



Suresh Srinivasan

An entrepreneur, consultant and a professor of strategy at Great Lakes Institute of Management, Chennai. He is also a chartered accountant and comes with decades of industry experience globally.

Acid test of India's institutional strength



Jio's entry in the Indian telecom industry has triggered a number of issues | Reuters

Feb 6, 2017 16:58

With Jio's entry and possible Vodafone-Idea merger, the telecom industry is undergoing a shake-up

Jio's 'big bang' entry seriously dented the Indian telecom industry's profitability — Bharti has reported a 65 per cent decline in profits for the third quarter; Vodafone reported a 5 per cent drop in top-line, primarily on account of reduced subscriber base, pricing pressures and depleted data revenue arising from Jio's entry. Idea Cellular's situation is similar. The fourth quarter forecasts too don't show much promise.

Trigger point

Jio's entry has triggered a number of issues; with damage to the industry already done, incumbents are seriously assessing their medium- to long-term strategies.

From another perspective, Jio has been successful in establishing a 'new normal', with a sharper focus on data, moving away from voice; which truly reflects the demands of a growing digital economy. In effect, Jio entering the market and the aftermath can be dissected and viewed from three angles.

~ First, Jio has accused its competitors (Bharti, Vodafone and Idea) of cartelisation, alleging that they are not offering points of interconnection (PoI) for Jio to scale up.

~ Second, the competitors are saying that Jio's offering free voice calls is a clear case of 'predatory' pricing, that has adversely impacted the telecom industry.

~ Third, with Vodafone and Idea Cellular initiating a merger to become the largest player in the telecom sector, is there a case for growing industry concentration? And will such a position provide a platform for the consolidated players to abuse their dominant position, at the cost of subscribers?

Competition Commission of India

The objective of India's Competition Act, 2002 is to prevent corporate practices from having an adverse effect on competition, to promote and sustain competition in markets, and protect the interests of consumers through the Competition Commission of India (CCI).

With so much dynamism in the telecom industry, and at a juncture where the transparency and strength of Indian institutions are being put to test, the CCI has a key role to play in decisively making a call that is in the best interests of the industry, its players and telecom subscribers. Let us look at the three issues individually.

Cartelisation: *Is there a case?*

With close to 70 per cent of the industry's current revenue streams coming from voice-related services, Jio's free voice call has devastated short-term industry profitability and viability. There is also the potential threat of the subscriber base shifting from incumbent network providers to Jio, provided the latter 'walks the talk'.

PoI, or points of interconnection, are critical for voice calls to go through from one network to another — in a sense, competitors are collaborators — to eventually reach their subscribers.

Jio alleges that Bharti, Vodafone and Idea are not offering enough PoIs for Jio to successfully scale up. It contends these are deliberate attempts by the competition, having grouped as a cartel, which it sees as a violation of their licensing terms.

Clause 4(c) of competition law says it is an abuse of dominant position if an enterprise or group indulges in practices that result in denial of market access to another player in any manner. The Telecom Regulatory Authority of India (TRAI), *prima facie*, sees a violation of incumbents abusing their dominant position, and has recommended imposing a penalty of around ₹3,000 crore on them.

The question here is: is there really a cartelisation of incumbents to block Jio's entry? Or is there a genuine hardship and infrastructure constraint imposed on the incumbents due to Jio's free voice call offer that goes beyond the existing telecom licensing terms (tsunami of free calls, as they term it). CCI is still investigating this.

Jio's 'predatory' pricing: *Is there a case?*

Telecom players have alleged that Jio is offering predatory pricing to its customers. In developed markets, where competition laws are stringent, predatory pricing has always been associated with a 'dominant' player selling goods and services below cost with an objective to eliminate competition. Large players such as Walmart and Microsoft have faced the brunt of such action in the past.

In Walmart's case, standalone pharmacies had alleged that it abused its dominant 'retail' market share to sell drugs below cost, severely impacting standalone pharmacy competitors. In the legendary *United States vs. Microsoft Corporation (2001)* case, predatory pricing was the main contention; being a dominant player in the 'operating systems' market, it bundled Internet Explorer to kill standalone internet browsing companies.

But these were all cases of large dominant players taking advantage of their near-monopoly power to predatorily price through some form of 'bundling'. Jio's case is different; it has driven prices down in an industry where it is still a non-significant player, in terms of market share and revenue. In essence, it does not hold a dominant position in the telecom industry in the first place to qualify for predatory pricing.

In addition, it is not bundling its offerings with another service, where it has a dominant position. At the most, it can be argued that its large and profitable presence in other industries (oil and gas, retail) could potentially help and sustain its low-price offering in the telecom industry, to gain market share.

Hence, is there any case to call Jio's 'free voice' calls 'anti-competitive'? How will the CCI view this? In this context, it is interesting to see the Commission's stand in 2015, when cab operator Fast Track alleged that ride share player Ola was offering predatory pricing. Surprisingly, the

CCI found *prima facie* evidence of Ola employing anti-competitive practices. But was Ola really a dominant player?

In contrast, during the same year, CCI dismissed the allegation that Flipkart and Snapdeal were employing anti-competitive practices, on the grounds that they are not dominant players, commanding a market share of less than 1 per cent in the Indian retail market. In essence, CCI needs to take a serious call in the latest case for the well-being of the telecom industry, its players and, eventually, the subscribers.

Potential Vodafone-Idea merger: *And increasing industry concentration*

In response to Jio's entry, Vodafone announced that it has entered into discussions with the Aditya Birla Group for an 'all-share' merger of Vodafone India and Idea Cellular, the third largest player. The combined entity is likely to end up with around 40 crore subscribers, overtaking Bharti, which is currently the country's largest telecom player. Although this merger could benefit Vodafone by not requiring it to take the IPO route (which it was planning for), its ongoing tax disputes with the government, involving an amount of over ₹13,000 crore, could become contentious.

The merger can give the consolidated entity a leadership position in 12 out of 22 telecom circles in the country. In at least five circles, its revenue and subscriber base will surpass the 50 per cent threshold set.

More importantly, the key question is: will the merger create a dominant player in the market, which will be detrimental to the subscribers? Again the merger has to be approved by the CCI and it will be interesting to see how it views this issue.

The other point

Not allowing the merger to go through on the grounds of emerging dominant position can seriously impact the industry's health, as the very objective of the merger is to better utilise spectrum and infrastructure, cross-sell services across subscribers, and increase economies of scale to counter short-term price pressures. More importantly, the merger will allow larger spend on technology which is already intensive in the industry.

However, allowing the merger could significantly increase the 'two-firm' concentration, that is, the market share controlled by the top two firms which, in effect, could allow these companies to abuse their dominant position; like a series of mergers in the airline industry (Jet-Sahara, Kingfisher-Air Deccan) that virtually killed the 'low-cost' model.

The merger, again, has to be seen in the context of alleged cartelisation and predatory pricing that makes the issue a bit more complex. In effect, this will turn out to be an acid test of India's institutional strength; the CCI needs to rise to the occasion; the international community is watching with keen interest.