

## MOOT PROPOSITION

### Part-I

Rimcircle Jivan Infocomm Ltd., more popularly known as Rimcircle Jivan, recently shot to news when Ramesh Ambalal announced the ideas and plans of Jivan which shook the industry. Share prices of Airtalk, VIPfone, and Innovation fell considerably when the launch of Jivan was made.

Rimcircle Industries Pvt. Ltd. is stated to be one of the biggest private companies in India in terms of its size, revenue, assets and value, leading it to be one of the financially strongest companies in the country. It has been claimed that Rimcircle Industries Pvt. Ltd. has the largest market share in polyester fibre and yarn industry and petroleum products industry not only in India but also globally. Rimcircle Industries Pvt. Ltd. is also stated to be India's first private sector company to feature in the Fortune Global 500 list of 'World's Largest Corporations'.

In 2005, Rimcircle Industries Limited split and there was one major de-merger of note for Ramesh Ambalal. His dream project- Rimcircle Infocom became a part of Arvind Ambalal Group. Arvind Ambalal had inherited the telecom business of the Rimcircle group following the division of the family empire between him and Ramesh Ambalal. The division of properties amongst the two siblings had put a non- compete clause on Ramesh Ambalal for 10 years from 2005 onwards specifying that he cannot enter into similar business till the year 2015. But it's the fact that Ramesh Ambalal wanted to enter again in Telecom Market and had went on acquiring Infotalk Broadband Services Limited in 2010, the company which was the only successful bidder for pan-India 4G network in 2300 MHz band category.

Subsequently, Rimcircle Industries Pvt. Ltd. acquired majority stake i.e. around 96 per cent in IBSL, which was later on re-named as Rimcircle Jivan Infocom Limited (i.e. Rimcircle Jivan Infocom Ltd. ). At present, Rimcircle Industries Pvt. Ltd. is stated to hold 99.44 per cent stake in Rimcircle Jivan Infocom Ltd. Rimcircle Jivan Infocom Ltd. was initially holding internet services provider (ISP) licence. Subsequently, it applied for migration of its ISP license to Unified License, which was granted by the Department of Telecommunications (hereinafter 'DoT') on 21st October, 2013 enabling it to provide the complete bouquet of telecom services including voice call services in all the 22 service areas across the country.

Rimcircle Jivan Infocom Ltd. has deployed the largest amount of spectrum for 4G LTE services in India. Rimcircle Jivan Infocom Ltd. has an overall spectrum holding of 1107.8 MHz across all 4G-LTE bands and in all the bands, Rimcircle Jivan Infocom Ltd. is holding the largest spectrum i.e. 50 per cent in 2300MHz band, 56 per cent in 800MHz band and 28 per cent in 1800MHz band. Rimcircle Jivan Infocom Ltd. is offering seamless 4G services using LTE technology in 800MHz, 1800MHz and 2300MHz bands through an integrated ecosystem.

Further, the telecom network of Rimcircle Jivan Infocom Ltd. comprises of approximately 2.43 lacs Base Transceiver Stations (BTS), which is approximately 18 per cent of the total BTSs installed by the entire industry and 66 per cent of the overall 4G LTE BTS in the country. Rimcircle Jivan Infocom Ltd. also owns and holds the largest Optical Fibre Cables (OFC) network in the country.

In 2016 Ramesh Ambalal made a dramatic entry into the telecom sector by providing various lucrative offers and disruptive pricing in the name of Rimcircle JIVAN. He also announced a 'free welcome offer' for Jivan customers from September 5 till December 31. Rimcircle Industries has invested as much as \$20 billion on Jivan -- its largest ever capital expenditure on a single project.

Based on the press release dated 16th January, 2017 of Rimcircle Jivan Infocom Ltd. , it is evident that it has a subscriber base of 72.4 million as on 31<sup>st</sup> December, 2016, which makes it India's top carrier by mobile broadband user base, surpassing the Airtalk and all other telecommunication service providers in the country.

Upon roll out of its services, Rimcircle Jivan Infocom Ltd. announced 'Jivan Welcome Offer' under which data, voice, video and the full bouquet of Jivan applications and content was available to the subscribers absolutely free, commencing from 5th September, 2016 and ending on 31st December, 2016. Telecom Regulatory Authority of India (TRAI) curtailed the period of the said offer till 3rd December, 2016. However, Rimcircle Jivan Infocom Ltd. continued the same till 31st December, 2016 in complete disregard of the directions of TRAI. Subsequently, Rimcircle Jivan Infocom Ltd. launched a new offer for its subscribers viz. 'Happy New Year Offer', whereby it gave all its users unlimited data, voice calls and messages until 31st March, 2017. Rimcircle Jivan Infocom Ltd. also provides an exclusive offer for iPhone users viz. 'Jivan

iPhone offer' offering unlimited local, STD, and national roaming on voice calls on any network in India, 20 GB of 4G data per month, unlimited 4G data during night, 40 GB Wi-Fi data and unlimited Short Message Service (SMS) from 1st January, 2017 to 31st December, 2017. Rimcircle Jivan Infocom Ltd. is the only telecom operator in the Indian market to have announced and committed free services in respect of voice calls (both within and outside its network), SMS and roaming irrespective of the volume of usage. Such free services were offered notwithstanding the regulatory requirement of "calling party pays", whereunder Rimcircle Jivan Infocom Ltd. is required to pay interconnection charge of 14 paisa per minute for calls by its subscribers to customers of other network. 'Jivan Welcome Offer' and 'Happy New Year Offer' of Rimcircle Jivan Infocom Ltd. amounts to zero pricing as well as 'free voice calls for life'.

Ramesh Ambalal at the time of launching JIVAN said that all voice calls to any network across India on its Jivan network will be free which they are going to deliver considering the dream of PM Narendra Modi, the PM of India. Multiple newspaper advertisements even video advertisements through TV ads carried the photograph of PM Modi. After predictable outrage amongst telecom service providers, a Right to Information petition has been filed in regard to Modi being the chosen the face for Rimcircle JIVAN. The RTI asks whether any permission was sought by Rimcircle Jivan for using the photo of the PM in their advertisement? Soon later Rs. 500 was imposed as penalty on Rimcircle JIVAN for improper using of the picture of PM Modi and the picture was removed as well.

Indian Airtalk Pvt. Ltd. is a global telecommunications company with operations in 18 countries across Asia and Africa. It provides 4G services in 21 telecommunication circles across India. Indian Airtalk Pvt. Ltd. is stated to be amongst the top three mobile service providers globally in terms of the number of subscribers. It offers 2nd Generation (2G), 3rd Generation (3G) and 4<sup>th</sup> Generation (4G) wireless telecommunication services, amongst other services. Airtalk is also the first operator to roll out 4G Long Term Evolution (LTE) wireless telecommunication services in India. VIPfone India Pvt. Ltd., Innovation Cellular Pvt. Ltd. Are the other telecommunication service providers in the Indian Telecom market.

Various informations were filed by Airtalk, VIPfone and Innovation against the Rimcircle Jivan Infocom Ltd. before the Competition Commission of India under Section 19 (1) (a) of the

Competition Act, 2002 for contravention of provisions of Section 3 and 4 of Competition Act, 2002 on ground that Such conduct of Rimcircle Jivan Infocom Ltd amounts to predatory pricing in contravention of Section 4(2)(a)(ii) of the Act.. The Commission on 9 June, 2017 reached to the considered view that no prima facie case of contravention of Section 4(2)(a)(ii) of the Act is made out against Rimcircle Jivan Infocom Ltd. The matter was therefore ordered to be closed in terms of the provisions of Section 26(2) of the Act.

The said order of the commission is challenged before the Supreme Court of India.

## **Part-II**

The CCOI is a premier Telecom industry association in the telecom Sector. It is a society registered under the Societies Registration Act, 1860 with the Registrar of Societies at Delhi in July 1996. All the TSP involved in present case are members of CCOI.

On 22 December 2015, Rimcircle Jivan Infocom Ltd. intimated TRAI & DoT about commencement of test launch. As per the unified license terms all the TSPs executed interconnection Agreement. Rimcircle Jivan Infocom Ltd. executed IC Agreement with various TSPs including Indian Airtalk Limited (Airtalk), INNOVATION Cellular Limited (Innovation), VIPfone India Limited (VIPfone). The TRAI has been monitoring the quality of services laid down under the TRAI Regulations. It is specified that each TSPs is required to meet "reasonable" demands for POIs from each other.

On 21 June 2016, Rimcircle Jivan Infocom Ltd. issued a letter to the Petitioner informing them that:-

"...Rimcircle Jivan Infocom Ltd. is currently conducting test trials of its services before its commercial launch..." and that "...Rimcircle Jivan Infocom Ltd. , on reasonable grounds, is expecting over 100 million subscribers in the first year post launch of services. Rimcircle Jivan Infocom Ltd. will require sufficient interconnect capacity for inter-operator traffic at the Points of Interconnection ("POIs")..."

Rimcircle Jivan Infocom Ltd. provided a forecast to various TSPs for POIs based on inter alia an assumption of "...an average call duration of 54 seconds...": 3,281 POIs (i.e. 2,586 Access POIs and 695 NLD POIs) for initial scenario of 22 million subscribers ("...for which number series is

already allotted...") expected in the first quarter after launch. "Immediate demand" for POIs; Demand for 7,056 POIs (i.e. 5,703 Access POIs and 1,353 NLD POIs) for 50 million subscribers at the end of 3 months; Demand for 9,064 POIs (i.e. 7,326 Access POIs and 1,738 NLD POIs) for 75 million subscribers at the end of 6 months; and Demand for 10,070 POIs (i.e. 8,140 Access POIs and 1,930 NLD POIs) for 100 million subscribers at the end of 9 months. Rimcircle Jivan Infocom Ltd. asked the Petitioner to treat its letter as a "firm demand".

On 14 July 2016, Rimcircle Jivan Infocom Ltd. issued a letter to the TRAI and the DoT stating that the POIs provided by the TSPs were substantially inadequate and leading to congestion in all circles. Accordingly, Rimcircle Jivan Infocom Ltd. requested:-

"...the Authority to immediately intervene and instruct these service providers, namely Airtalk, Innovation, VIPfone augment the POI capacities as per the firm demands made by Rimcircle Jivan Infocom Ltd. ..."

On 8 August 2016, 11 August 2016 and 22 August 2016, Corporation of Cellular Operators of India ("CCOI") issued a letter to the DoT stating inter alia that Rimcircle Jivan Infocom Ltd. was providing "...full-blown and full-fledged services, masquerading as tests, which bypass Regulations and can potentially harm policy features like the non-predatory pricing, fair competition, etc..."

On 1 September 2016, Rimcircle Jivan Infocom Ltd. made public announcement of the commercial launch on 5 September 2016. On 2 September 2016, CCOI's 5th letter to DoT, TRAI, PMO, MoF & MoC about launch of Rimcircle Jivan Infocom Ltd.'s services, stating that they are in no position to provide POIs requested by Rimcircle Jivan Infocom Ltd. The Rimcircle Jivan Infocom Ltd. wrote to the Petitioner informing them that it would be commencing commercial operations on 5 September 2016. On 5 September 2016, Rimcircle Jivan Infocom Ltd. launched commercial operations.

On 15 September 2016, Rimcircle Jivan Infocom Ltd.'s 4th letter to TRAI informing that more than 10.2 Cr calls are still failing every day due to lack of adequate POIs.

On 21 October 2016, TRAI recommended to the DoT to impose a penalty of INR 950 crore on contesting service providers "...for non-compliance of the terms and conditions of license and denial of Interconnection to Rimcircle Jivan Infocom Ltd. ..."

On 21 September 2016, Rimcircle Jivan Infocom Ltd. filed information under Section 19(1)(a) of the Competition Act, 2002 before Competition Commission of India against Airtalk, VIPfone, Innovation and CCOI respectively for violation of Sections 3 and 4 of the Competition Act terming the act of TSPs as "cartelisation" by "action in concert" by delaying and denying adequate Point of Interconnections (POIs), even during the test phase/period, thereby attempting and thwarting the Rimcircle Jivan Infocom Ltd.'s new project/entry in the telecom market, as that action resulted into failures of calls of Rimcircle Jivan Infocom Ltd., on others Networks..

On 21 April 2017, Competition Commission of India, relying primarily on CCOI's letters dated August 8, 2016 and September 2, 2016 as well as the recommendation dated October 21, 2016, passed the majority order under Section 26(1) of the Competition Act and directed the Director General to cause an investigation into the matter.

The Petitioners ("Service Providers") challenged common impugned order/direction dated 21 April 2017 passed by the Competition Commission of India (CCI) ("the Commission") under Section 26(1) of the Competition Act, 2002. The challenge is through a writ petition before the Bombay High Court on the grounds that the reasons for framing the prima facie opinion by the commission were baseless and the availability of an alternative forum in the form of TRAI excludes the jurisdiction of Competition Commission on the said issue. However, High court after going through the whole matter dismissed the petition on the ground that the High Court in exercise of writ jurisdiction cannot substitute the prima facie opinion of the Commission and upheld the direction issued by the commission. TSPs have now approached the Supreme Court challenging the judgment of Bombay high court.

### **Part III**

The petitions in both the matters are before the supreme court of India for final hearing. Supreme court has clubbed both the matters for hearing on the following issues primarily-

1. Whether Rimcircle Jivan Infocomm Ltd. has acted in violation of section 3 and 4 of the Competition Act, 2002 by applying predatory pricing policy?
2. Whether the order passed by Competition Commission directing the Director General to investigate the matter is subject to judicial review on ground that the reasons for framing prima facie opinion are baseless?
3. Whether existence of an alternative forum (TRAI) is a bar to petition before Competition Commission of India in the present case?

The parties can frame any other issue relevant to the case.

Abbreviations Used –

- TRAI- Telecom Regulatory Authority of India
- CCOI- Corporation of Cellular Operators of India
- TSP- Telecommunication Service Provider
- ISP- Internet Service Provider
- POI- Point of Interconnection
- IC agreement- Interconnection Agreement
- DoT- Department of telecommunication
- CCI- Competition Commission of India