



**COMPETITION COMMISSION OF INDIA  
(Combination Registration No.C-2016/12/463)**

4<sup>th</sup> May, 2017

**Notice under sub-section (2) of Section 6 of the Competition Act, 2002 jointly given by Dish TV India Limited & Videocon D2h Limited**

**Coram:**

Mr. Devender Kumar Sikri  
Chairperson

Mr. Sudhir Mital  
Member

Mr. Augustine Peter  
Member

Mr. U. C. Nahta  
Member

Mr. G.P. Mittal  
Member

**Legal Representatives:** Luthra & Luthra and Shardul Amarchand Mangaldas & Co.

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

1. On 9<sup>th</sup> December, 2016, the Competition Commission of India (“**Commission**”) received a notice jointly given by Dish TV India Limited (“**Dish TV**”) & Videocon D2h Limited (“**Videocon d2h**”) under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”). The notice was filed in Form II, pursuant to the passing of board resolutions by Dish TV and Videocon d2h on 11<sup>th</sup> November, 2016 approving the Scheme of Amalgamation (“**Scheme**”). (Hereinafter, Dish TV and Videocon d2h are collectively referred to as “**Parties**”).
2. The proposed combination contemplates amalgamation of Videocon d2h with and into Dish TV (to be renamed as Dish TV Videocon Limited (“**Dish TV Videocon**” or “**Resultant Entity**”). Resultantly, Videocon d2h will be dissolved and shareholders of Videocon d2h (including its promoters) will receive equity shares in Resultant Entity. Pursuant to the proposed combination,



existing shareholders of Dish TV will own 55.4% equity shares of the Resultant Entity and the remaining 44.6% equity shares of the Resultant Entity will be held by existing shareholders of Videocon d2h.

3. In addition, pursuant to a Share Purchase Agreement (“SPA”), one of the promoter shareholder of the Resultant Entity (currently, a shareholder of Dish TV) proposes to acquire 4.95% shares of the Resultant Entity from certain existing shareholders of Videocon d2h, with an option to purchase additional 4.95% shares after one year from the date on which the Scheme takes effect.
4. In terms of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* letter dated 3<sup>rd</sup> January 2017, Parties were required to remove certain defects in notice and provide requisite information / document pertaining, *inter alia*, to market share of direct-to-home (“DTH”) operators in India and details of shareholding structure of the Resultant Entity. The reply to the above said communication was filed on 9<sup>th</sup> January, 2017.
5. Dish TV, a public company incorporated in India, launched DTH broadcasting services in 2003. It is also engaged in the business of providing teleport services (uplinking) to the broadcasters of various channels under a separate license issued by the Government of India. Dish TV has a subsidiary, namely, Dish Infra Services Private Limited which is active in the business of providing infrastructure support services to the subscribers of Dish TV.
6. Videocon d2h launched its DTH broadcasting services in India in July, 2009.
7. The Commission observed that there is horizontal overlap between the Parties in provision of DTH services in India. Furthermore, it emerged that Dish TV may have some structural linkages with Essel group in as much as some of the entities of Essel group are engaged, *inter alia*, in business of development of TV contents which is upstream to the business of distribution of TV contents.
8. Accordingly, letters, under Regulation 14 of the Combination Regulations, were issued to the Parties on 6<sup>th</sup> February, 2017, seeking information pertaining to, *inter alia*, market share of the Parties and of their competitors at state level in DTH services business, linkages of Dish TV with



the Essel group and synergy from the proposed combination. Complete response to the above said communication was filed on 1<sup>st</sup> March, 2017. The Parties also provided certain information as voluntary submissions *vide* their letters dated 10<sup>th</sup> March, 2017, 6<sup>th</sup> April, 2017 and 1<sup>st</sup> May, 2017.

9. The Commission, in its meeting held on 31<sup>st</sup> January, 2017, decided to seek comments and information, under sub-regulation (3) of Regulation 19 of the Combination Regulations read with Section 36 of the Act, from Telecom Regulatory Authority of India (“**TRAI**”), broadcasters and competitors of the Parties (*i.e.* DTH operators) in India. Letters were issued to the above said entities on 6<sup>th</sup> February, 2017. Also, a letter requesting certain information in relation to the proposed combination was also sent to Ministry of Information and Broadcasting (“**MIB**”).
10. *Vide* their letter dated 22<sup>nd</sup> March, 2017, the Parties, made a request for inspection of documents under sub-regulation (1) of Regulation 37 read with Regulation 50 of the Competition Commission of India (General) Regulations, 2009 (“**General Regulations**”), which was granted and the Parties inspected the non-confidential documents on 5<sup>th</sup> April, 2017.
11. On the issue of relevant product market, the Commission observed the submissions of the Parties that the services provided by various Distribution Platform Operators (“**DPOs**”) such as Multi System Operators (“**MSOs**”), Local Cable Operators (“**LCOs**”), Over-The-Top services (“**OTTs**”), Internet Protocol Television (“**IPTV**”) are interchangeable *vis-a-vis* the subscriber as the end-use is similar (*i.e.*, retail consumption of TV content) and that the market structure is such that the DPOs are merely operating a platform to distribute the content of the broadcasters. Further, it has been stated that DPOs are required to make available the content of the broadcaster on an ‘*as is basis*’ to the consumer and the industry is ‘platform agnostic’, which implies that irrespective of the platform, the subscribers get the same content. It has thus been submitted that the consumers have multiple means of accessing television channels *e.g.* Terrestrial TV, Cable TV, OTTs, DTH, IPTV *etc.* and that the Parties have contended that relevant product market for the purposes of the Proposed Combination ought to be ‘the market for retail distribution of TV content *via* DPOs’.
12. With respect to horizontal overlaps, the Commission noted that both the Parties are engaged in providing DTH services. On the aspect of relevant product market, the Commission observed



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that distribution of TV content by aforesaid categories of DPOs may not be closely interchangeable or substitutable in terms of the provisions of the Act. The services offered by DTH operators can be distinguished from those of MSOs in terms of packages, pricing, flexibility offered, technology, infrastructure requirements *etc.* The Commission observed that while the operating area of the MSOs is local in nature, the DTH operates on a pan India basis. TRAI's recommendation on "*Issues relating to DTH Licenses*", dated 23<sup>rd</sup> July, 2014, also makes such distinction, wherein it states that in case of DTH service providers, the market share should be looked at pan-India level, whereas, in the case of cable TV operator, the market needs to be looked mostly at state level. Further, the Commission observed that OTT services are specialised in nature as they are provided through internet. IPTV, OTTs *etc.* are not substitutable with DTH, as only limited content is available through them and the medium of providing these service is internet, which still has limited reach. However, as the proposed combination is not likely to raise any appreciable adverse effect on competition, the Commission decided that the delineation of relevant product market be left open. With respect to the relevant geographic market, the Commission observed that the Parties and their competitors, namely, Airtel, Tata Sky, Sun Direct *etc.* are present across India and offer similar bouquet of channels pan India at comparative base price. Therefore, the Commission decided that the relevant geographic market is India in the instant case.

13. With respect to DTH services in India, the Commission noted that the market share of Videocon d2h and Dish TV is around 20 percent and 25 percent, respectively, and the combined market share, post combination, will be relatively high at around 45 percent. The Commission also noted that the combined market share of the Parties is much higher in some of the states. However, at pan-India level, there are competitors (market share in India indicated along with) of the Parties, such as, Tata sky (around 21 percent), Airtel (around 20 percent), Sun Direct (around 10 percent), Reliance Digital (around 3 percent), who would provide competitive constraint to the Parties, post-combination. Further, taking into account the ease of switching by consumers, constraints from other modes of distribution of TV content, presence of sectoral regulator, expected entry of new players in near future like Reliance Jio DTH, the Commission noted that the horizontal overlap between the Parties in DTH services is not likely to raise any competition concern in India.



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14. As aforementioned, during the assessment of the notice, it emerged that Dish TV may have structural linkages with entities of Essel group, viz. SITI Cable, Zee Entertainment Enterprises Limited Ltd. (“ZEEL”) and Zee Media Corporation Limited (“ZMCL”). In this context, the Commission observed that ZEEL and ZMCL are broadcasters, i.e. developers of TV content whereas SITI Cable and Dish TV are DPOs. Business activities of broadcasters and DPOs are at different stages or levels of the production / supply chain. Accordingly, the Commission assessed and examined vertical relationship between ZEEL / ZMCL and Dish TV and the likely impact of the same.
15. The response of third parties, viz., broadcasters and the competitors of the Parties have raised following issues in this regard:
- 15.1 *Dish TV is a part of the Essel group and because of that there exists vertical relationship between Dish TV and ZEEL / ZMCL. Further, the Resultant Entity with a market share of around 45% would have potential vertical relationship with ZEEL / ZMCL.*
- 15.2 *The Resultant Entity may form bouquets or place channels to disadvantage of broadcasters.*
- 15.3 *Owing to high market share of the Resultant Entity, post-combination, the broadcasters would grant high discount to the Resultant Entity, as compared to their competitors.*
- 15.4 *Queries have been raised about the authenticity of the synergy claims arising from the proposed combination, as Dish TV and Videocon d2h use different technologies for their DTH business.*
16. The Commission, however, observed that both Ministry of Information and Broadcasting (“MIB”) and Telecom Regulatory Authority of India (“TRAI”) have issued detailed guidelines that, *inter alia*, cover the aforesaid areas of concern raised by certain broadcasters and competitors of the Parties. Further, TRAI issued detailed regulations on 3<sup>rd</sup> March, 2017, namely, Telecommunication (Broadcasting and Cable) Services Interconnection (Addressable Systems) Regulation, 2017 (“**Interconnect Regulations**”), Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order (“**Tariff Order**”) and



Telecommunication (Broadcasting and Cable) Services, Standard of Quality of Services and Consumer Protection (Addressable Systems) Regulations 2017 (“**Consumer Protection Regulations**”).

17. Specifically, the Commission noted that the following obligations on both DPOs as well as distributors of TV contents to be relevant for the issues under consideration. Under the extant regulatory regime, every distributor of TV content is required to publish on its website: (i) total channel carrying capacity, (ii) list of channels available, (iii) number of channels for which signals have been requested by the distributor of TV content from the broadcaster and an interconnection agreement has been signed, (iv) spare channel carrying capacity, and (v) list of channels for which requests have been received from the broadcaster and an interconnection agreement signed but which are pending distribution due to non-availability of spare channel capacity. Further, the Interconnection Regulations stipulate that every distributor of TV content shall allocate every alternate spare channel capacity on its network to the channels, in sequential manner and this has to take place on a non-discriminatory basis. Further, maximum retail price of channels are fixed by the broadcasters. The Commission also observed that market at the level of broadcasters as well as DPOs is competitive with presence of several big competitors. In view of the above, the Commission observed that the regulatory landscape and presence of other competitors would ensure that there is no adverse impact on competition, on account of vertical relationship in the instant matter.
18. The Commission further observed that the Parties, *vide* their letter dated 2<sup>nd</sup> May, 2017, have filed following voluntary undertaking under sub-regulation (2) of Regulation 19 of the Combination Regulations, whereby the Resultant Entity shall bear the following costs:
- a. the cost of realigning and re-configuring the receiving antenna installed at customers’ premises, in case the Parties decide to surrender either of the transponders leased by DTIL or Vd2h (as the case maybe), so as to make it compatible with the transponders that may be retained by the Resultant Entity; and
  - b. the cost of antenna of the customer and/or set top box which may be required to be changed as a result of the Proposed Combination.



19. The Commission noted that this would address any apprehension regarding the customer of respective party having to bear the cost of technical realignment that would be carried out by the Resultant Entity as Dish TV and Videocon d2h use different technologies for their DTH business. The Commission, while accepting the undertaking submitted by the Parties, directed the Parties to submit compliance report, along with other relevant documents, once every year for a period of five (5) years from the date of receipt of this order.
20. Considering the facts on record and the details provided in the notice given under sub-section (2) of Section 6 of the Act and on basis of the assessment of the proposed combination, the Commission is of the opinion that the proposed combination is not likely to have appreciable adverse effect on competition in India and therefore, the Commission, hereby, approves the same under sub-section (1) of Section 31 of the Act.
21. This order shall stand revoked if, at any time, the information provided by the Parties is found to be incorrect.
22. The information provided by the Parties is confidential at this stage in terms of and subject to provisions of Section 57 of the Act.
23. The Secretary is directed to communicate to the Parties accordingly.