



**COMPETITION COMMISSION OF INDIA**  
(Combination Registration No. C-2020/09/775)

11<sup>th</sup> November, 2020

**Notice under Section 6(2) of the Competition Act, 2002 filed by Google International LLC**

**CORAM:**

Mr. Ashok Kumar Gupta  
Chairperson

Ms. Sangeeta Verma  
Member

Mr. Bhagwant Singh Bishnoi  
Member

**Order under Section 31(1) of the Competition Act, 2002**

**A. BACKGROUND**

1. On 23<sup>rd</sup> September 2020, the Competition Commission of India (**Commission**) received a notice (**Notice**) under Section 6(2) of the Competition Act, 2002 (**Act**), filed by Google International LLC (**Google**). The Notice was given by Google in relation to its proposed acquisition of approximately 7.73% of the equity share capital in Jio Platforms Limited (**Jio Platforms**), a subsidiary of Reliance Industries Limited (**RIL**).
2. The Notice was given pursuant to execution of an Investment Agreement (**Investment Agreement**), executed between Google, Jio Platforms and RIL on 14<sup>th</sup> July 2020. Certain Google group entities have also executed a Foundational Commercial Agreement (**FCA**) with Jio Platforms to collaborate and develop new low-cost smartphones and operating system for such devices.



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3. The Commission, *vide* its letter dated 30<sup>th</sup> September 2020, issued under Regulation 14(3) of the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 (**Combination Regulations**) required Google to remove certain defects in its Notice as well as furnish certain additional information. In response, Google filed its submissions dated 6<sup>th</sup> October 2020. Subsequently, the Commission issued another letter dated 9<sup>th</sup> November 2020, under Regulations 5 and 19 of the Combination Regulations required Google to furnish certain additional information. Google filed its response on 10<sup>th</sup> November, 2020.

## **B. PARTIES TO THE PROPOSED COMBINATION**

4. Google is a wholly owned subsidiary of Google LLC. Google LLC is a Delaware Limited Liability Company and wholly owned subsidiary of Alphabet Inc (Alphabet). Google group is stated to create innovative products that have the potential to improve the lives of millions of people. Its core products and platforms include Chrome, Gmail, Google Drive, Google Maps, Google Play, Android, Search, and YouTube. These and Google's other innovative products and platforms provide consumers with multiple useful means to access digital content. Google group has presence and operation in India through several subsidiaries including Google India Private Limited and Google Payment India Private Limited.
5. Jio Platforms is a company incorporated in India and is a subsidiary of RIL. Jio Platforms owns and operates digital applications and holds controlling investments in certain technology related entities. Jio Platforms also holds 100% of the issued and outstanding share capital of Reliance Jio Infocomm Limited (**RJIO**), a public limited company incorporated in India. RJIO is a licensed telecommunication operator, providing mobile telephony services to users across India.



## C. PROPOSED COMBINATION

### (i) *Share acquisition in Jio Platforms*

6. As per the terms of the Investment Agreement, Google would acquire approximately 7.73% of the fully diluted equity share capital in Jio Platforms. Pursuant to the Investment Agreement and Shareholder's Agreement (SHA), Google would also be entitled to appoint a director on the Board of Directors of Jio Platforms and an observer to attend board meetings. Further, subject to maintaining certain ownership thresholds, Google will also have certain affirmative rights. These rights offer protection to Google's minority investment into Jio Platforms without conferring any rights over Jio Platform's commercial strategy. Additionally, Google would also be entitled to receive information relating to financial performance of Jio Platforms and those required for tax and other compliances.

### (ii) *Business Collaboration*

7. The parties have also contemplated a business collaboration (**Business Collaboration**) under the FCA to collaborate on the development of a new low-cost smartphone (**New Smartphone**) and operating system (**Customised OS**) for such devices. To jointly develop and launch the New Smartphone, Google and Jio Platforms will each contribute complementary assets and experience. The FCA, *inter alia*, contemplates the technical, operational and commercial understanding between Google and Jio Platforms with respect to the New Smartphone to be developed under this Business Collaboration.

## D. ASSESSMENT OF THE PROPOSED COMBINATION

8. The Proposed Combination would be an active investment by Google in Jio Platforms as well as a strategic tie-up between their groups to launch the New Smartphone. The parties would continue to operate independently after the Proposed Combination. The competition assessment in the instant case would focus on whether the considerable influential interest of Google in Jio Platforms, would result in any appreciable adverse



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effect on competition in the businesses where the products and/ or services of the parties are similar or vertically related or complementary to each other.

9. Additionally, the parties envisage a business collaboration to launch a new Android based smartphone. For the purpose of business collaboration, the FCA provides for a joint governance structure that will guide various aspects of the launch of the New Smartphones including matters relating to technical specifications, marketing strategy and resolution of disputes between the parties. Such an arrangement suggests that the business collaboration is in the nature of a joint venture between the parties. It would be relevant to assess the effect of the contemplated business collaboration on the competition landscape of the concerned businesses.
  
10. Based on the submissions of Google, it is observed that the activities of the parties are similar in the spheres of mobile app distribution, supply of apps & mobile/web services, supply of advertisement services, and supply of mobile operating systems. Further, the OTT applications and content of Google and the telecommunication services offered by Reliance Jio Infocomm Limited (**Jio Infocomm**), a wholly owned subsidiary of Jio Platforms, are complementary/vertical to each other. Taking into consideration these activities of the parties and the nature of the Proposed Combination, it is considered relevant to examine the following aspects:
  - 10.1. Any potential effect on competition in the markets where the products of the parties are similarly placed, *i.e.* supply of apps and mobile/web services, supply of advertisement services, and supply of mobile operating systems;
  
  - 10.2. Whether Google, being the significant supplier of mobile operating systems, and Jio Platforms, a credible incumbent in the Indian telecommunication industry, coming together to launch a range of smartphones is likely to raise competition concern in the markets for supply of mobile operating systems; and



10.3. The ability and incentives of both Google and Jio Platforms including RJIO, to discriminate between competitors in their respective businesses. In particular, whether the parties have the ability to access each other's resources and consequently enjoy any undue advantage.

#### **D I. Horizontal Overlaps, i.e. similarly placed businesses**

11. Although Google has claimed that the parties are not combining any of their businesses and they will continue to run these businesses independently, in view of its representation on the Board of Directors of Jio Platforms together with its contractual rights under the SHA, it makes relevant to assess whether the proposed combination is likely to result in coordination between the parties in any of the horizontally overlapping markets, resulting in appreciable adverse effect on competition.

##### **(i) Online advertisement services**

12. Google search engine has been the known online search advertisement platform across many parts of the world including India. However, Jio Platforms does not have significant presence or a close competitor of Google in advertisement services. The *Commission* in its recent order dated 24<sup>th</sup> June 2020 in Comb. Case No. C-2020/06/747 has noted that the revenue of Jio Platforms from advertising services is \*\*\* \*\* crore and \*\*\* \*\* crore in the preceding two financial years. It was further noted that even in the narrowest possible market viz. market for online display advertisement services, the revenue of Jio Platforms for the FY 2018-19 translates into only \*\*\*\*\* of the total market. While earnings from advertisement is the main source of revenue for Google, revenue of Jio Platforms from advertisement services is insignificant and constitutes less than 1% of its total revenue. Given the insignificant presence of Jio Platforms, the parties do not appear to have incentives to coordinate in any of the plausible market for online advertisement services so as to raise any competition concern.

##### **(ii) Apps and mobile/web services**



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13. As regards the supply of apps and mobile/web services, it is observed that the applications of the parties are similar in the domain of: (a) mobile browsers; (b) payment services; (c) video streaming services; (d) music and radio streaming services; (e) communications services; (f) cloud storage services; (g) news services; (h) education services; and (i) games. The Commission notes that all these activities are of typical new age dynamic markets and market share may not be the only guiding parameter for competition assessment yet a starting point of an inquiry. As per the details provided by Google, the combined market share of the parties is either less than 30% or the incremental market share as a result of the Proposed Combination is negligible. Thus, the parties do not seem to have incentives to coordinate in the respective businesses, more particularly owing to the features such as multi-homing, services being available for free and technical ease of shifting.

**(iii) Mobile operating systems**

14. Mobile operating system of Google viz. Android is currently the most prominent base operating system for smart mobile devices. Original Equipment Manufacturers (OEMs) modify the base OS according to their needs and deploy the customised OS in their smartphones. Apart from base Android, Google also offers its customised versions such as Android One and Android Go for deployment in smartphones. Customised Android can be developed by OEMs for deployment in their smart mobile devices, and this segment features the presence of several players and capabilities. The Commission also notes that Reliance Retail Limited (RRL) deploys KaiOS operating system on its mobile devices. The Commission examined whether the proposed business collaboration is likely to reduce the incentive for RRL to continue with KaiOS based devices. In this regard, the Commission notes from the submission of the Parties wherein it has confirmed that RRL would continue to sell KaiOS phones, and shall not degrade the quality of these phones to favour the New Smartphone. Thus, the proposed combination does not seem to raise any competition concern in relation to supply of Android or customised OS.



## **D II. Business Collaboration to launch new smartphones**

15. The FCA contemplates a joint governance structure that will guide various aspects of the launch of the New Smartphones including matters relating to technical specifications, marketing strategy and resolution of disputes between the parties. Such arrangement suggests that the Business Collaboration is in the nature of a joint venture between the parties.
16. It is observed that modern mobile phones consist of hardware and software that enable a bouquet of functionalities to the consumer, viz. calls, texts, access to the internet, games, sensors, etc. Similar to a computer, mobile phones also run on an operating system that allows multiple applications to operate on it. The success of any participant in the mobile phone industry depends on its products/ services being compatible with the base eco system. This presupposes seamless cooperation between the given player and other players operating at different levels of the product/service lines. The critical partners in any mobile ecosystem include: [i] Original Equipment Manufacturers (OEMs) – manufacture the hardware such as Samsung, Xiaomi, OPPO, etc.; [ii] OS developers – develop and supply OS deployed on the mobile phone such as Android, KaiOS, etc.; [iii] App developers – supply applications that run on the OS; and [iv] Telecom Service Providers (TSPs) – these operate telecommunications network and are also incidentally engaged in distribution of mobile devices, operating communication applications and OTT content.
17. Participants in each of the streams of mobile phone ecosystem extend a synergetic relationship with players in the other streams. This often incentivises each of them to expand their operations to other streams of the ecosystem or tie-up with players operating in the other streams. Competition at different levels of the mobile ecosystem is significantly influenced by input suppliers and incentives arising from their downstream presence. For instance, Apple has adopted a proprietary model wherein its OS (iOS) is deployed only in its phones and is not licenced to any third-party OEMs for deployment in their smartphones. Google, on the other hand, along with the Open



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Handset Alliance partners released a public version of Android mobile OS under an open-source license, in 2008. It has been stated that open-source licensing provides a copy of the source code, which is entirely customisable by the licensee.

18. Google has submitted the relevant market to be the market for the supply of mobile phones in India. Given the synergetic interface between different streams of the mobile ecosystem, an appropriate competition assessment would factor in the effects of conduct/ combination on the given product at a narrower level as well as the entire ecosystem at a broader level. Google is the known player for mobile OS and various mobile applications. Jio Platforms group is a significant incumbent in the telecommunication services and its affiliate, viz. Reliance Retail Limited (RRL) is *inter alia* engaged in supply of mobile handsets. Thus, the competition assessment of the Collaboration would focus on its impact on the smart mobile device market as well as the entire mobile eco system (*i.e.* handset, Operating Systems, applications and service ecosystem).
19. It is observed that the smartphones to be supplied pursuant to the Collaboration are yet to enter the market, which is competitive with the presence of several known players like Samsung, Vivo, Xiaomi Oppo, Lava, *etc.* Outside the Collaboration also, the parties do not have considerable market share in supply of smart mobile devices in India. Thus, the market position of the parties and resultant smartphones to be launched under the Business Collaboration are not that significant to raise any competition concern.
20. Given the nature and scope of Business Collaboration, it is also relevant to ascertain whether it gives incentive for Google to foreclose competition or increase rivals cost by denying Android to third party OEMs. It is observed that the primary stream of revenue for Google is from search advertisement business. For such purpose, the business model of Google has been to increase audience for its online services. Thus, there is no incentive for Google to indulge in any activity that may reduce its user base. Google has further submitted that:





*Google will continue to develop and maintain Android (or AOSP) and Android Go. It will not...degrade the quality of Android for third parties outside of the Collaboration.*

(emphasis added)

The Commission takes note of the said submission.

### **D III. Net neutrality and data integration**

#### ***(i) Net Neutrality***

21. The telecommunication sector has been evolving with the ongoing technological upgradations. Smartphone and data revolution have completely changed the user experience and the modern mobile telephony services are completely different from the services of conventional Telecom Service Providers (TSPs). Technological upgradation to 4G technology and rise of content and communication OTTs have changed the profile of TSPs to data service providers. TSPs are gearing to provide ‘triple play’ (voice, video and data) and ‘quad play’ (voice telephony, television, fixed line and mobile internet) services. Seamless data connectivity and increasing demand for internet-based applications and content have resulted in synergetic cooperation between TSPs and OTT application developers. TSPs now offer innovative tariff packages for a bundled voice, data and OTT services. Tie-ups between OTT players and TSPs have become a normal practice in telecommunications business.
22. Apart from being dependent on the efficacy of telecom infrastructure, OTT/ content providers can also establish localised servers nearer to the users to ensure faster access by them. Such arrangements nearer to the user help them to minimise the latency that would otherwise result from the increased distance between the internet user and the parent server of the OTT/ content provider. Content/ OTT providers either establish their own infrastructure or avail services of third-party content delivery networks (CDNs). The content providers read the geographies where their content is largely



accessed and place sufficient number of caching servers in such locations and connect them to the telecommunication networks. These caching servers are synchronised with the parent server and are responsible for monitoring the frequently accessed content, caching it and delivering it to the nearby users as and when demanded. These servers are located nearer to the users (also called as edge platforms) and their primary purpose is to accelerate website load time and reduce bandwidth consumption. Each CDN caching server typically holds multiple storage drives and high amounts of RAM resources.

23. Keeping in mind the way telecommunication industry has evolved in the recent times, and the aforesaid backdrop, the Commission notes that the product lines of Google group and telecommunication services such as those offered by RJIO, are complementary to each other and may have vertical linkages. In this context, it becomes relevant to examine whether the Proposed Combination would lead to any preferential treatment to Google applications or content in RJIO's network. In telecommunications parlance, it needs to be examined whether the 'net neutrality' of RJIO's telecommunication network is likely to be affected in view of the Proposed Combination.
24. Google has submitted that if a specific OTT service provider (such as Google) was to be provided preference in terms of allowing faster access, lower cost of access or similar arrangements, any such arrangement would be plainly forbidden by the license condition of RJIO. Further, the consequences for violating these license conditions would be serious, as breaches of net neutrality obligations could invite severe consequences, including revocation of the license granted to the TSP. Accordingly, it has been submitted that the legal framework already in place in India, prohibits RJIO from providing any preferential treatment to Google's content/ apps either before or after the Proposed Combination. It has been further submitted that no term in the Proposed Combination documents provides for any preferential treatment by RJIO to Google, or violates net neutrality obligations.



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25. The Commission observes that the potential for a TSP to give preference to a particular content has to be seen in light of the consequences of non-compliance of net neutrality obligation as well as the incentives for making a content more accessible only in a particular telecom network. When attempts were made to devise programmes that gave access to particular OTT applications on a discriminatory tariff basis, TRAI promulgated Prohibition of Discriminatory Tariffs for Data Services Regulations, 2016, which *inter alia* provide that:
- (a) No service provider shall offer or charge discriminatory tariffs for data services on the basis of content;
  - (b) No service provider shall enter into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of charging discriminatory tariffs for data services being offered or charged by the service provider for the purpose of evading the prohibition in this regulation.
26. The regulatory framework was further strengthened in 2018 by the Department of Telecommunications (**DoT**) to prevent any form of content-based discrimination. The Unified License conditions applicable to TSPs were amended to impose specific compliances, the relevant extracts of which are as under:
- (i) *A Licensee providing Internet Access Service shall not engage in any discriminatory treatment of content, including based on the sender or receiver, the protocols being used or the user equipment.*
  - (ii) *The Licensee is prohibited from entering into any arrangement, agreement or contract, by whatever name called, with any person, natural or legal, that has the effect of discriminatory treatment of content.*
  - (iii) *For the purpose of this provision: .....b) “Discriminatory treatment” shall include any form of discrimination, restriction or interference in the treatment*



*of content, including practices like blocking, degrading, slowing down or granting preferential speeds or treatment to any content.”*

27. The Commission notes that the Proposed Combination is a partial acquisition and non-observance of net neutrality obligation may be prejudicial not only to the licensee (*i.e.*, RJIO) but also to the investment made by the Google. Further, given the above telecom regulatory instruments governing net neutrality obligations of TSPs, the Commission does not find it necessary to separately examine the issue further.

***(ii) Potential data sharing between the parties***

28. Most of the data driven industries are multifaceted platforms where one or more sides of the platform are designed to attract user presence and the other sides are used for monetising the data relating to user behaviour. For instance, on Google’s Search application, one side of its platform offers free services to users for search services and on the other side, the monitored behaviour of such users is used as an input to offer advertisement services. Some of Google’s product enable access to internet and web world, and thus it possesses access to rich data regarding user behaviour. Google has a data policy that explains the nature of information collected by Google and why it is being collected.
29. Jio Platforms including RJIO, on the other hand, is also in a position to collect and possess consumer data. The privacy policy of RJIO defines Non-Personal Information as information that does not identify the user or any other individual, and includes session, web beacons and usage and transaction data, aggregate log data and aggregate information. It further states that RJIO uses this information, *inter alia*, to tailor its services to the interests of its users, to measure traffic within its services, to improve the quality, functionality and interactivity and let advertisers know the geographic locations from where its users/ visitors come. The privacy policy further provides that the information provided by the users will be used for a number of purposes connected



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with RJIO's business operations including (a) verifying the identity, access, privileges assigned and relationship with the user; (b) provisioning of products/services, testing or improvement of services, recommending various products or services; (c) communicating about bills, invoices, existing or new offers, content, advertisements, surveys, key policies or other administrative information; (d) analytics and reviews for improvement of RJIO's services; (e) improving user experience while using RJIO's services by presenting tailored advertising, products and offers; and (g) other usages that users may consent to.

30. Business combination between entities having access to user data can be analysed from the perspective of data backed market power. The assessment in such instances needs to focus on the incentives of parties to pool or share their databank and monetise such data in possible means. However, in the instant matter, it is noted that the Proposed Combination is an acquisition of 7.73% stake in Jio Platforms by Google. This may not result in unrestricted access to each other's resources including user data. Thus, an assumption of full integration is not warranted. Accordingly, it would not be required to conduct an assessment as if the data banks of the parties are merged. Nevertheless, the parties may have incentives to engage in mutually beneficial data sharing. In this regard, Google has submitted that:

*"...The Collaboration does not contemplate a combination or sharing of the Parties' preexisting proprietary and confidential datasets, or future datasets that the Parties may generate through their activities outside the Collaboration.*

*Each Party will have access only to the data generated under the Collaboration necessary to serve the legitimate business purposes of the Collaboration and subject to applicable laws, including data collection and privacy policies, personal rights, and consents."*

31. Notwithstanding all the above submissions of Google, any anticompetitive conduct resulting from any data sharing or otherwise, in any manner, in the future could be taken up under Sections 3 and/or 4 of the Act, irrespective of the approval granted herein, having due regard to the dynamics of the concerned markets and position of the parties therein.



32. Considering the material on record including the details provided in the Notice and the assessment of the Proposed Combination based on factors stated in Section 20(4) of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have any appreciable adverse effect on competition in India. Therefore, the Commission approves the Proposed Combination under Section 31(1) of the Act.
33. This order shall stand revoked if, at any time, the information provided by Google is found to be incorrect.
34. The information provided by Google is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.
35. The Secretary is directed to communicate to Google, accordingly.