combination Registration No. C-2015/12/345 dated 18-2-2016; Reliance/Aircel, Combination Registration No. C-2016/10/445

But the biggest splash on this front was created on 20-3-2017 when Vodafone India and Idea, the second and third largest players of the sector respectively, announced that they were merging to form the biggest telecom entity of the country with almost 400 million subscribers. This merger would result in the combined entity holding close to 35% market share in terms of consumer and 41% market share in terms of revenue. It has been speculated that the combined entity would be required to surrender spectrum in five circles to comply with the merger guidelines issued by the Department of Telecommunications in 2014.[26] The merger would ensure that the combined entity would be among the top two players in 21 of 22 circles across the country. While a market share of 35% may be sufficient to ensure a smooth sailing for the merger in CCI, the dominance of the merged entity in 21 circles may call for certain modifications to be made to the deal and room for more spectrum surrender, especially in scenarios where both the entities were already the top two players within the circle. The most peculiar aspect though remains that both the companies have stated that they would retain the separate brands of both the companies.

Towards a five-player telecom sector

While Vodafone has officially claimed that the merger has been carried out to combine Vodafone's strong urban presence with Idea's hold on the rural market,[27] a spate of four mergers and two rumored to be on the cards indicate that the same is a result of the upheaval caused by Jio. From a total of 10 players in the market at the end of 2015, the market may now be potentially reduced to a maximum of five players: Vodafone-Idea, Airtel, Jio, Reliance Communications-TATA-Aircel-MTS and BSNL-MTNL. The Telecom Secretary has stated that existence of five players would ensure sufficient competition within the sector.

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[26] Siddharth Philip, Vodafone Idea-India Merger Seen Handing Rivals Cheap Spectrum, The Economic Times (6-2-2017) http://economictimes.indiatimes.com/news/company/corporate-trends/vodafone-idea-india-merger-seen-handing-rivals-cheap-spectrum/articleshow/56995316.cms

[27] Deborshi Chaki, Reliance Jio not main reason for merger of Idea Cellular, Vodafone, Livemint (Mumbai, 21-3-2017) http://economictimes.indiatimes.com/news/company/corporate-trends/vodafone-idea-india-merger-seen-handing-rivals-cheap-spectrum/articleshow/56995316.cms

While markets undergoing consolidation has not been an unknown phenomena in both developing and developed countries, telecom consolidations in most of the markets have often been driven by regulatory overhaul or technological advancements.[28] While regulatory overhaul and technological advancement vide NTP and a number of liberal measures undertaken by the Union Government along with generational upgrade of networks can be observed, the nature of competitive consolidation in the present scenario is almost unparalleled: for the fact that it has been driven by the mere existence of one player within the market. The rationale behind such mergers seem to be that the newly discovered synergy would equip the competitors with sufficient ammunition to take on the all-consuming rising giant of the sector. The mergers are observed to have been complementary in nature, with two companies chalking out their respective strengths to ensure existence of a stronger combined entity: be it the strong presence of Aircel in South combining with Reliance's presence all over the country or the rural-urban combination by Vodafone-Idea merger. The effect of such consolidation would probably result in thinning in terms of number of players within the sector, which may be a cause of concern — but the fact that these five players may be omnipresent across all circles would ensure that the competitive streak to regain or retain markets is renewed and the fact that the consumer, for all the competition between these five players, may end up being the biggest beneficiary.

2.4 KEY HIGHLIGHTS OF THE MERGER

1. Vodafone to combine its subsidiary Vodafone India (excluding its 42% stake in Indus Towers) with Idea, which is listed on the Indian Stock Exchanges.
2. The primary step for AB group would be the acquisition of 4.9% of shares from Vodafone, which would lead to every share is price of Rs. 108 and total of Rs. 3874 crore. This would, further, aid in getting increased share holding capability of 26%o to Idea.

[28] Kevin Okoeguale, Deregulation, Competition and Merger Activity in the US Telecommunications Industry (26th Australasian Finance and Banking Conference, Sydney, 17-12-2013 to 19-12-2013) https://ssrn.com/abstract=2049491

3. Whereas Vodafone holds 45.1% of the shares within the merger, Idea would be allowed to shop for another 9.6% however at a price of Rs.130 per share within the span of next four years. However, if Idea is unable to come back up to an equal proportion of Vodafone, it can buy additional shares however at the value prevailing within the market.
4. Vodafone would appoint the chief Financial officer; however, the chairman of the new combined entity would be Kumar Mangalam Birla. The chief operating officer of the new entity would be named conjointly, under a joint agreement, by each company.
5. The merger additionally provides the promoters of each the entities with a right to nominate three members each for the board. There would be a complete of twelve members on the board of that 6 would be independent.
6. Highly complementary combination will create India's largest telecom operator[29] with the country's widest mobile network and a strong commitment towards 'Digital India' vision.
7. There will be an acceleration in PAN India expansion by combined entity's sustained investment of wireless broadband services using 4G/4G+/5G technologies, which will support the introduction of digital content and 'Internet of Things' (IoT) services. Also, it will further expand financial inclusion for the benefit of Indian Consumers, business and society as a whole through mobile services.
8. Merger of equals governed by a shareholders' agreement with joint control of the combined company between Vodafone and the Aditya Birla Group.
9. The merger magnitude relation is in line with recommendation from the joint freelance valuers. The implied enterprise value is INR828 Billon (US$ 12.4 Billion) for Vodafone India and INR 722 Billion (US$10.8 Billion) for Idea excluding its stake in indus Towers, valueiing Vodafone India at 6.4x EV/LTM EBITDA and IDEA excluding its stake in Indus Towers at 6.3x EV/LTM EBITDA.[30]
10. Substantial cost and Capex synergies with an estimated net present value of approximately INR670 billion (US$10.0 billion) after integration cost and spectrum liberalisation

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29 Largest communication provider by revenue (based on quarter ending 2018 TRAI Industry revenues) and subscribers as reported in December 2018)

30 Idea valuation calculated excluding Idea's 11.15% stake in Indus Towers (valued at 8.8x LTM Ebitda as per Bharti Infratel's multiple as at 17th March 2017 close)

payments, with estimated run-rate savings of INR140 billion spectrum (US$2.1billion) on an annual basis by the fourth hill year post completion.[31]

11. If Vodafone and the Aditya Birla Group's shareholdings within the combined company aren't equal in a span of four years, Vodafone can sell down shares within the combined company to equalise its belongings thereto of the Aditya Birla cluster over the subsequent 5 year period.
12. Unless achieving an equalisation, the voting rights over the extra shares controlled by Vodafone will be restricted and votes will be exercised mutually as per the terms of the shareholders' agreement.
13. Vodafone India will be deconsolidated by Vodafone on announcement and reported as a joint venture post-closing, reducing Vodafone Group net debt by approximately INR552 billion (US$8.2 billion) and lowering Vodafone Group leverage by around 0.3x Net Debt/EBITDA.[32] The transaction is expected to be accretive to Vodafone's cash flow from the first full post-completion.[33]

2.5 STRATEGIC COMBINATION

Vodafone Group Plc (LSE: VOD) and Idea Cellular (NSE: 1DEA), excluding Vodafone's 42% stake in Indus Towers, have proclaimed that they have reached a stage of agreement to merge their operations in India to form India's largest telecom operator. The combined company would become the leading communications provider in India with almost 400 million customers, 35% customer market share and 41% revenue market share.[34] However, in due course, the complete strategy of the combined company will be developed and the name will also be modified. Additionally, designed leverage customers' affinity for each existing brands.

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31 ON annual basis before integration costs in the fourth full year after completion

32 Based on expected FY2017 year end net debtEbitda. Net det/Ebitda impac includes the INR 39 Billion (US$579 million) payment from the Aditya Birla Group, is adjusted for the deconsolidation of Vodafone Netherlands and is subject to completion adjustments.

33 FCF as defined by Vodafone on a guidance basis but after spectrum payments.

34 Larges communication provider by revenue (based on Q3 FY17 TRAI industry revenue) and subscribers (as reported for December 2016)

The aforesaid merger is based on 'Digital India' vision of the Indian Government and economic inclusion goals, delivering important advantages to 1.3 billion Indian customers and making substantial worth for all stakeholders.

By combining their respective businesses, Idea and Vodafone will establish a company with the scale and efficiency required to offer innovative and attractively priced mobile services, enhancing consumer choice in a highly competitive market with at least five major telecoms providers. The combination of the two companies' networks and spectrum holdings, together with continued investment, will accelerate the pan-India expansion of wireless broadband 4G/4G+/5G technologies to build capacity, supporting the expansion of digital content and IoT services and delivering a world-class broadband experience to customers. The combined company will have sufficient spectrum to compete effectively with the other major operators in the market. It would hold 1,850 MHz, including circa 1,645 MHz of liberalised spectrum acquired through auctions[35]. It will be capable of building substantial mobile data capacity, utilising the largest broadband spectrum portfolio with 34 3G carrier and 129 4G carriers across the country.

Vodafone India's strong presence in metro circles and Idea's leadership in semi-urban and rural telecom markets will allow for nationwide leadership within Indian M&A guidelines. In circles where both Idea and Vodafone India currently have a limited presence, the combined entity will become the leading challenger with the scale to compete more effectively and enhance consumer choice.

The combined company will be able to draw on support from its two largest shareholders, Vodafone and the Aditya Birla Group, (each a "Party" and collectively the "Parties") to drive growth, investment and to create value for all stakeholders. The Parties' capabilities combine experience of running leading businesses across multiple industries and geographies, world

[35] Spectrum holdings are shown on a proforma combined basis and may need to be reduced to comply with M&A guidelines.

class expertise in telecoms with global scale, enterprise services, mobile money services and procurement and a deep understanding of - and strong relationships within – the Indian market.

2.6 TRANSACTION DETAILS

The dealings are going to be structured as follows:

1. Plan can contribute all of its assets together with its standalone towers with 15.4k tenancies[36] and its 11.5% stake in Indus Towers.
2. Vodafone can contribute Vodafone India together with its standalone towers with 15.8k tenancies[37] however, excluding its 42% stake in Indus Towers.
3. The merger follows the consistency of recommendations from the joint independent valuers. Based on Idea's undistributed share price, the agreed merger ratio implies enterprise value for Vodafone India of INR 828 billion and an enterprise value for Idea's mobile business of INR 722 Billion, excluding its II.15% stake in Indus.[38]
4. The net debt contrition of Vodafone will be dependent of Idea's net debt on completion and also on customary closing adjustments. The contribution will amount to INR 25 billion which will more an Idea at the time of completion.
5. Contemporaneous with completion of merger, after transferring 4.9% stake to Aditya Birla group for INR 39 Billion in cash, Vodafone will own 45.1% in the merged company. The so transferred stake to Aditya Birla Group will amount to 26% of the merged company, leaving remaining 28.9% to Idea's other stake holders.
6. With a view of equalizing the shareholding Aditya Birla Group has the right to acquire upto 9.5% more stake from Vodafone under a decided mechanism. However if Aditya Birla Fails to level up its stake, then Vodafone will have to reduce its stake in order to

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36 Excluding IBS (in Building solution), COW (cell-sites on wheels) and MSC (mobile switching center) tower and tenancies)

37 Ibid

38 Idea Market capitalization as at 27 January 2017 (30 trading day closing VWAP of INR 72.5), being the last trading day prior to the announcement by Vodafone and Idea that they were in discussion in relation to this transaction:

equalize its ownership. Until such equalization is achieved, Vodafone's additional shares will be restricted and votes will be jointly exercised under the pre-stated terms in the shareholders' agreement.

Prior to the fulfilment of the deal, Vodafone and Idea expect to sell their standalone lowers assets and Idea's 11.15% stake in Indus Towers to cut back leverage within the combined company. Also, Vodafone will explore strategic choices for its 42% stake in Indus Towers; potential choices embody either a partial or a full disposal.

As the combined company will be jointly controlled by Vodafone and the Aditya Birla Group, Vodafone will immediately deconsolidate[39] Vodafone India. The combined company will be reported as a joint venture after the closing by Vodafone and would further lead to a decrease in the net debt of Vodafone under the equity method.

2.7 SYNERGY OPPORTUNITY

The merger of Idea and Vodafone will generate the scale to meet the consumers' fast pacing demand for data consumption and permit remarkable efficiancies. By the fourth year after completion of merger, run-rate cost and Capex Synergies are anticipated to reach INR 140 Billion on yearly basis. This is however, is equivalent to a net present value of approximately INR 700 Billion,[40] after integration costs.[41] Operating cost savings represent 60% of the expected run-rate savings.[42]

The main expected sources include:

[39] The Vodafone group's reported revenue, Ebitda, operating profit and profit before and after tax for the year ending 31 March 2017 will exclude Vodafone India, with the after tax result of Vodafone India being presented as a single line in the income Statement. All previous years financial results will be restated onto this basis.

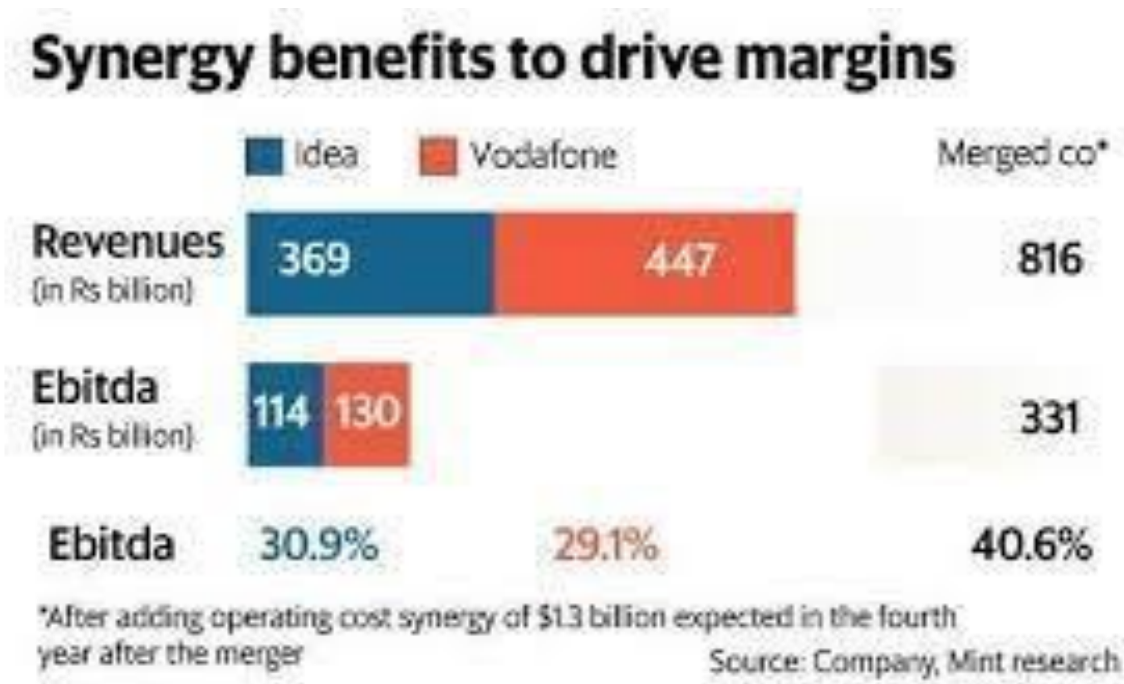
[40] Pre spectrum liberlisation payments or INR 670 Billion (US$ 10 Billion) post Spectrum liberlisation payments.

[41] Total expected integration cost and CAAPEX is expected to be approximately INR 133 Billion (US$2 Billion) from completion until the end of the fourth full year.

[42] Excluding Integration Cost

- Savings in energy costs, generating operational efficiencies, rationalizing network infrastructure and lower maintenance expenses.
- For resulting in lower Capex, higher spectrum availability and larger single Radio Access Network (RAN) deployment coupled with re-deployment of overlapping equipment from rationalised sites;
- Back office, service centres and distribution efficiencies;
- Developing a single IT system for the new company and well organising regional and nationwide IT systems; and
- Optimising general and administration costs.

Parties also predict some regulatory dis-synergies. These are exceptionally pushed by way of spectrum liberalisation payments and requirements according to regulatory spectrum caps and market share thresholds of definitive circles an year after conclusion of the transaction.



2.8 EQUALISATION MECHANISM

Under the agreed equalising mechanism, Aditya Birla Group has the right to acquire more shares from Vodafone, with an intention to equalise Parties' shareholding over the time. However, Vodafone's extra shares will be kept restricted and votes can be exercised jointly under the agreed terms, until such stated equalisation is achieved.

The parties have agreed to a stagnancy period, for first three years after completion, wherein neither party can buy shares from or sell shares to the third party. While Aditya Birla Group can avail their right and purchase a stake upto 9.5% from Vodafone in the merged entity at the Price already agreed upon so as to have an equivalent value for 100% of the merged entity after the completion.

2.9 JOINT GOVERIVANCE AND MANAGEMENT

A shareholders' agreement has been made between Vodafone and Idea and it is supposed that the merged entity's article will be altered so as to state rights for each party after the completion. Also, there would be 12 directors including 3 directors appointed by each party and 6 independent directors to constitute the Board of the merged entity. However, Idea will retain the exclusive right of appointing the Chairman that will be Mr. Kumar Mangalam Birla whereas Vodafone holds the right to appoint the Chief Finance Officer. Both these parties will together decide upon the appointment the Chief Executive Officer and Chief Operating Officer.

These roles along with the roles of broader management tearn will be affirmed before the completion wherein the sole principle of such appointments will be 'the best person for the job'. Furthermore, the Parties will be subjected to number of conditions under the agreed shareholders' agreement which includes (but however not restricted to) a party holding its shareholding above 26% in the merged entity until 31 March 2020 and above 21% thereafter.

2.10 CAPITAL STRUCTURE AND DIVIDEND POLICY

On the basis of the pro forma net debt on 31 December 2016, which was INR 1079 billion, the leverage of the combined company would have been 4.4x LTM EBITDA.[43] But leverage would have been 3.0x LTM Ebitda including the pro forma sale of Vodafone and Idea's standalone towers, Idea's 11.15% stake in Indus and the estimated run-rate Capex synergies.[44]

The merged company is expected to a self funding by the parties but are dedicated to sustain an appropriate leverage before the completion and after that, will be aided by the expected sale of standalone towers of Idea and Vodafone as well as Idea 11.15% in Indus.

There has been an agreement on the capital structure and dividend policy between the parties which is anticipated to be executed post completion of the merger. This will assure that the merged entity is properly capitalised and that excess cash flow[45] will be allotted to shareholders.

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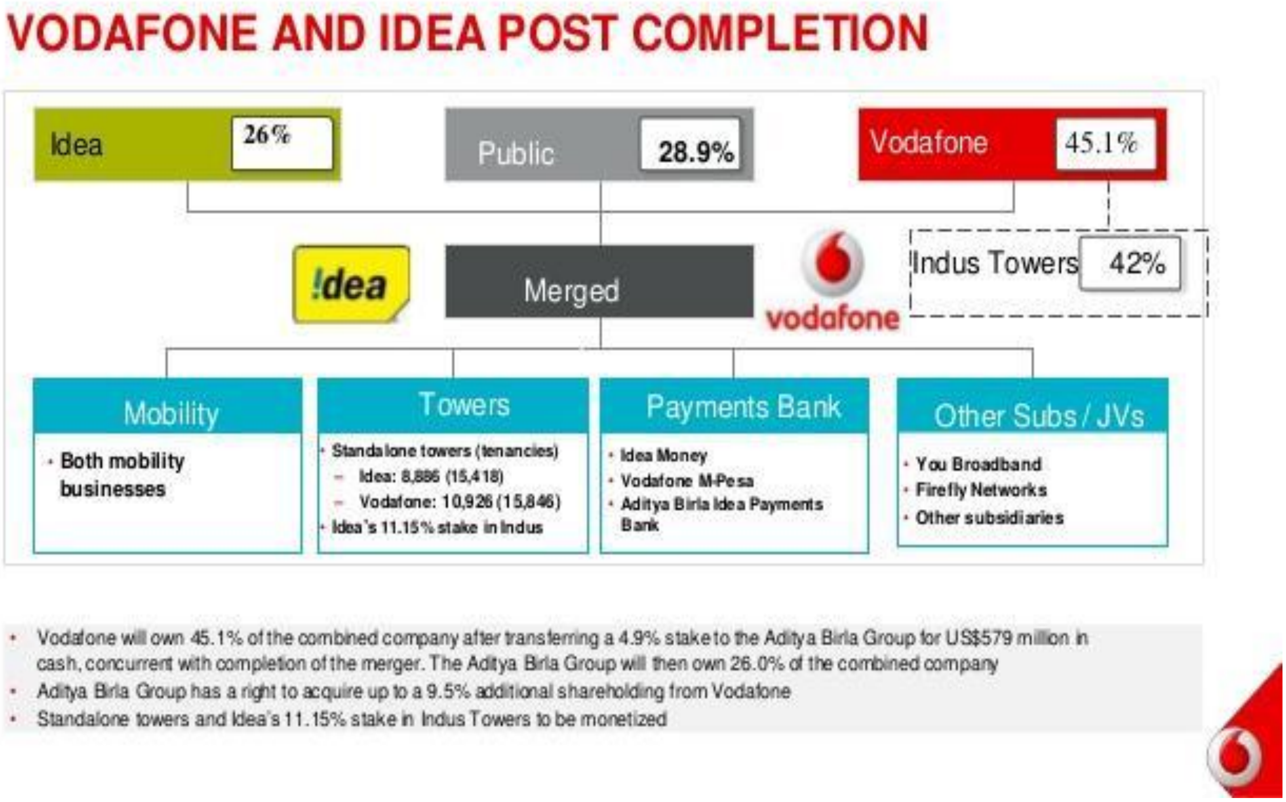
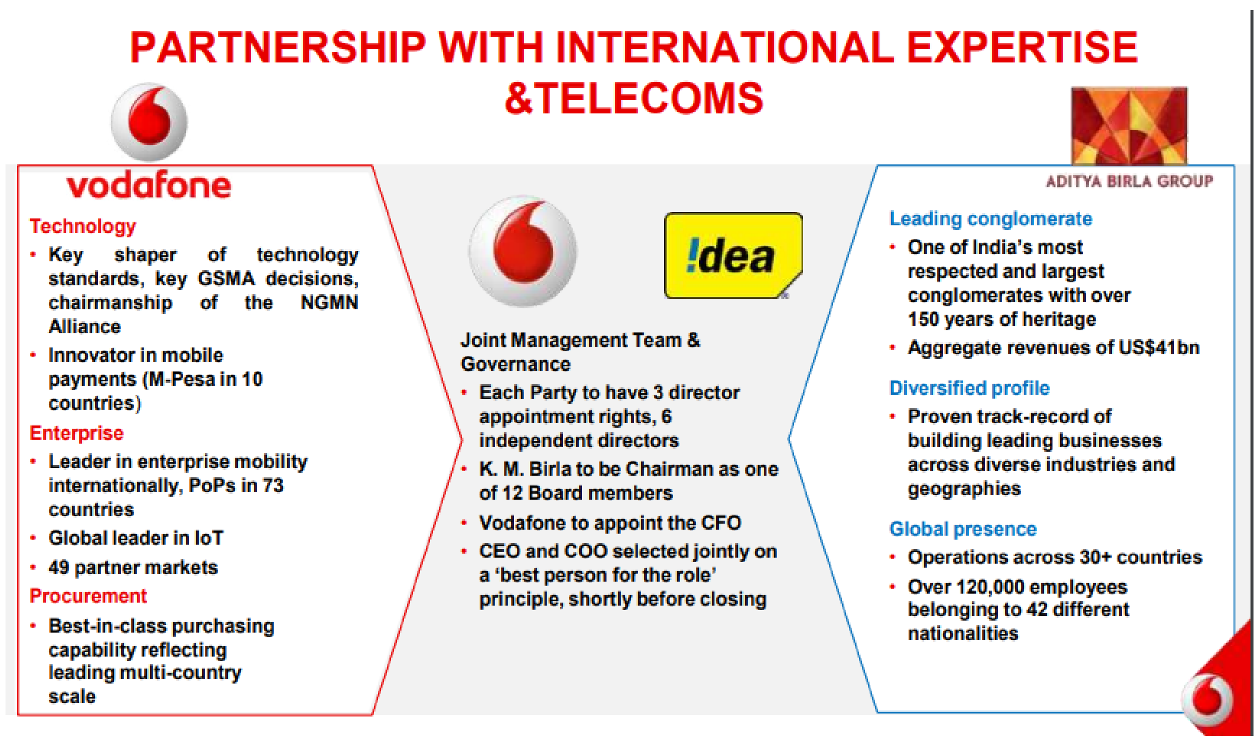
43 Based on 2 x Idea's Net debt (based on pro Forma adjustment as per transaction definition) of INR Billion (US$ 7.9 Billion) as at 31 December 2016 + INr 25 Billion (US$ 369 Million)

44 Pro-forma for the estimatd run rate opex synergies of US$ 1.3 Billion in the forth full year of the operation post completion, assuming tower assests sold at the Bharti Infratel multiple of 8.8x LTM EBITDA as at 17th March 2017 close and CGT deducted from the proceeds.

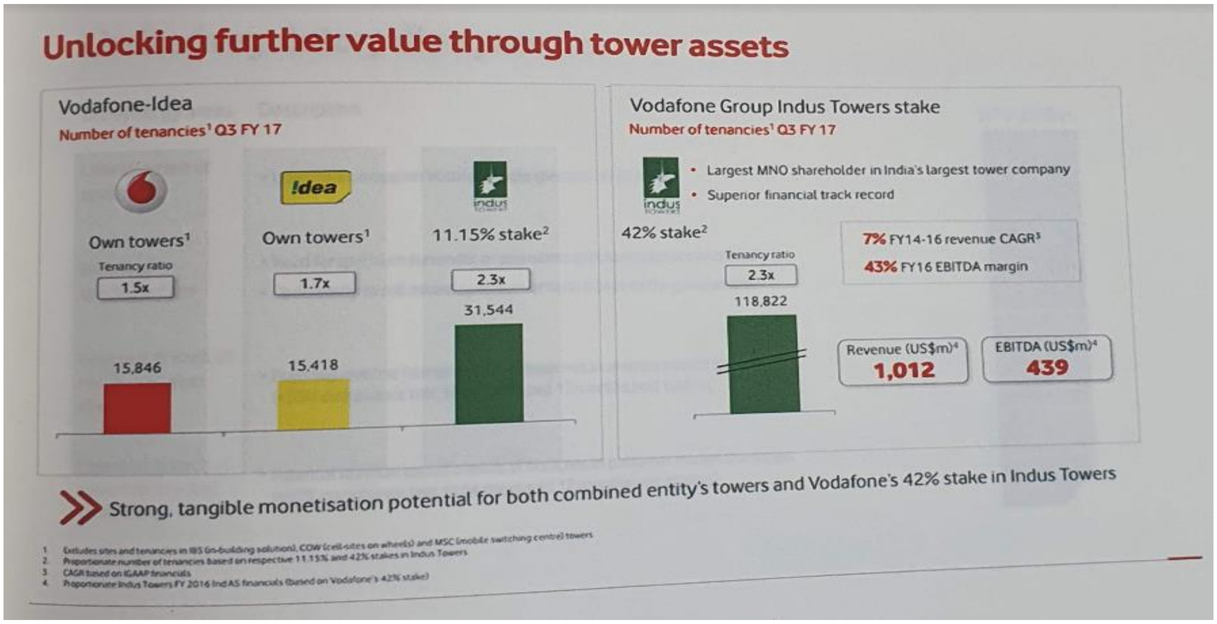
45 Excess cash flow takes into account the future capital requirement of the combined company.

(Source www.vodafone.com)





(Source www.vodafone.com)



(Source www.vodafone.com)

SUBSTANTIAL COST AND CAPEX SYNERGIES

Synergy areas	Description
Network & IT	• Rationalisation of combined site requirements (more than 20%) following network consolidation • Avoidance of duplicative 4G network expansion and upgrades, re-deployment of over-lapping equipment • Material longer-term IT savings due to scale benefits, infrastructure sharing and system combination
Customer service & customer acquisition	• Service centres, back office and distribution efficiencies • Scale efficiencies with channel and service partners
G&A and other	• Rationalisation of combined marketing costs • Streamlining of overlapping activities

~US$2.1 billion run-rate cost and capex synergies in 4th year

NPV of cost and capex synergies ~US$10.5bn

1. Includes total integration costs amounting to c. US$2 billion; excludes spectrum liberalisation costs, estimated at US$0.5 billion NPV. The NPV of cost and capex synergies after spectrum liberalisation and integration costs is US$10.0 billion

(Source www.vodafone.com)

LIMITED REGULATORY DIS-SYNERGIES

Dis-synergy areas	Description	NPV (US$m)
Liberalisation of spectrum	• Liberalisation cost on Vodafone India spectrum in 13 circles	~500
Breach of spectrum caps	• Need for spectrum surrender or sale where spectrum caps are breached • Opportunity to sell excess spectrum or hand it back to the government	<0
Potential breach of revenue market share caps	• Potential revenue loss as a result of breaches in revenue market share caps (<50% compliance test, to be measured 12 months post closing)	?
Potential breach of customer market share caps	• Potential revenue loss as a result of breaches in customer market share caps (<50% compliance test, to be measured 12 months post closing)	?

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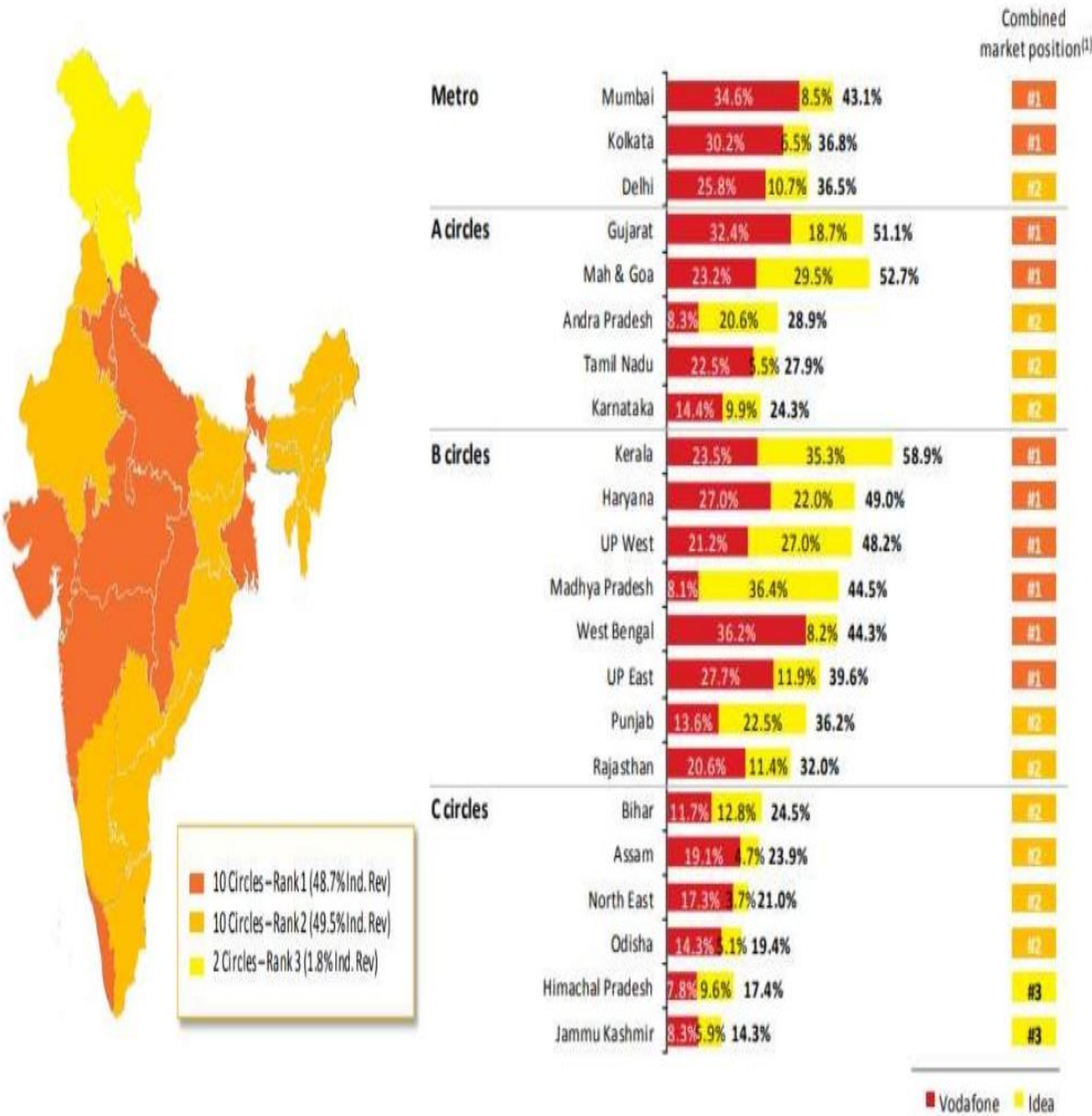
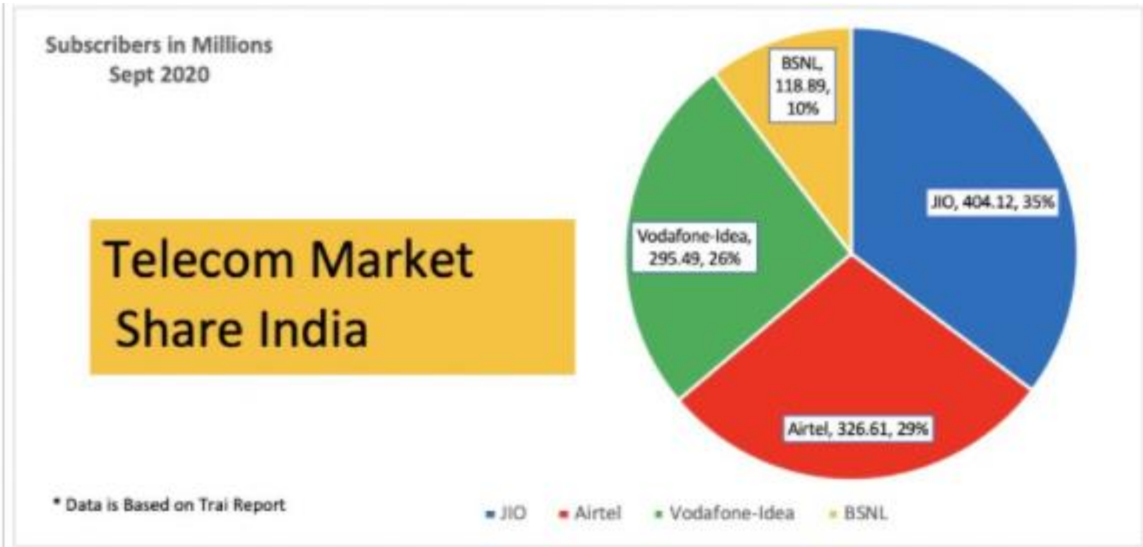
(Source www.vodafone.com)

Leadership position across India



(Source www.economictimes.com)



Telecom Subscriber Market Share Sept 2020

Operators	Subscribers in Millions	Market Share (Sep'20)
JIO	404.12	35.3%
Airtel	326.61	28.5%
Vodafone-Idea	295.49	25.8%
BSNL	118.89	10.4%
Total	1145.11	100.0%

(Source : www.livemint.com)

Thus, the merger will be the India's largest telecom merger, the consumers are expected to benefit as there would be better infrastructure, better services and better tariffs offered by the new formed entity. Merging together will have more fire to retain the consumers in spite of the strong player i.e. Reliance Jio, already dominating the market.

It has been speculated that the subscribers of both of these companies will carry on the use of their respective services without any disturbance. Moreover, once the companies are merged, the users will be migrated to the new entity in the same way as it happened when Vodafone bought Hutchison Essar. However, it also speculated that the merger would create a mess reading the price war as Reliance Jio would try to snatch more consumers and Vodafone-Idea

will dig in to retain their subscribers. It has been stated by the Vodafone CEO, Vittorio Coloa, that “We are complimentary; Idea is strong where Vodafone is weaker. Vodafone is strong where Idea is weaker.”[46]

Though the current merger seems beneficial and promising yet the whole thing depends on the approvals from various regulatory authorities in order to complete the merger.

[46] Idea Vodafone Merger whats in it for he Customer. The Hindustan times, (20 March 2017)

CHAPTER 3
THE COMPETITION ASPECT

Beyond a definite threshold, Mergers & Acquisitions need approval from the Competition Commission of India (CCI). This is necessary so as to keep a track on unfair business practices across the sectors. The merger between Vodafone and Idea is expected to create nation's largest mobile phone operator which would worth more than $23 billion and would amount to 35% market share.

As already discussed in the previous chapter, Vodafone will own 45.1% whereas Idea will hold 26% stake in the merged entity and further will pay INR 3874 crore cash for 4.9% shareholding. Also, the rest 28.8% will be owned by other shareholders.

Parties are involved in telecommunication services in telecom circles all over India. In pursuance of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 Combination Regulation, Parties were required to file certain documents with the commission. And due to the product overlaps between the parties, a competition assessment was made by the Commission under the following segments:

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);
ix. Mobile wallet services.

3.1 RETAIL MOBILE TELEPHONY SERVICES

The commission, while understanding with its decisional exercise, discovered that retail mobile communication administrations can be classified on the premise of different criteria based on type of service, client and access equipment. But considering the fact that the said merger is not likely to result in substantial adverse outcome on competition, for the reasons stated under the following paragraphs, accurate delineation of the significant product market is left open.

According to Section 20(4) of the Competition Act[47], the assessment is made on the following terms

a) Concentration Analysis: The Commission considered the issue of market shares and concentration which is also dealt under the guidelines for transfer/merger of service licenses on compromises, arrangements and amalgamation of companies. These guidelines are released in 2014 by Ministry of Communications and Information Technology, Government of India (also known as DoT Merger Guidelines). As per these guidelines, any merger which results in its market shares exceeding 50% in any service sector, its consequent company will have to decrease its market shares within a

[47] Section 20- Inquiry into combination by Commission: (4) For the purposes of determining whether a combination would have the effect of or is likely to have an appreciable adverse effect on competition in the relevant market, the Commission shall have due regard to all or any of the following factors, namely:
(a) actual and potential level of competition through imports in the market power
(b) extent of barriers to entry into the market: (c) level of combination in the market; (d) degree of countervailing in the market;
(e) likelihood that the combination would result in the parties to the combination being able to significantly sustainably increase prices or profit margins;
(f) extent of effective competition likely to sustain in a market; and
(g) extent to which substitutes are available or are likely to be available in the market;
(h) market share, in the relevant market, of the persons or enterprise in a combination, individually and as combination; a
(i) likelihood that the combination would result in the removal of a vigorous and effective competitor or competitors in the market; (j) nature and extent of vertical integration in the market;
(k) possibility of a failing business;
(1) nature and extent of innovation: (m) relative advantage, by way of the contribution to the economic development, by any combination having or likely to have appreciable adverse effect on competition; (n) whether the benefits of the combination outweigh the adverse impact of the combination, if any.

year from the date of such approval of the merger to 50%. The Commission further observed in regards to the holding of spectrum by TSP that, under the licensed service area, spectrum holding is subjected to 25% cap out of the total assigned and 50% in a specific bond of the assigned spectrum. The parties have agreed that they would abide by the Market Share Cap and Spectrum Cap. However, the Commission in this regard noted that that assessment would be based on factors stated under Section 20(4) of the Act, independent of these guidelines.

According to the first step of the assessment of the stated merger, the level of concentration in every market and the impact of the merger on the same will be examined by the Commission. In this regard, it was observed by the Commission that as per the market share estimates provided by the parties, in each telecom circle based on different relevant competitive metrics which includes overall quantum of spectrum, total number of subscribers, gross revenue, net subscriber additions, gross revenue adjusted for revenue of JIO (Reliance Jio Infocomm Limited).[48]

On the estimates drawn on the various market shares, the parties stated that the competitor's actual competitive impact in the market can be calculated on the basis of net subscriber additions during 2016-17.

Most of such estimates did not came to be as reflecting on the competitive constraints, which are exercised by different TSPS on each other, due to the promotional offer by Jio in 2016-17. Thus, the Commission concluded that such estimates are mainly built on (i) gross revenue of FY 2016-17and (ii) quantum of spectrum are, therefore, better competitive constraints reflective.

[48] Since Jio did not report revenue during initial years the parties estimated Jio's revenue using average ARPU

The following table shows the position of the parties in different telecom circles:

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]

Table 1 : Revenue based market shares of parties[49]

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

In the next step, the impact of the merger was examined by the Commission on the concentration level as on incremental HHI. This examination covered 14 telecom circles in which the joint market share is expected to more than 30%. Furthermore, it was observed by the Commission that there has been a significant change i HHI with respect to all 14 circles, starting from Andhra Pradesh around 400 to Kerala around 1500. Thus, based on the above stated, the said merger would probably result in

[49] Competition Commission of India, Notice Order , (3rd October 2017)

compounded market share along with substantial change in concentration of 14 out of 22 telecom circles viz. Andhra Pradesh, Gujarat, Delhi, Kolkata, Madhya Pradesh, Kerala, Maharashtra, Mumbai, Uttar Pradesh (E), Uttar Pradesh (W), West Bengal, Rajasthan, Haryana and Punjab. It was also taken in account, by the Commission, that the combined entity's spectrum holding may surpass spectrum caps in the telecom circles of Haryana, Gujarat, Kerala and Maharashtra in terms of total spectrum assigned. However, on the basis of spectrum holding examination for various TSPS, spectrum looks fairly spread over to all such TSPS.

b) EXAMINATION OF COMPETITVE CONTRAINTS POST THE MERGER

One of the major impacts of the stated merger also relies upon the parties' position in terms of closeness of competition. For this purpose, the parties were directed by the Commission to share the mobile number portability data. On the basis of the data provided, the Commission observed that in 10 out of 14 telecom circles, parties seems to be a close competitor i.e. in state of Haryana, Uttar Pradesh (East), Uttar Pradesh (W), Gujarat, Punjab, West Bengal, Andhra Pradesh, Kerala, Mumbai and Maharashtra.

c) BUYER POWER

The Commission noted that as submitted by the parties, a comparison of the mobile subscriber base as per TRAI (Telecom Regulatory Authority of India) and the stimulated number of unique mobile users in India by GSM Association indicates that approximately 2/3rd of customers tend to have multiple SIMS (known as multi-SIMing).[50] Therefore, it becomes very easy for the customers to change a primary SIM to a secondary one and vice versa, when there be any fluctuation in price by one of the SIM providers, by changing the usage of the SIM in their mobile phones.

50 https://www.gsma.com/mobileeconomy/india (28 April, 2018)

Also, due to the MNP Regulations 2009 (Mobile number Portability Regulations), subscribers now have the option of switching their primary service provider easily (either with minimal chargers or no charge) while keeping their existing mobile number. As per the TRAI subscriber report (as on 31.12.2016), this facility (MNP) has been used by more than 254 million subscribers.

Such easy switching options make sure that the competition in prices sustains to retain the consumers. Moreover, the competitive restraints can be seen from the buyer's side as well which reflects the churn rates for the mobile services in general and in particular with the parties. But these churn rates are only considered for the pre-paid segment and not the post paid segment as this accounts for an unimportant part of the overall Indian retail mobile telephony services market. The Commission also observed that the churn rates at the Pan India level exceeds 60% and is higher than 50% in majority telecom circles. These rates add up to a rapid turnover of the consumer base which points out to the customer preferences and easy way to switch. Hence, these factors levy an additional competitive restraint on the TSPS. Such substantial churn is visible of the restraints from the buyer's side apart from those posed by multi-SIMing and portability. Thus, in opinion of the Commission, there is substantive restraint on the TSPs in the mobile retail telephony services market from the buyer's side.[51]

d) EXTENT OF COMPETITION TO BE MAINTAINED AFTER THE MERGER

After the said merger, the retail mobile telephony services market will have minimum five private TSPS in all telecom circles i.e. Bharti Airtel (which will include Telenor), RCOM & Aircel, Jio, Tata and the merged company and State owned TSP i.e. BSNL/MTNL. The Commission also examined the resources and the size of these

[51] Competition Commission of India, Notice Order, (3rd October 2017)

competitors and further opined that all these competitors are in a position to have adequate competitive restraints on the merged company and will be likely to extinguish any appreciable adverse effect on the competition which would result from the said merger.

e) LEVEL OF COMBINATION IN MARKET

The Commission remarked the submissions made by the parties wherein they stated that the market in undergoing and observing a hike in number of subscribers and considerably high data usage. A sharp increment has been observed in mobile broadband users and a multi fold expansion of per user data consumption, which requires considerable amount of investments by the operators to build strong coverage, data capacities and quality. However, by opposing the above view, currently the industry is facing decline in revenues and margins and high cumulative debt.

Considering the above stated, the Commission noted some efficiencies which result from the stated merger, including consolidation of spectrum holdings, decrease in overlapping national infrastructure, de-duplication of fresh equipment, etc. however, understanding the fact that the industry is observing a stage of consolidation, it becomes significant to also evaluate the effect of decrease in number of competitors. Thus, the Commission has concluded that the decrease in the number of competitors, at this point in mobile telephony markets, is not probably to have any adverse effect on competition.

The Commission has opined, on the basis of total factors exclusively depending upon the buyer power and extent of competition which is probable to stay post merger, that irrespective the effect of rising concentration in some telecom circles, the said merger is likely not to have any adverse effect o the competition in the market for retail mobile telephony services or any such segments in any of its telecom circles in India.

3.2 ENTERPRISE SERVICES

Enterprise services are services related to retail business communication. They are offered by and to institutions/ corporates and businesses. Offerings in present context is a wide category of services which subsumes fixed voice, fixed data, converged communications, Internet of Things offerings 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.

From the above-mentioned business services, Parties have few segments of overlapping activities viz., (i) Toll Free Services; (ii) MPLS/VPN; (iii) NPLC; (iv) ILL; (v) Audio Conferencing; and (vi) Location Tracking.

The enterprises services market is examined by the Commission as a whole and segments constituting part of enterprise services. It was observed by the Commission that the Idea have insignificant presence in the overall enterprise services segment or any of its sub-segments. Subsequently, the Combination Proposed is unlikely to notably change the level of concentration or account for any appreciable adverse effect on competition in India in the market for enterprise services.

3.3 ISP SERVICES

An Internet Service Provider is the term used for a company which is able to facilitate its customers with avenue to the Internet, generally from a computer. ISPS use fibre-optics, satellite, copper wire, etc. to provide internet access to its customers. In India, there are major TSPs and wireline service providers included in ISPS, who have either an ISP license or a Unified License with ISP authorization.

The Commission noted that both Idea and Vodafone are amongst smaller companies engaged in providing ISP Services. An estimated 4 percent combined market share of both the parties, 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. Subsequently, the Combination Proposed is unlikely to notably change the level of concentration or account for any appreciable adverse effect on competition in India in the market for ISP Services.

3.4 NLD Services

The National Long Distance Licence agreement defines National Long Distance as "... *the carriage and delivery of switched bearer telecommunication service over a long distance ,a network connecting different Short Distance Charging Areas (SDCAS)*". These network i.e.,. services are e mostly meant for captive consumption because most of the mobile service operators use their own National Long Distance services.

The National Long Distance services customers include (a) different telecom operators to connect their customers either: (i) to the internet (for data) or to other customers (for voice and 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.

The Commission noted that the market share of both the Parties combined in India would be approx 23 percent with Idea and Vodafone's respective share being 10 percent and 13 percent. The Merged Entity would continue to face significant competitive constraints from other competitors such as (i) Airtel (including Telenor India), with a market share of around 30 percent and is the biggest player in this sector; (ii) BSNL, with a market share of around 17 percent; (iii) RCOM-Aircel with a market share of around 15 percent and others.

In addition, the study of the Combination Proposed in terms of the impact on competition in the market for National Long Distance Services in India, the Commission also inquired whether the Merged Entity would have incentive or ability to foreclose the market at circle level. With respect to this, the Commission observed that there are around 29 active providers of National Long Distance 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. Therefore, the Commission noted that the Merged Entity is not likely to have incentive or ability to foreclose the market. Commission also observed that the Combination Proposed will not materially restrict the choices available to consumers for the provision of National Long Distance 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 National Long Distance Services in India.

3.5 ILD SERVICES

International Long Distance as per the ILD License agreement (ILD License) 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.

The Commission has also observed that the market share of the Merged Entity in India would be around 18 percent and therefore 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-Aircel, with a market share of around 17 percent;
(iii) Tata with a market share of around 9 percent and others.

The analysis of the Combination Proposed, in terms of impact on competition in the market for International Long Distance Services in India, the Commission has also examined whether the Merged Entity would have incentive or the ability to foreclose the market at circle level. With respect to this, the Commission observed that there are at least 8 ILD operators in every circle. It also noted that, there are no long term contracts for provision of ILD Services. The Commission, therefore, observed that the Merged Entity is not likely to have incentive or the ability to foreclose the market and that the Combination Proposed will not restrict the choices available to 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.

3.6 PROVISION OF PASSIVE INFRASTRUCTURE SERVICES THROUGH TELECOM TOWERS

For operation of service providers' networks, passive infrastructure is required for the retail mobile services. Provisions of telecoms towers are an integral component of passive infrastructure as, on these towers, telecoms operators install telecoms active infrastructure (e.g., antennae, radio access network and transmission systems). There are tower operators, who, 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.

The standalone tower networks owned by both the companies individually are used to operate their own networks and also to host third party TSPs. Further, both Idea and Vodafone hold 11.15 percent and 42 percent respectively in Indus Towers, a joint venture inter alia between entities of Idea, Bharti Infratel Limited and Vodafone India.

However, for these standalone tower networks, it has been submitted by the parties that prior to completion of the Combination Proposed, the Parties in their individual capacity intend to investigate 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, Vodafone India Limited will dispose its 42 percent stake in Indus Towers. The Proposed Combination has been assessed accordingly.

The Commission noted that both Vodafone and Idea don't have compelling presence in the market with their combined market share being less than 5 percent in terms of number of standalone towers and/or number of tenancies.

The Idea's share in tenancies/standalone towers of Indus Towers also does not change the assessment significantly. Considering the distinctive specificities of the telecom industry and scope of operations of the Parties, the Commission is of the opinion that the Combination Proposed is unlikely to have an appreciable adverse effect in the market for provision of passive infrastructure services through telecom towers in India.

3.7 PROVISION OF PASSIVE INFRASTRUCTURE SERVICES OVER FIBRE OPTIC NETWORK (BACKHAUL)

TSPS require physical connectivity to connect radio base stations attached to towers to their core networks which is provided by Backhaul. This enables customers' data and voice traffic to be handled appropriately. Based on the capacity requirements, various forms of backhaul (fibre being one of them) are used. By backhaul agreements, TSPS can secure dark fibre in shared network, which is required to create capacity bandwidth. Fibre backhaul capacity holders provide wholesale end-to-end connectivity to their networks, including managed services like fault monitoring and repair services, to TSPs, who operate their network using this infrastructure.

The Commission noted 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 studied the market share of the Parties in terms of length of fibre network owned by the TSPS and non TSPS like RailTel and Powergrid. The Commission is of the opinion that the market share of both the Parties combined is likely to be around 15 percent and therefore, the Merged Entity will continue to have competitive constraints from TSPs like Jio, BSNL, Airtel, etc. Considering the distinctive specificities of the telecom industry and scope of operations of the Parties, the Commission is of the opinion that the Combination Proposed is unlikely to have an appreciable adverse effect in the market for provision of passive infrastructure services through telecom towers in India.

3.8 ICR SERVICES

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 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.

As established, ICR agreements are mutually negotiable between the TSPS. The Commission noted 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 Combination Proposed is unlikely to cause any appreciable adverse effect on competition in the market for provision of ICR Services.

3.9 MOBILE WALLET SERVICES

The Commission noted that Idea through its Idea Money - a pre-paid wallet and mobile money account is active in the market for mobile wallet services in India. Whereas, Vodafone India also through its M-Pesa service is active in the market for retail wallet services in India, which was launched in 2012 in partnership with ICICI Bank Limited.

The Commission recognized that the Parties do not have notable presence in the mobile wallet services market and that the market is distinguished by the presence of other compelling competitors such as Oxigen, PayTM, Mobikwik, Airtel Money, etc.

Based on the aforesaid, the Combination Proposed is unlikely to cause appreciable adverse effect on competition in the market for provision of mobile wallet services in India.

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 view that the Combination Proposed is unlikely 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.

3.10 Mergers and Acquisitions Research Paradigms

There are different panoramas to the study, where on one hand, recognized financial economics and strategic management as two major areas of research in M&A's for discovering sources of shareholders' wealth[52], Larsson and Finkelstein (1999) on the other hand, gave an elaborated classification of M&A research areas namely; finance & economic, strategy, human resource management and organizational behavior [143]. As mentioned above, the focus of this study is on the two motives for mergers and acquisitions i.e. Strategic and Economic & Financial motives.

a) *Strategic Motives*

Various researchers characterized the vital measure for undertaking M&A exercises as a wellspring of corporate development and enhancement, essentially complementing variables that are limited by the administration, for example, expansion systems (related versus unrelated diversification) as a focal figure determining the post-M&A performance. They additionally consider the distinguishing proof of contrasts between types of merger (horizontal, vertical & conglomerate) and sorts of payment technique (cash versus stock). The run of the mill factors utilized for measuring the performance are size, pre-M&A profitability and growth. Marks and Mirvis (2001) expressed that the issue of estimation is the significant explanation behind clash finding in the investigations of M&A's.[53]

b) *Economic and Financial Motives*

The economic and financial point of view of undertaking M&A is mainly concerned with the efficiency impact of M&A on the economy through market power and

[52] Datta, D.K., Pinches, G.E., and Narayanan, V.K., "Factors influencing wealth creation from Mergers and Acquisitions: A meta-analysis", Strategic Management Journal, vol. 13, pp. 67-84, 1992

[53] Marks, L. M., & Mirvis, P. H., "Making mergers and acquisitions work: Strategic and psychological preparation", Academy of Management Executive, vol. 15, no. 2, pp. 80-93, 2001.

economies of scale with real noticeable quality on 'market for corporate control'. The debate of 'market for corporate control view' is the economic value produced from M&A activities that are decided by market characteristics and its competitiveness. The researchers here evaluate the performance of M&A's with both accounting-study methodology (by using accounting ratios) and event-study methodology (by studying changes in stock prices that occur due to M&A announcements).

Merger & Acquisition Waves

The history of M&A's indicates that many merger movements occurred in the United States of America (USA), and every such movement was dominated by mergers of a particular type. Some key observations of the merger movement of the merger waves indicate

• Merger movements often occur when the economy experiences sustained high rates of growth, as this manifests favorable business prospects.

• These movements correspond with the developments in the business environment.

• The waves occur when the firms react to new investment and profit opportunities arising out of transformations in economic conditions and technology innovations.

• They often result in proficient resource allocation, reallocation processes and efficient resource utilization.

• M&A's have become a global phenomenon and are no longer restricted in the U.S.

• A new trend that is being observed is the increase of acquirers' from emerging markets.

• Research demonstrates that merger waves result from a mix of financial, administrative and innovative stuns (Mitchell and Mulherin, 1996).[54] Economic shocks deal with economic expansion that motivates companies to expand to meet the ever-growing demand. Regulatory shocks arise when regulatory barriers are eliminated,

[54] "The Impact of Industry Shocks on Takeover and Restructuring Activity", Journal of Finance, vol. 41, no. 2, pp. 193-229, 1996.

paving the way for corporate communication. Technological shocks signify changes in technology that not only change the existing industries but also create new ones.

In the purview of these factors, understanding the history of M&A's becomes crucial. A few research studies have centered upon M&A movement and have recognized times of expanded action, which is alluded to as "merger waves". As per Lipton (2006) mergers developed toward the end of the nineteenth century in the US and from that point forward, they have occurred in waves. Every wave is described by a kind of merger and particular industries. Mergers & Acquisitions occurred in waves. Martynova and Renneboog (2008) reviewed a century of transactions and identified six major waves of M&A's.[55] The 1890's and mid 1900's witnessed the very first wave of M&A's. Organizations in the United States attempted to build monopolies in their respective industries by framing trusts – in center, an extreme type of Horizontal Mergers. It is trusted that the wave was created by a monetary misery and the improvement of trading in industrial securities on the New York Stock Exchange (NYSE). The primary objective for taking part in M&A movement amid the 1890's was to combine industrial production and to decrease rivalry among organizations. This is the reason most combinations amid the 1890's were described by key M&A's with a specific end goal to achieve operating synergies. The First Wave was one of major horizontal mergers, creating the principal steel, telephone, oil, mining, railroad and other giants of the manufacturing and transportation industries in the United States (US). This wave ended due to the start of World War I.

In the late 1910's and amid the late 1920's, the second influx of M&A movement showed up. The M&A in this period were the aftereffect of a countermove to the monopolistic structures that was made by the primary wave. After the legislature laws precluding anticompetitive conduct, acquisition focused organizations turned their attention for Vertical Mergers as a method for development. Accordingly, the main

55 , "A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand? (Previous title: The History of M&A Activity Around the World: A Survey of Literature)", Journal of Banking and Finance, ECGI – Finance Working Paper No. 97/2005, 2008

alternative organizations had for development was through vertical extension, thus this wave has turned out to be known for its production of oligopolistic structures. Amid the second wave organizations occupied with vertical M&A's keeping in mind the end goal to acquire a fortified production network. This Second Wave saw the ascent of significant automobile manufacturers, for example, Ford and FIAT. The second rush of M&A action arrived at an end in the late 1920s, brought about by the Stock Market fall of 1929 and the Great Depression of the 1930s.

The Mergers and Acquisitions waves: The evolution of M&A[56]

Table 2.1: The Mergers and Acquisitions waves: The evolution of M&A

Waves	Period	Aspects
First Wave	1893-1904	Horizontal Mergers
Second Wave	1919-1929	Vertical Mergers
Third Wave	1955-1970	Diversified Conglomerate Mergers
Fourth wave	1974-1989	Co-generic Mergers, Hostile Takeovers, Corporate Raiders
Fifth Wave	1993-2000	Cross Border, Mega Mergers
Sixth Wave	2003-2008	Globalization, Private Equity, Shareholder Activism

Source: KPMG

The third M&A wave is said to take off amid the 1950s and arrive at an end in 1970 subsequently due to the oil crisis and recession following the crisis. The wave was one of extension and enhancement, where US corporate administration was fixated on entering new markets. This pattern prompted to the creation of conglomerates and holding organizations were composed of many unrelated businesses (Ferris & Petitt, 2013). Organizations tried to diversify from competitors, and taking part in Conglomerate Mergers was the principle decision, since stricter antitrust directions amid the 1960s regularly hindered for mergers inside a similar line of business. This third influx of the M&A spiked in 1968 and clasped with the oil crisis in 1970's.

[56] Source: KPMG

The fourth M&A wave took off in the 1970's till late 1990's. Amid the fourth wave the organizations began refocusing on center business goals and also started to pay special attention to the benefits obtained internally and by not attempting to diversify. Furthermore, the fourth wave saw another pattern in unfriendly bidders, who were constantly intrigued by picking off slower, less effective firms.

To remain profitable, many organizations looked for approaches to decrease both working and financing costs. Many organizations merged with or acquire each other to exploit the economies of scale connected with large-volume producers. In addition, a few organizations considered M&A's to be a way to lessen their danger and diminish their financing costs. The accessibility of credit to finance highly risky companies and transactions fueled an increase in Leveraged Buyouts (LBOs) and leveraged recapitalizations. A few organizations that had purchased unrelated businesses amid the past wave even exploited the booming M&A market to offer their unsuccessfully performing divisions and refocus on their core organizations. The most influenced businesses of this wave were the Banking and Financial Services. Stock markets crash of 1987 and the tumble down of highly leveraged companies stopped the fourth wave of M&A's.

The 1990's paved the way for the fifth wave of M&A's. It was the era of the 'mega deals'. This era emphasized for larger economies of scale and created multinational conglomerates of extraordinary sizes, under the assumption that competitive advantage can be achieved through size. Most of the M&A's conducted during the fifth wave were Cross-Border deals. With the development of the worldwide economy, many organizations considered M&A's to be the speediest and least costly method for acquiring a presence in an outside nation and safeguarding their place in the worldwide economy. This pattern was to a great extent driven by the advancement of multination trade zones, for example, the European Union (E.U.) and the North Atlantic Free Trade Agreement (NAFTA). Mitchell and Mulherin (1996) stated that the key factors facilitating this wave were market deregulation and privatization.[57] affirm that another important factor facilitating this wave was the technology shock of the internet revolution. The most remarkable mergers of this wave were centralized in the Banking & Financial Services, Telecommunications, Entertainment, Media and Technology sectors. The fifth wave of M&A movement finished in 2000 as a result of a downturn in equity market that year.

The sixth wave of M&A started in 2003. The Sixth Wave saw the introduction of globalization, as established companies emphasized the need to create a multinational reach. Private Equity boomed as shareholders looked to spread ownership of their companies between themselves and institutional investors. This wave saw the continuation of the two trends initiated in the 1990's i.e. cross-border acquisitions and industry consolidations. The low-intrigue environment combined with the apparently unending credit accessibility fuelled an expansion in Leveraged Buyout, many supported by private value firms. Financial specialists went looking for expansion benefits and higher yields. As they emptied cash into new resource classes, for example, private equity, a lot of assets got to be distinctly accessible to take organizations private and buy divisions available to be purchased. This sixth wave of M&A's arrived at a sudden end after the subprime debt crisis of 2007.

Finally, from 2002 to these days an extensive increment of mammoth mergers has been watched worldwide in the Telecommunications business once more. As of recently, the turmoil of the credit market in the US and the unsteadiness in the overall securities markets has not interfered with this wave of mergers.[58]

In 2014, however optimism seemed to have returned in the market. The value of M&A's globally reached 1.75 trillion U.S. dollars in the first six months of the year, an

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[57] "The Impact of Industry Shocks on Takeover and Restructuring Activity", Journal of Finance, vol. 41, no. 2, pp. 193-229, 1996.

[58] "Mergers and Acquisitions Motives", University of Crete (contract n.MTKD-CT014288) Marie Curie Transfer of Knowledge-EU's 6th F.P., 2007

increase of 75% over the same period last year and the largest volume of transactions since 2007. The business environment after the 2008 crisis, characterized by risk aversion and a focus on organic growth by firms was dispersing. Since this is an era of instability in terms of market growth and the firms are starting to understand that this instability in the markets is the new trend. Therefore, in such an environment, it will not be feasible to rely only on organic growth and cost cutting to produce consistent financial results. Managers, once again believe that it is easier to buy growth than building it. And thus, the seventh wave of M&A's is likely to occur.

Mergers and Acquisitions: Worldwide

Worldwide M&A is a standout amongst most happening and an essential component of corporate procedure in this day and age. Many organizations around the globe have merged with each other with a rationale to extend their organizations and lift their revenues. In the couple of years there are many organizations meeting up for development over the globe. Indeed, even in India merger and acquisition has turned into a pattern today with a relentless rivalry in the global market. There are domestic deals like Penta homes gaining Agro Dutch Industries, ACC acquiring Encore Cement and Addictive, Dalmia Cement assuming control over Orissa Cement, Edelweiss Capital procuring Anagram Capital. The statistic shows the value of mergers and acquisitions (M&A) worldwide from 2010 to 2015. In 2014, the value of global M&A deals amounted to 4.81 trillion U.S. dollars.[59] In 2015, companies announced over 44'000 transactions with a total value of more than 4.5 trillion USD (4.1 trillion USD/2.9 trillion GBP).

Compared to 2014, the numbers of deals grew only marginally by 2.7% while the value rose at 16%.

[59] Statista, The Statistics portal, 2015, https://www.statista.com/statistics/267369/volume-ofmergers-and-acquisitions-worldwide

Figure 2.8: M&A Activity: Number & Value of Announced Transactions [118]
Source: Thomson Financial, Institute of Mergers, Acquisitions and Alliances (IMAA) analysis

M&A Activity: Number & Value of Announced Transactions

Total volume of mergers and acquisitions worldwide

M&A is an essential branch of corporate strategy which manages the joining, purchasing and selling of organizations with the point of advancing the development of the undertaking in its individual sector. The consolidating of a smaller organization with a bigger organization can increment monetary power and piece of the overall industry permitting the recently shaped organization to additionally create and extend inside its particular sector. The lines between "mergers" and "acquisitions" have become obscured and the terms are frequently used reciprocally, in spite of the fact that they allude to various things. Merger and acquisition patterns are believed to influence an economy's product market, currency market and work showcase. Worldwide markets are additionally significantly impacted by the M&A patterns. The value of worldwide M&A amounted to US$3.5 trillion during the year 2014, a 47% raise from comparable 2013 levels and the firmest annual period for worldwide deal making since 2007. Ninety-five deals with a value greater than $5 billion were announced in the year 2014, which was more than double the value and number of large-cap deals announced throughout 2013. Over 40,400 worldwide deals were announced in the year 2014, a 6% increase compared to the year 2013. M&A's in the fourth quarter of 2014, summed up to US$922.5 billion, a 7% increase from the third quarter of the year and the strongest concluding quarter for deal making since the fourth quarter of 2006. M&A activity for European targets amounted to US$869.8 billion in the year 2014, a boost of 55% compared to the level of activity seen all through the year 2013. Asia Pacific M&A showed the stiffest annual period for deal making in the region since records began in 1980 with US$716.2 billion announced deals in the year 2014. Cross-Border M&A activity summed up to US$1.3 trillion in the year 2014, accounting for 37% of overall M&A volume and a 78% increase over the year 2013. Cross-border M&A in 2013 accounted for 31% of total M&A's.[60]

Background of Mergers and Acquisitions in India

Historically, the foreign investment policy of the Indian government (during the period from 1950 to 1990) consisted of very rigid foreign exchange controls and regulations, a bar on free trade and control of the flow of funds to a very large degree. Be that as it may, the idea of M&A in India was not prominent until the year 1988. Amid that period a little rate of organizations in the nation used to come together, for the most part into a cordial acquisition with a negotiated arrangement. The key element adding to fewer organizations involved in the merger is the administrative and prohibitory provisions of MRTP Act, 1969. As indicated by this Act, an organization needed to take a pressurized and troublesome method to get approval for a merger or an acquisition. The year 1988, saw one of the most seasoned business acquisitions or mergers in India. It was the notable inadequate hostile takeover offer by Swaraj Paul to over power DCM Ltd. and Escorts Ltd.

The year 1991 then, saw a critical revolution and move in the government policy with the introduction of the New Industrial Policy, 1991 which paved the way for economic advancement in India. The government loose different regulations, controls and directions

60 Thomson Reuters Report

permitting trade and business to succeed resulting in a solid and dynamic economy. In India, the concept of M&A was initiated by the government bodies. The Indian economic reform since 1991 has opened up a whole lot of challenges both in the domestic and international domain. In recent years, India has seen a multiple growth in mergers and amalgamations, largely encouraged by liberalization measures, which have substantially relaxed restrictions on international mergers and amalgamation transactions.[61]

There were three distinctive trends seen in the Mergers & Acquisitions activities in India following the reforms in 1991. In the first trend, there was a vivid investment activity, a wave of consolidation within the Indian industry as the companies tried to get ready for the possible aggressive competition in domestic and foreign markets, via M&A's, to achieve economies of scale & scope. In the second course, which became evident in 1995, there was increased action in consolidation of subsidiaries by multinational companies which were operating in India, accompanied by the entry of numerous multinational companies into Indian markets, through the way of acquisitions of firms in the Indian Market, with liberalized norms in exchange for foreign direct investments (FDI). The third wave of M&A in India, evident since 2002, was Indian companies started venturing abroad and making acquisitions deals in developed and developing economies, in order to gain entry into the international markets.

Thus, Indian companies concentrated on capital & business restructuring. There was consolidation in the steel, cement and telecom industries. It was then that India saw the emergence of new sectors like telecom, information technology and the rapid growth of service sectors like hospitality, retail, banking and entertainment. The liberalization in India also led to the growth of the financial system in India. The opening up of the financial sector, vast cash reserves with great profits and also enhanced competitiveness in the global markets, further gave confidence to large Indian companies to venture overseas for market expansion. Rising economic growth and decreasing interest rates made the financing of such deals a lot cheaper. Changes in regulations made by the finance ministry in India concerning with foreign

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61 Mahesh Chamarty, 13th June, 2012, 'Globalisation and its Impact on Mergers and Acquisition in India – A Legal Study', http://maheshchamarty.blogspot.in/2012/06/globalisationand-its-impact-on-mergers.html

investments by Indian companies made it easier for the companies to acquire in foreign markets. Thus, the deregulation of industrial policies along with the participation from foreign investors labeled the beginning of the era of large scale mergers and acquisitions in India. As for now, the scenario has entirely changed with increasing competition and globalization of businesses in India. It is believed that at present, India has now emerged as one of the top countries entering into mergers and acquisitions in the world.

M&A's have been effectively required in every single industrial division in India. It is generally spreading far over the extent of every single industrial vertical and on all business stages. The expanding volume is seen in different divisions like that of finance, telecom, FMCG, pharmaceuticals, industrial improvement, automotives and metals. Substantial Indian organizations are experiencing a period of development as all are exploring development potential in remote markets and on the flip side even worldwide organizations is focusing on Indian organizations for development and extension. A portion of the main considerations bringing about this sudden development of M&A arrangements in India are good government policies, abundance of capital streams, financial stability, corporate investments, and dynamic state of mind of Indian organizations.

The "India story" has seen a profound shift in gear and direction during 2006. While in recent years most media references to India's growth have focused on the sub-continent as a destination for outsourcing and investment. This is particularly evident in the powerful new trend towards overseas acquisitions by Indian companies. The increased competition in the global market has prompted the Indian Companies to go for mergers and acquisitions as an important strategic choice. Some biggest M&A's carried out by Indian companies worldwide are those of Tata Steel acquiring Corus Group plc, UK based company in 2007 with a deal of US $12.2 Billion; this deal is the largest Indian takeover of a foreign company till date and made Tata Steel the world's fifth-largest steel group. The second largest M&A deal ever involving an Indian company, was that of Vodafone buying the controlling interest of 67% held by Li Ka Shing Holdings in Hutch-Essar for US$11.1 Billion in 2007. Vodafone Essar is owned by Vodafone (52%), Essar Group (33%) and other Indian nationals (15%). The third largest M&A deal was of Hindalco acquiring Novelis from Canada for US $6 Billion in the same year. These are the largest M&A deals undertaken by Indian Companies till date.

Financial year 2015 was a hopeful year for the global business environment. India continued to be a major attraction for international players, as showed by their ongoing interest in the country's growth story. The worldwide M&A trend was repeated in India. Several very expensive announcements boosted total M&A deal value in the Indian M&A backdrop. Total number of M&A deals of Indian companies in 2014 rose to 1,177 amounting to US$50 Billion; the highest ever in a decade and the momentum is set to pick even higher in 2015. The year 2014 marked an aggregated disclosed value of US$50 Billion, compared to US$20.1 Billion seen in 2014, representing an increase of 21%. In 2015, the number of M&A deals involving Indian companies stood at 1177, increasing by 20% from 843 deals in 2014. M&A deals contributed around US$38 Billion from 573 deals and Private Equity (PE) deals contributed US$12 Billion from 604 deals, according to a report by an advisory firm Grant Thornton. E-commerce within the Information & Technology (IT) witnessed 240 deals worth $3.8 billion in 2015, 8% of the total deal size of US$48 Billion.

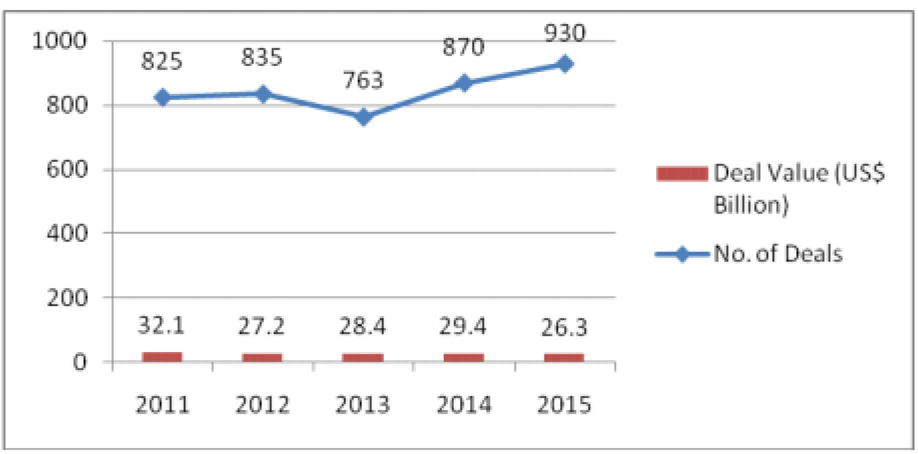

Figure 2.9: M&A Activities in India
Source: EY analysis of Thomson ONE data

On the other hand, domestic M&A deals were on the integration wave as well, with Sun Pharma acquiring Ranbaxy, Flipkart looping in Myntra, Kotak merging with ING

Vysya with a few large power sectors M&A's. Flipkart's $1-billion fund-raising in July 2014, led by Tiger Global was the tenth largest deal in the year 2014.[62]

With these major mergers and many more on the annual chart, M&A services in India is taking a revolutionary form. Creating a niche on all platforms of corporate businesses, merger and acquisition in India is constantly rising with edge over competition. These deals are hence, carried out as part of a broader globalization drive involving a string of strategically targeted mergers or acquisitions. This is particularly the case for India's larger corporate groups, for example Tata, that look to strengthen specific parts of their value chain and develop globally integrated offerings.

Fascinated by the markets and higher-value offerings of developed economies, Indian companies are making the immense majority of their transactions in North America, Europe and the more developed economies in Asia, with transactions equally distributed between these locations. This M&A trend is a key factor helping Indian companies to emerge on the global stage. Globalization and mergers in India has just aided in enhancing the financial state. The automobile, steel, cement, pharmaceutical, petrochemical, and numerous more sectors have just experienced effective mergers with abroad organizations in India. These worldwide affiliations have presented to them a variety of accomplishment which has created a brand value in the market for them. Nations that are looking for mergers in India for upgrading the trade situation are Canada, Holland, Belgium, Italy, Sweden, Norway, Poland, Germany, Spain and the United Kingdom. Mergers in India may incorporate mergers, joint endeavors, acquisitions, takeovers, and different sorts of cross- border exchanges. The patterns and development of M&A dealings has prompted to a discernible increment in the globalization and mergers in India.[63]

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[62]] Indian M&A deals touch record $50 bn in 2014, Retrieved on 6th February 2015, http://www.firstpost.com/business/indian-ma-deals-touch-record-50-bn-2014-2084145.html
[63] Business.mapsofindia.com, Retrieved on 18th May, 2011, http:// business. mapsofindia. Com/globalization/mergers-india.html

The world economy is partitioned amongst develop and developing markets. The current pattern of an expansion in buyers from developing markets putting resources into developed markets can dynamically affect the deals space. Because of the monetary easing policies of developed nations, banks and corporate have more funds which are utilized towards M&A transactions. The Indian M&A scene have seen a few expensive deals in the previous couple of years. When Indian business houses are always looking at inorganic development through acquisitions of different organizations, the M&A field seem stronger than ever before now. According to a report by International Monetary Fund (IMF) published in 2016, with the worldwide economy slowing down while the Indian economy remains especially versatile to the worldwide downtrend and with increasing distressed assets in the Indian business environment, Indian business houses have been on the cutting edge of worldwide and domestic M&As'. The recent transactions show an unavoidable requirement for combination in different segments, sale of distressed assets by debt-laden Indian organizations and simplification of generally scattered group organizations. Given the backdrop of a well-developed M&A legal and regulatory system in India, the street ahead for the Indian M&A background is by all accounts brilliantly lit.

Mergers and Acquisitions in Telecommunication Industry: Worldwide

Companies are looking to grow through M&A's as demand slows for wireless and Internet services and they're looking for scale so they can afford to build the high-speed networks necessary for the latest mobile and video offerings. Bidders are conflicting with each other around the globe as they compete for a decrease in pool of potential partners. Global telecom firms grew from strength to strength in the year 2015. Optimistic market trends were seen in mobile broadband, cloud computing and big data management that ensured the steady growth of firms even while telecom operators have struggled to generate revenue. Most countries already have or are now in the process of developing, national broadband network policies for fixed broadband. The global telecom sector in 2016 saw continued focus on the underlying trends of

M2M, Cloud Computing, Big Data Analytics, and the over-arching Internet of Things. Telecom companies generally focused more heavily on customer retention, while also improving mobile and fixed broadband infrastructure for the future. 4G deployment was a key trend around much of the world. Many of the operators in the emerging markets focused mainly on mobile infrastructure with lower priced smart phones becoming a dominant trend. Mobile broadband infrastructure became increasingly important in the emerging markets of Middle East, Asia, Africa and Latin America, as the populations placed more and more demand on present infrastructure.[64]

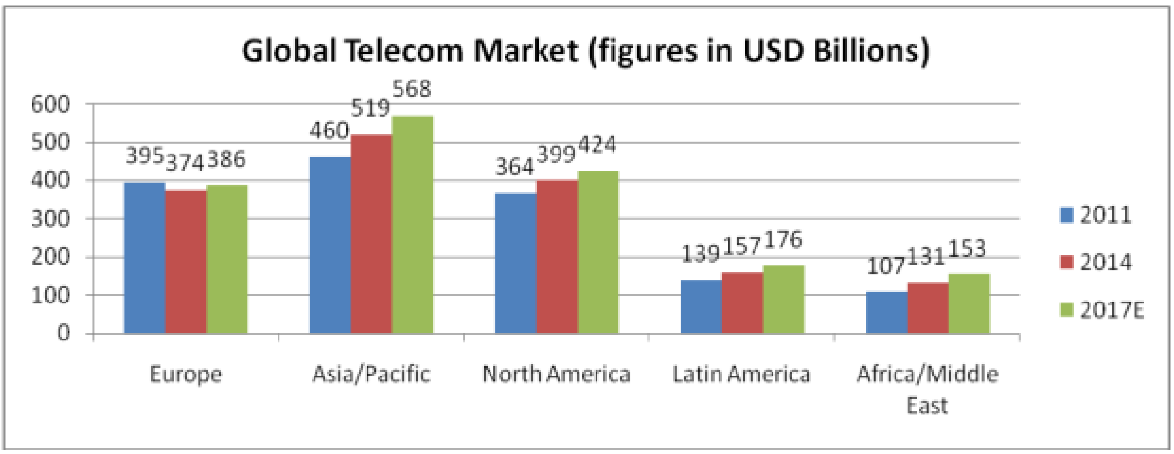

Figure 2.10: Share of Global Telecom Market

A combination of telecommunications & media potentials has become more important, as operators seem to boost in-market scale and reduce churn levels by tying customers into additional products. In September 2014, the Spanish incumbent announced the acquisition of GVT from French media conglomerate Vivendi for €4.66 Billion in cash as well as a payment representing 12% of Telefonica Brasil's shares, after its consolidation with GVT.

64 Market Realist, Global Telecom Companies are growing rapidly in 2015, Retrieved on 28th July, 2015, http: //marketrealist.com/2015/07/global-telecom-companies-growing-rapidly-2015/

In-market integration is an undeviating theme in Europe, and September saw a number of moves by operators to raise their existence in core market segments. Thus, in 2014, Orange acquired Spanish altnet Jazztel for US$4.3 Billion which is its largest acquisition in close to a decade. On the other hand, Tower sales have long been a favored route for operators seeking free up cash and reduce the costs of rural mobile service provision in emerging markets. The year 2014 witnessed a number of tower transactions taking place across Africa. In September 2014, India's Bharti Airtel divested over 3,500 telecommunications towers to Eaton Towers in six countries; Ghana, Kenya, Burkina Faso, Malawi, Niger & Uganda. Under this contract, Bharti will lease back the towers from Eaton after 10 years, which enabled the Indian player to reduce debt and capital expenditure on inactive infrastructure. In the adjacent markets as well, M&A remained an important subject in the telecom sector. Asian firms' have been more audacious than firms' in other regions in extending their capabilities across the value chain. The year 2014 has been remarkable for a wave of deals involving targets in equipment manufacturing and distribution. Telkom Indonesia acquired a 25% of PT Tiphone Mobile Indonesia, a mobile phone distributor, for US$117.2 Million in 2014, where the incumbent was using the deal to strengthen its own distribution business in addition to growing its presence in the prepaid credit market. Japan's Softbank also increased its stake in US-based mobile handset distributor BrightStar Corp to 94.7% in 2014.[65]

Mergers and Acquisitions in Telecommunication Industry: India

M&A's have been a foundation of the telecom industry for many years. In the past decade, the telecom industry has spent an astounding USD 1.5 trillion on M&A activities, investments that have transformed the industry landscape into the competitive playing field that can be seen today. The service industry forms the

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[65] "Inside Telecommunications Issue 15 Mergers and Acquisitions", http://www.ey.com /GL/en/Industries/Telecommunications/EY-inside-telecommunications-issue15-M&A

backbone of social and economic development of a country. Across the globe, the service sector has been assuming a predominant part in the development of economies. Telecommunication industry is a standout amongst the most productive and quickly developing industries in the world. As indicated by the yearly report by Department of Telecommunications (DoT), Government of India, the Indian telecom sector has enlisted an amazing development amid the previous couple of years and has turned out to be second largest telephone network in the world, after China. It is one of the few sectors in India which has seen most fundamental structural and institutional reforms since 1991. Government approaches and regulatory framework implemented by Telecom Regulatory Authority of India (TRAI) and DoT have given a helpful environment for service providers.

However, the motivation behind the transactions have evolved over time and has believed that the industry is on the cusp of a new wave of M&A activity driven by some of the disruptions now taking place [122]. According to the annual report 2012-13 published by Department of Telecommunications (DoT), Government of India, the Indian telecom sector has seen phenomenal growth over the past decade or so. With around 900 million telephone connections, India is the second-largest telecom market in 2013 in the world after China [40]. Today, telecom sector is the fastest growing market in the world. It is one of the most money-making & rapidly developing industries and is viewed as an indispensable constituent of the worldwide utility and services sector. This sector deals with diverse forms of communication mediums, e.g. fixed line phones, mobile phones as well as Internet and broadband services. According to a report published by FICCI (Federation of Indian Chambers of Commerce and Industry), India is one of world's quickest developing telecom markets, has gone about as the essential driver for outside and domestic telecom organizations putting into the sector. It is likewise perceived as one of the lucrative markets comprehensively, bringing about enormous investments being made in the segment both by private and government part in the most recent decade. Accordingly, the telecom sector kept on recording impressive achievement and has risen as one of the key segments responsible for India's resurgent economic development.

With the liberalization of the Indian economy, the telecom sector has become very attractive for M&A's. The majority of telecommunication services providers believe that in order to meet the needs of globalization, strategic alliances and mergers and acquisitions are the principal tools. Thus, the quantity of M&A's in Telecom Sector has been expanding essentially. As of now, a huge number of M&A in Telecom Sector are going all through the world. The purposes for such a wonderful development of M&A in telecom industry is the incorporation of web (including broadband) and cable services in the telecom sector, new advancements like wireless fixed phone services and the deregulation in the telecom sector.

The point behind such M&A's is to accomplish competitive advantages in telecom industry. The M&A's in telecom industry are viewed as horizontal mergers as the elements going for M&A are working in a similar industry. The M&A's in the telecom industry help the organizations to eliminate their expenses, accomplish more noteworthy piece of the overall industry and fulfill market control. Mergers and acquisitions in Telecom Sector likewise have some negative impacts, which incorporate monopolization structure of the telecom products and administrations, unemployment and others. Nonetheless, the governments of different nations find a way to control these issues. The M&A's in the telecommunication sector in India are governed by the Telecom Regulatory Authority of India (TRAI).[66]

India has turned into a wellspring of telecom M&A's in the most recent decade. M&A have additionally been driven by the advancement of new telecom technologies. The key M&A bargain in India was the offer of Mumbai license by Max group to Hutchison Whampoa group of Hong Kong. It was a joint venture (JV) between Max group &

66]Economy Watch, 17th July, 2010, http://www.economywatch.com/mergersacquisitions/international/telecom-sector.html

Hutchison Whampoa. In this JV, Hutchison Max Telecom Ltd. (HMTL) secured GSM Mobile telephone license for Mumbai reason in the year 1994. The performance of this deal encouraged Hutchison in 1999 to acquire 49% of Sterling Cellular Ltd. Further in 2000, Hutchison picked up 49% stake in Usha Martin Telecom in Kolkata. The arrangement was hyped as a noteworthy accomplishment for Indian businesspersons in telecom venture. This took a progression of M&A; Vodafone's obtaining of 10% value in Bharti in 2006 for US$ 1 Billion, Maxis procurement of Aircel at big business estimation of US$ 1 Billion and Birla Group's acquisition of Tata's stake in Idea Cellular.[67]

The historical backdrop of the Indian Telecom segment begins path in 1851, when the principal operational landlines were laid by The British Government in Calcutta. With independence, all foreign telecom organizations were nationalized to shape a Post, Telephone and Telegraph, a monopoly run by the Government of India. Telecommunications industry is chiefly the most gainful and quickly creating enterprises in the world and it is viewed as an essential part of the overall utility and services sector. Telecom industry in India has experienced a revolution amid the previous couple of years with colossal development in the telecom subscriber base. India's telecom segment is one of the quickest developing and one of the biggest telecom networks in the world. With the progressing investments into infrastructure deployment, the nation is anticipated to witness high infiltration of Internet, broadband and mobile subscribers in not-so-distant future. Telecommunication industry manages different types of correspondence mediums, for instance cell phones, fixed line telephones, Internet and broadband services.

The point behind such M&A's is to accomplish upper hands over alternate players in the telecom industry. M&A's in the telecom business have developed by noteworthy extents in India since the mid-1990s. Financial changes embraced in the 1990s in India

67 Sanjoy Banka, "Mergers & Acquisitions (M&A) in Indian Telecom Industry- A Study", December 2006, the Chartered Accountant

spearheaded the telecom sector which used to be an overwhelmingly state controlled one. Private interest in the telecom division in India not just encouraged the fast development of telecom administrations in the urban, and also country parts of India, it likewise gave the chance to M&A's in this sector.

As per another explanatory review on the segment "Indian Telecom Analysis (2008-2012)", versatile communication kept on invigorating development in the Indian telecom area with mobile subscriber base anticipated to ascend at a CAGR of around 6.6% amid 2011-12 to 2014-15. Tele-density in India has essentially upgraded amid the previous couple of years and has secured vast part of the nation's populace attributable to the enhancing network infrastructure. Telecom Regulatory Authority of India (TRAI) was established to go about as a free administrative body directing telecom advancement in India. It was established by an Act of Parliament; the principal capacity of the body was to finalize toll rates and settle question between players. TRAI is of the view that while on one hand mergers support efficiencies of scope and scale and subsequently are alluring, care must be taken those monopolies don't raise as a result of it. TRAI had issued its suggestion to Department of Telecommunications (DoT) in January 2004 with respect to intra circle Mergers and Acquisitions which were acknowledged by DoT.

The telecom business in India is developing at an unimaginable speed and the growth rate is expected to twofold with each passing year. There are numerous new advancements in the telecom division, including the presentation of 3G innovation into the Indian market.

In a move that would empower first-class mergers in the telecom segment, the branch of broadcast communications (DoT) has chosen to permit an entity formed by merger of at least two mobile service providers to have up to half of the piece of the overall industry around. Additionally, organizations holding 3G range will be permitted to hold two squares of the rapid radio waves per hover in any resultant element post-merger, as indicated by draft rules on M&A being talked about by the telecom department.[68]

M&A's have been one of the defining factors that have impacted the Indian telecommunications industry over the years. Although M&A's haven't been a regular feature off late, mainly due to regulations and high debt levels of potential telecom companies. These new revisions to the telecom merger and acquisitions (M&A) guidelines are relied upon to give a major underwriting to union in the telecom sector. Presently, Bharti Airtel holds 24.31% piece of the overall industry in the mobile market, joined by Vodafone at 19.15% and Idea Cellular at 16.94%. Taking into thought, the spectrum cap of half in a band for access services, exchange of licenses ensuing to merger of organizations will be permitted where piece of the overall industry for access services in individual service territory of the resultant entity is up to half.

Prior, merged entities were allowed to hold just up to 35% in any telecom circle. In the event that two consolidating elements hold wireless transmissions acquired through sell-offs then they are not required to pay market rate for spectrum. The telecom sector's first M&A rules, accordingly will pave the way for solidification in the telecom market where there are around 12 players including Bharti Airtel, Vodafone, BSNL, Idea, Reliance, Tata Teleservices and Aircel in India.

Given this gigantic rush of mergers and acquisitions and the potential for significant yields from these sorts of M&A in the Indian Telecommunication industry, it appears to be likely that if M&A is wealth improving. Additionally, the advantages of the gigantic flood of Telecom Mergers in the past and today have been for quite some time addressed and leave a scope for research in this segment. Still, the conceivable development of this segment into a restraining infrastructure is hard to protect on the grounds of effectiveness (financial and operational). Additionally, because of deregulations, technological changes and an influx of tremendous M&A's, the telecom

68 Feroz, E. H., Kim S. and Raab R., "Performance Measurement in Corporate Governance: Do Mergers Improve Managerial Performance in the Post Merger Period?", Review of Accounting and Finance, vol. 4, pp. 86-101, 2005

industry have been significantly changed from being monopolistic to progressively oligopolistic market structures which represents another test by and large.

Most of the prior reviews excessively slumped in consolidating different execution measures to better fathom the results of such events and in this manner deducing on why they happen. Additionally, examining M&A events in the Telecom sector would empower a superior comprehension of the underpinnings and conceivable results of up-and-coming M&A exercises, since it is one of few segments in India which has seen the most principal auxiliary and institutional changes since 1991. Besides, in the greater part of the reviews led in Indian setting, this segment is untouched by the Indian researchers and experts to the best of my insight. Despite the fact that merger and acquisition qualities contrast over different enterprises, their effects are also similarly conditioned in the majority of the Indian researches. Therefore, this review endeavors to audit, examine and assess past general literature on pre and post-M&A execution with extraordinary reference to Indian Telecommunication Industry. The consequences of this review will hence, serve to extend the future structure of the Indian Telecommunications Industry.

CHAPTER 4

ROLE OF REGULATORY AUTHORITIES

Almost two decades have passed since the telecom revolution, formulating the National Telecom Policy (NTP) in 1999 and yet the telecom industry in India is facing a difficult time. At the time of enforcement of this policy, there were hardly a million subscribers. But since then, the telecom industry has developed a lot to become the top second telecommunication market globally.

The transformation pace of the telecom sector, over the past years, has been surprising. This all started with the entry of Reliance Jio in September 2016 in the market, which was a full house already with the presence of biggies like Bharti Airtel, Vodafone, Idea and BSNL and other small players.

Out of all the impact created by the entry of Jio, one such is about the HHI (Herfindahl Hirschman Index). On a range from 0 to 10,000, wherein the higher number means the higher concentration, it was found to be increased from 1543 to 2490 between June 2016 and June 2017 i.e. approximately 1000 points higher. This accelerated the wave of merger post the entry of Jio and one out of which is on the verge of completion i.e. Vodafone-Idea merger.

A study conducted by ICRIER has stated that there has been a hike of 10% in the internet subscribers which further resulted in the increase of 2.4% GDP. Therefore, a clear economic gain can be seen and is further expected in future.

STEPS REGARDING THE KEY APPROVALS:

- Filing of Scheme with Stock Exchanges and SEBI for approval
- Apply for regulatory approvals (CCI, DOT, RBI, FIPB (if applicable))
- Filing of Scheme with NCLT
- Shareholder and creditor meetings
- Scheme approved by NCLT
- Regulatory approval
- Listing approval[69]

4.1 SEBI

SEBI and the exchanges gave the conditional nod to the deal. In their "no-objection' letters on scheme of amalgamation, the two Exchanges- the BSE and the NSE emphasised that all the conditions put forth by the regulator need to be placed before the NCLT while seeking its go-ahead."[70]

SEBI noted that a complaint was received alleging that one of the promoters of Idea Cellular had purchased 0.23 per cent shares of the company prior to announcement of the draft amalgamation scheme, in violation of securities laws, and added that the charges are being examined by it. "The buyers have given a voluntary undertaking not to dispose of the said shares till SEBI gives further directions and any liability eventually held to be valid against the purchasers shall be borne by them."[71]

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69 https://www.ideacellular.com/wps/wcm/connect/6f2c723a-d660-4f7d-a988 097d1059b14c/Investor+Presentation_200317(1).pdf?MOD=AJPERES&CACHEID-6f2c723a-d660 4f7d-a988-097d1059b14c

70 Report idea cellular seeks nelt nod for merger with vodafone india, DNA India, (08 August, 2017, 04:20 PM) http://www.dnaindia.com/business/report-idea-cellular-seeks-nclt-nod-for-merger-with-vodafone-india-2522909

71 Ibid

Further, the explanatory statement to the notice to shareholders needs to disclose prominently that SEBI is looking into the charges with regard to said transaction done by the purchasers prior to the announcement of the scheme.[72]

SEBI has also received complaint about violation of takeover norms as the shareholding of Idea would increase from about 21 per cent to about 26 per cent pursuant to the scheme. "The acquisition pursuant to draft scheme of arrangement is exempt from the obligation to make an open offer...if the acquisition is pursuant to a scheme of arrangement, inter alia, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign. Thus, the said exemption is applicable only if NCLT approves the draft scheme," SEBI said.

The regulator further added that an abridged prospectus about the merger needs to contain a risk factor stating in detail the risks associated with the outcome of the examination by SEBI of the allegations so made.

Furthermore, the companies needs to ensure that the scheme of merger clearly states the norms for voting by public shareholders and that the "scheme of arrangement is acted upon only if the votes cast by the public shareholders in favour of the proposal are more than the of votes cast against it. "[73]

The explanatory statement to the notice to shareholders needs to disclose prominently that is examining the allegations with regard to transactions done by the purchasers in the shares of Idea before the announcement of the scheme. "All the above facts shall be brought SEBI notice of NCLT" SEBI said.

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72 Ibid

73 Report idea cellular seeks nclt nod for merger with vodafone india, DNA India, (08 August, 2017, 04:20 PM) http://www.dnaindia.com/business/report-idea-cellular-seeks-nclt-nod-for-merger-with-vodafone-india-2522909

It also asked the company to ensure that additional information, if any, submitted after filing the scheme with the stock exchanges, are displayed from the date of receipt of this letter on the website of the listed company.

> "The regulator asked Idea to incorporate the observations of SEBI and exchanges in the petition to be filed before NCLT and the company is obliged to bring the observations to the notice of NCLT"[74]

4.2 COMPETITION COMMISSION OF INDIA

The next step involves approvals from CCI and other regulatory bodies. In regards to the Competition Commission of India, we have already seen the same in the previous chapter in detail. The competition commission has approved the proposed merger between Vodafone India and Kumar Mangalam Birla-owned Idea Cellular, a key step in paving way for creation of India's largest telecom company by subscribers. The same was confirmed by Idea Cellular under sub-section (1) of Section 31 of the Competition Act.[75][76]

4.3 NATIONAL COMPANY LAW TRIBUNAL

The National Company Law Tribunal (NCLT) Approved Idea's proposal to merge with Vodafone Mobile Services and Vodafone India.

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74 https://www.firstpost.com/business/idea-vodafone-merger-SEBI-exchanges-give-conditional-go-ahead-to-23bn-deal-3906753.html, (25TH July, 2017, 12:30PM) 49CCI gives unconditional nod to Vodafone-Idea merger, The Economic Times, (25th July, 2017, 12:20PM),

75 CCI gives unconditional nod to Vodafone-Idea Merger, The Economic times (25th July 2017) https://economictimes.indiatimes.com/news/company/corporate-trends/cci-gives-unconditional-nod-to vodafone-idea-merger/articleshow/59740614.cms

76 Section 31(1) - Orders of Commission on certain combinations: Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of Section 6.

"The scheme is genuine, bona fide and in the interest of the creditors and the shareholders," and Ahmedabad Bench of NCLT said.[77]

4.4 INCOME TAX

As the Vodafone-Idea merger is on the verge of completion, it is speculated that the onus of the tax liabilities on Vodafone India's parent company of INR 22,100 crore might come down on the new entity.

As told by a senior Income Tax officer, in reply to the merger proposal, a NOC (Non Objection Certificate) has been issued to Vodafone-Idea. The NOC so given comes with an explanatory remark on the incomplete tax liabilities of Vodafone group of INR 22,100 crore. The said liability arose from the case against Vodafone which is related to a demand of INR 7990 crore, raised by the Government on Vodafone International Holdings for failing to deduct tax on capital gains that was made after acquiring 67% of Hutchison Essar. The matter is presently under the International Arbitration wherein Vodafone have challenged India on on using retrospective legislation for recovering INR 22,100 crore as tax.

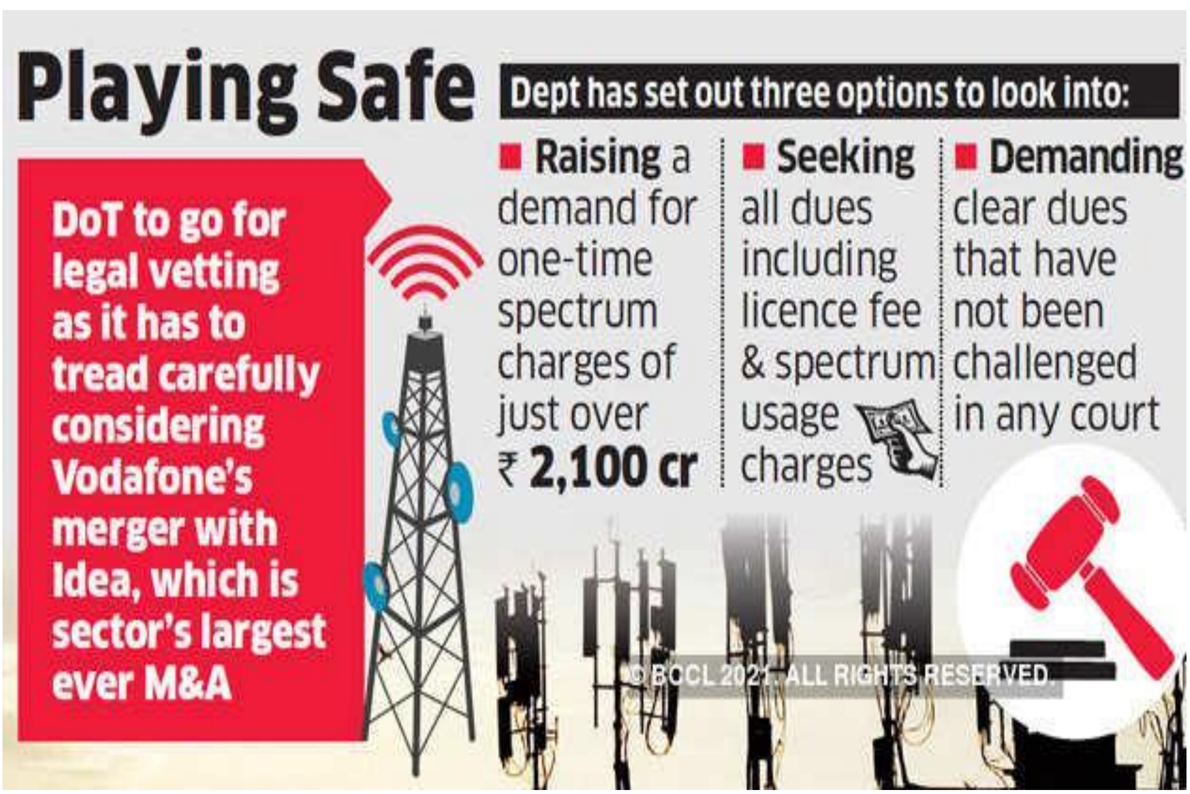
However, according to the Income Tax officer, there is no issue from the Tax authorities in regards to the merger and hence, no action will be taken against them in the court. But as per the law, the tax liabilities are on the parent and pre-merged entity and thus, would fall on the merged entity. To speak in favour of this, the spokesperson from Vodafone further stated that in case of merger of Indian companies, the assets and liabilities of the merging companies falls on the new entity so formed after the merger, as per the legal principles and Income Tax Act. Any such responsibilities are subject to tax indemnities/agreements between the parties. We have no comment to

[77] NCLT approves Idea-Vodafone merger, The Economic Times, (12 January, 2018, 07:17PM), https://economictimes.indiatimes.com/news/company/corporate-trends/nclt-approves-idea-vodafone merger/articleshow/62474431.cms

make on the agreement between Vodafone and Aditya Birla on the treatment of such assets and liabilities'.[78] Therefore, the tax liability passes over the merger company until and unless any special exemption or exclusion has been stated.

Moreover, the Vodafone CEO earlier stated, at the time of announcement of the merger, that the tax liabilities on Vodafone will not affect the merger as it was not in favour of the Vodafone Group. But on the contrary, the Indian subsidiary will be liable as it was an offshore deal which involved transfer of an underlying Indian asset.

Though the whole scenario, as stated above, seems confusing but the bottom line is that the merger has got the NOC from Income Tax authorities.



78 I-T nod to Voda-Idea merger with caveats, Business Standards, (22nd November, 2017, 01:11AM), https://www.business-standard.com/article/economy-policy/i-t-nod-to-voda-idea-merger-with-caveats 117112200027_1.html

4.5 FOREIGN DIRECT INVESTMENT

The approval from Department of Telecommunications has been a much-awaited nod for the largest telecom à merger of the country. "The telecom ministry is the competent authority to take the final call on Idea Cellular proposal for infusing 100% foreign direct investment (FDI) in the company"[79] as stated by Suresh Prabhu, Commerce and Industry Minister.

The Telecom Department has raised certain conditions while looking on the views over the proposal of the merger by Department of Industrial Policy and Promotion (DIPP).

Until this, the overseas firm had an option to buy upto 49% in a telecom company in India as per the FDI policy under the automatic approval route. But to purchase stakes above 49%, Government's approval is needed. As on March 31, 2018, the foreign shareholding in Idea was approximately 34%, which includes 7.4% for promoters and rest as public shareholders. While the British telecom multinational- Vodafone Group Plc is the majority shareholder of Vodafone India. After merging together, the new entity would exceed the desired limit and thereby breaching the limit of automatic approval

However, the Department of Telecommunications has given the approval for 100% FDI in Idea Cellular which was 67.5% earlier, thereby giving way to India's largest merger. The approval for FDI is a major step in the current merger, following the other statutory approvals from- SEBI, NSE, BSE, CCI, NCLT Mumbai and NCLT Ahmedabad. The merger is on its last stage of completion, waiting to get a final nod from DoT.

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[79] Voda-Idea merger: DoT receives legal view on issue of raising demand for dues. India Today, (20th June, 2018), https://www.indiatoday.in/pti-feed/story/voda-idea-merger-dot-receives-legal-view-on-issue-of raising-demand-for-dues-1265608-2018-06-20

It has been reported in one the previous Economic Times edition that the merger is likely to be approved after a few days from the final nod by the DoT. Also, it is expected that Idea will have to sign an undertaking stating that dues raised by the Government shall be payable by the company as idea would then be the license holder after Vodafone license gets transferred to Idea. Secondly, DoT is expected to raise the dues including INR 57,000 crore for OTSC (One Time Spectrum Charge) that is owed to the Government. The other charges are already put on stay in different courts.

The merged entity would, thus, begin which a debt hangover of INR 1,14,000 crore which they will try to pay by means of equity infusions, sales of stakes and towers amongst other ways. Moreover, in a regulatory filing, Idea has called upon for an extra ordinary general meeting which is to be held on June 26 for approving the change in name of the new entity from 'Idea Cellular Limited' to Vodafone Idea Limited' and to raise, via debt, upto INR 15,000 crore.

DoT unlikely to be able to force telcos to pay licence fee/SUC dues since the matter is sub judice

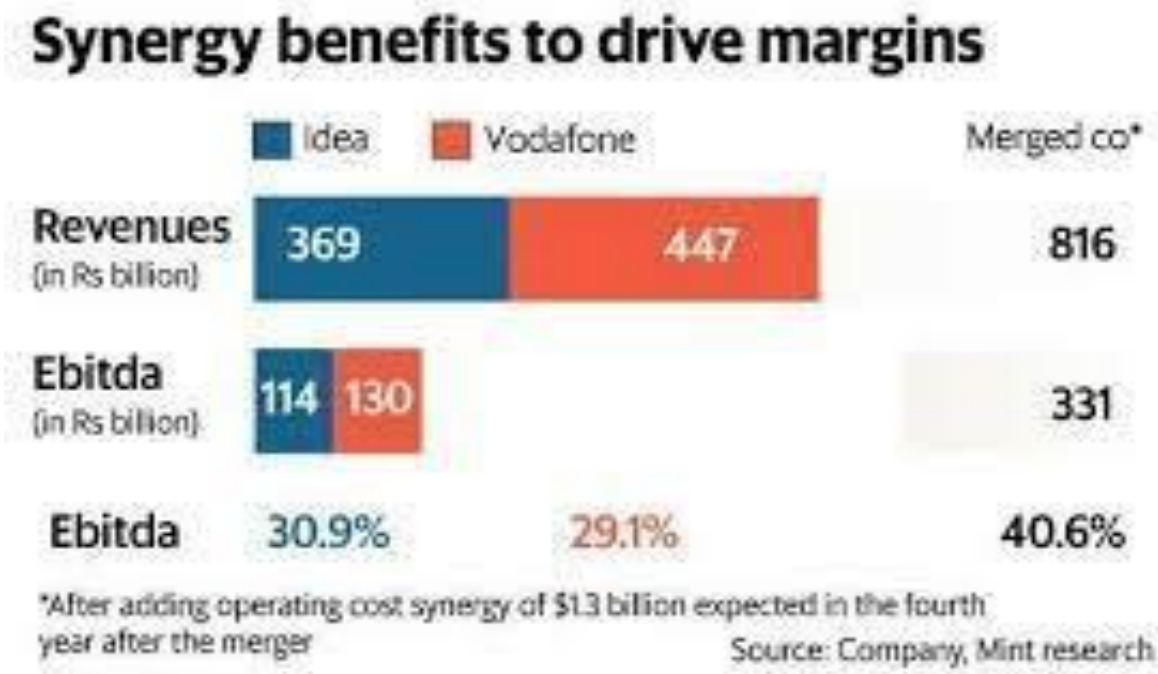
It may ask Idea to submit a bank guarantee equivalent to OTSC dues

Vodafone India may be asked to clear OTSC dues as it won't exist as a licencee post merger with Idea

Telecom Secretary Aruna Sundararajan has said DoT in final stages of approving Idea-Vodafone merger

4.6 COMPARISON WITH AIRTEL AND JIO

Thus, it can be concluded that the rationale behind the merger :-



Vodafone and Idea will independently operate Ebitda (it stands for earnings before interest, tax, depreciation and amortization) on a margin of approx 30%, which way lower than that Bharti Airtel and Reliance Jio.

Thus, it can be concluded that the merger can be advantageous for the consumers at the initial stage post completion for sake of sustaining the existing subscribers. But, in longer run, it might adversely affect them.

CHAPTER 5
ANALYSIS OF IMPACT ON DIFFERENT MARKET PLAYERS

5.1 ANALYSIS

- IMPACT ON MEDIUM TRADE

The merger holds significance for the consumers as a speedy change is expected at amongst the market organisation and so the medium trade development. Medium Trade in India will see the domination of three medium giants, out of which Vodafone-Idea will be the largest.

There are various implications that this merger will lead in order to encourage the medium trade

1. There will be initiatives taken sort the serious turmoil and misbalance created by Jio.
2. India is the fastest growing market in reference to the subscriber base. The weak cash health of the medium sector will be determined by such mergers as there would be infusion of health and life.
3. This merger will aid Vodafone-Idea to overcome the debts and further, large amount of credit will be infused put in the system.
4. The merger will save the medium firms from commercializing their business and this will directly impact the quality of services provided by different players in the market.

CONCLUSION AND SUGGESTIONS

It can be stated as the fact that growth in India, which is knowledge-based economy, would not have been possible without the progress and development of the Indian Telecommunications and IT sectors. Though the growth in IT sectors has risen exceptionally yet it seems to have a tragic mid-fall. However, it seems that the Government have realized the urgent need of reforms to give a boost to the growth in this sector and further, it has taken initiatives in this direction by introducing the Unified License and removal of foreign investment restrictions pertaining to this sector.

However, one cannot deny the fact that India still needs to cover a lot of the ground in order to achieve the growth rate which is equal to other developed and developing countries. India is amongst one of the last countries to have an access to 3G technology wherein at such time the other countries already moved ahead with 4G technologies. Also, the Government still has a long way to go in order to introduce the policies, regulations, etc. not just for the sake and interest of the Government or the telecom operators but also for the interest of the consumers. Though the Government seems to be in a relaxing position in dealing with certain issues existing in telecom sectors but still it has finally gave the green signal for 3G roaming packs, which were the cause of major pain to the telecom operator and also to the consumers.

Another thing which needs the attention is the flexibility in regulatory mechanism. The telecom legislation presently are archaic in nature and thus need of the hour is the mechanism that can keep up with the pace of changing needs in the industry.

There is no double mind in concluding that the future years will be an exciting journey for the telecom sector.

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