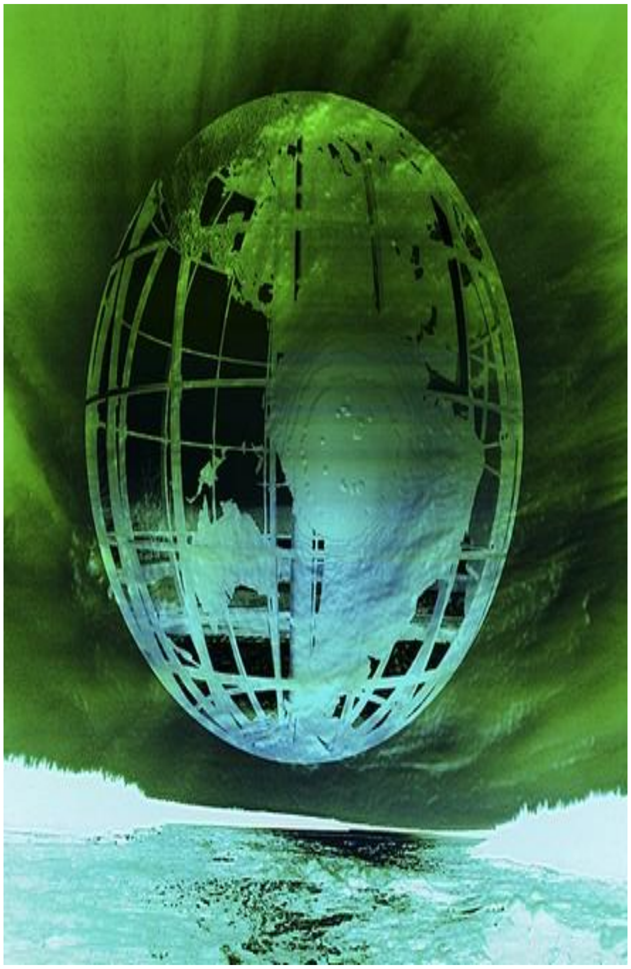

M&A LAB

BHARTI – ZAIN
Deal Dissection

Dissected by – Team M&A

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May 17, 2010

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DISCLAIMER

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PROLOGUE

Finally, Bharti Airtel Limited ("**Bharti Airtel**") bags the 'big ticket' to begin its much awaited African Safari. The highly ambitious, Indian entrepreneur, Mr. Sunil Bharti Mittal had always looked at Africa as the venue for the next round of technology and telecom revolution and had never concealed his intent to be a part of African business history. Bharti Airtel was determined to find its way into Africa, but the crucial question was who would be the indigenous partner? The two rounds of extremely arduous negotiations with MTN Group Limited ("**MTN**") could not bring any success for Bharti Airtel. However, the failure to woo MTN did not dampen the spirits of Bharti Airtel or dilute its ambitions. The writing on the wall was clear; choosing another African partner was only a matter of time.

In our M&A Labs titled '***BHARTI-MTN: Ringing The Bell From Asia To Africa***' dated June 5, 2009 and '***Second missed call: Bharti Airtel fails to reconnect with MTN***' dated October 9, 2009, we had critically evaluated the transactions proposed between Bharti Airtel and MTN in the two rounds of failed negotiations. In this M&A Lab, we explore the Bharti Airtel – Zain deal which the parties have recently concluded, without much uproar, compared to the boisterous Bharti Airtel – MTN negotiations. As always, we seek to analyze the commercial, legal, regulatory and tax aspects of this deal which marks the entry of Bharti Airtel and brand 'India' into African shores.

EXECUTIVE SUMMARY

On February 15, 2010, Bharti Airtel announced that it had entered into exclusive discussions with Mobile Telecommunications Company KSC ("**Zain**") for the acquisition of Zain Africa International BV ("**Zain Africa**") and thereby the entire African operations of Zain, excluding the operations in Sudan and Morocco. With bitter experience to haunt, Bharti Airtel strategically played it safe this time and made an offer to Zain which it just could not refuse. For a commercially ailing Zain, Bharti Airtel's offer of USD 10.7 billion was a jackpot.

On March 30, 2010, Mr. Sunil Bharti Mittal, Chairman and Managing Director of Bharti Airtel and Mr. Asaad Al, Banwan, Chairman, Zain Group executed the definitive agreements at Netherlands marking the transformation of Bharti Airtel into an emerging-market multinational. The acquisition is the largest by an Indian company, second only to the USD 12 billion takeover of Corus by Tata Steel in 2007.[1] In the Indian telecom space, the deal is the second largest after the USD 11.2 billion (approximately) Vodafone Hutchison transaction in 2007.

Would the transaction prove to be expensive for Bharti Airtel? What attracted Bharti Airtel to takeover Zain Africa? What will be Bharti Airtel's strategy for Zain Africa and the African continent? How have the investors reacted to the deal? Is the Bharti Airtel – Zain deal comparable to the failed Bharti Airtel – MTN proposed transaction? What will be the equation between Bharti Airtel and MTN? These are some of the commercial considerations that we try to analyze in this M&A Lab along with the relevant legal, regulatory and tax aspects involved in the deal.

[1] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Zain-board-approves-sale-of-African-assets-to-Bharti/articleshow/5720720.cms

TRANSACTION DETAILS

BRIEF SNAPSHOT	
Acquirer	Bharti Airtel Limited
Seller	Mobile Telecommunications Company KSC
Target	Zain Africa International BV
Acquisition	Bharti Airtel Limited indirectly acquired 100% of Zain Africa International BV and its business operations in Africa from Zain under a privately negotiated agreement.
Mode of acquisition	Security (Share) Sale
Consideration	USD 10.7 billion
Mode of Payment	<u>All cash deal</u> Bharti Airtel to pay: a) USD 8.3 billion within three months from the date of closing; b) USD 700 million after one year from the date of closing; and c) USD 1.7 billion assumed as debt on the books of Zain.
Funding	<u>Leveraged Buy-out</u> a) Bharti Airtel to borrow USD 7.5 billion from a consortium of banks led by Standard Chartered Bank and Barclays Bank. b) Bharti Airtel to avail of a rupee loan of USD 1 billion equivalent from SBI Group.

Parties involved in the Transaction:

1. Bharti Airtel

India's first private telecom services provider with a footprint in all the 23 telecom circles. Widely regarded as India's largest telecom service provider in terms of annual revenues, Bharti Airtel provides mobile & fixed wireless services using GSM technology across all the telecom circles along with broadband & telephone services in 94 cities. All these services are provided under the 'Airtel' brand. Bharti Airtel, as we understand, also has licenses to operate telecom operations in Sri Lanka and Seychelles. In January

2010, it acquired Warid Telecom, a 3-million-subscriber company based in Dhaka, Bangladesh for USD 300 million.

2. Zain

Zain was established in 1983 in Kuwait as the region's first mobile operator. It is a public company engaged, together with its subsidiaries, in the provision of mobile telecommunication and data services, including operation, purchase, delivery, installation, management and maintenance of mobile telephones and paging systems in Kuwait and 21 other countries in the Middle East and North Africa. Its wholly owned subsidiaries include; Mobile Telecommunications Company Lebanon (MTC) SARL, Lebanon, and Sudanese Mobile Telephone (Zain) Company Limited, Sudan.[2]

3. Zain Africa

Wholly owned subsidiary of Zain, incorporated in Netherlands and held the African operations of Zain. The company was originally named Celtel which was acquired by Zain in 2005 and renamed as Zain International BV. The same has been acquired by Bharti Airtel now through Bharti Airtel Netherlands BV.

CHRONOLOGY OF KEY EVENTS

Following table encapsulates the timeline of the key events that have occurred in the Bharti Airtel – Zain saga including the initial round of negotiations that began with MTN:

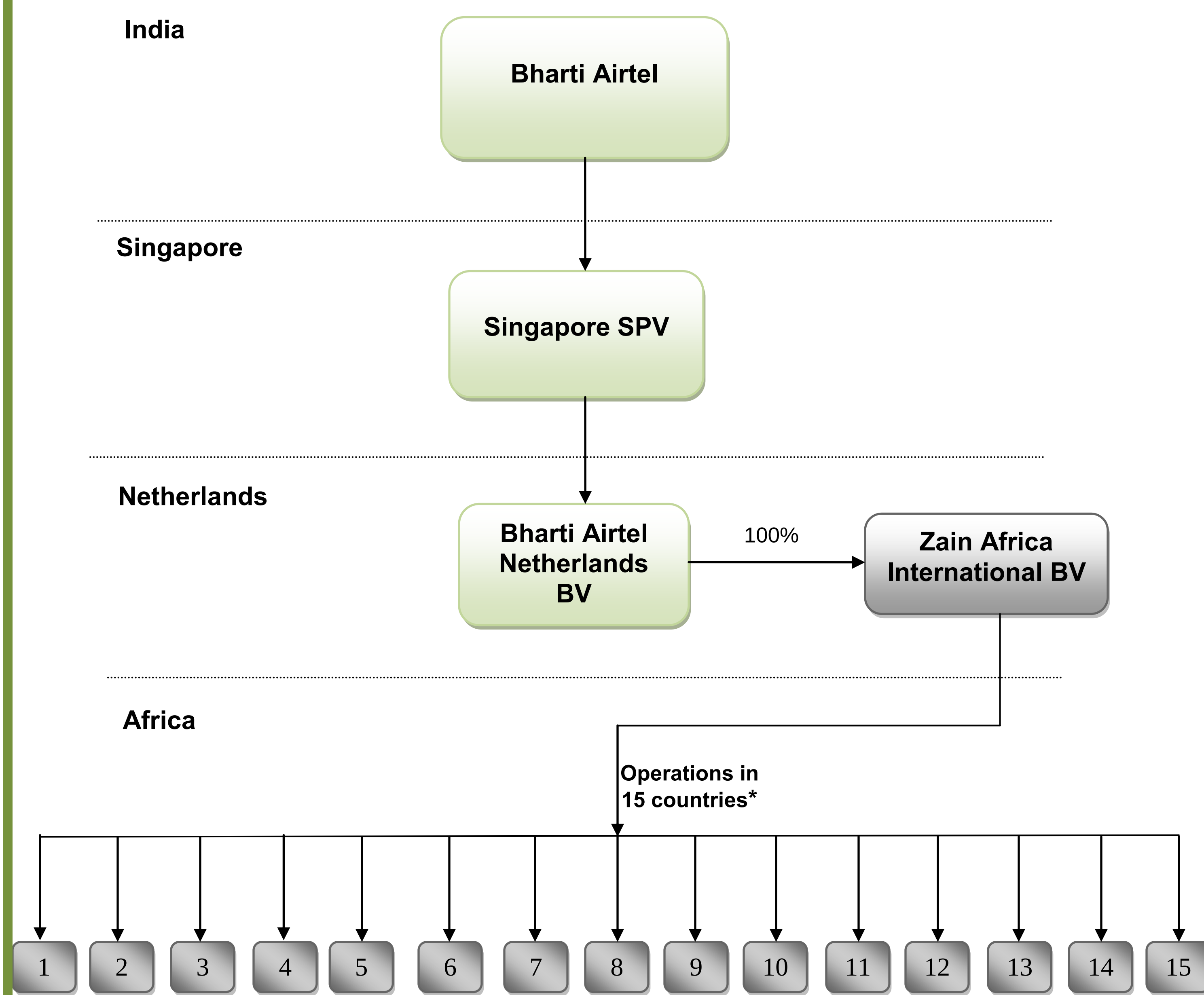
Date	Event
May 5, 2008	Bharti Airtel announces that it has entered into exploratory discussions with the MTN Group.
May 24, 2008	Bharti Airtel withdraws from the talks, following the MTN board presenting a structure completely unacceptable to Bharti Airtel. Bharti Airtel sees this new proposal as a convoluted way of getting indirect control of the proposed combined entity, which would have made Bharti Airtel a subsidiary of MTN.
May 26, 2008	Reliance Communications ("**RCom**") enters into exclusive merger discussions with MTN.
July 2, 2008	Financial Express reports that Bharti Airtel is in talks with Zain for acquisition of its African assets.[3] News denied by Bharti Airtel's spokesperson.
July 19, 2008	RCom and MTN formally end talks.

[2] http://in.reuters.com/money/quotes/companyProfile?symbol=ZAIN.KW
[3] http://www.financialexpress.com/news/Bharti-seen-in-talks-with-Kuwaiti-telco-Zain/330626/

Date	Event
May 25, 2009	Bharti Airtel makes a media statement announcing that it has entered into talks with MTN for a strategic merger with exclusivity period till July 31, 2009.
September 30, 2009	The proposed transaction between Bharti Airtel and MTN called off for the second time in two years on the expiry of the exclusivity period.
February 15, 2010	Bharti Airtel and Zain agree to enter into exclusive discussions till March 25, 2010 for the acquisition of Zain Africa for an enterprise value of USD 10.7 billion.[4]
February 16, 2010	Media Statement from Bharti Airtel, regarding the proposed commercials of the deal. The total agreed enterprise value of USD 10.7 billion proposed to be met as payout of around USD 9 billion and for the remaining USD 1.7 billion, Bharti Airtel will assume debt on the books of Zain.[5] USD 700 million out of the payable of USD 9 billion will be paid by Bharti Airtel after one year from closing. Also, parties agreed to a break-fee of USD 150 million payable by either party.
March 21, 2010	Bharti Airtel announces that the entire financing requirement of USD 8.3 billion for the proposed acquisition of Zain Africa has been successfully tied-up. The financing was oversubscribed, with major international banks committing to underwrite the total amount.[6] **Dollar loan**: USD 7.5 billion by a consortium of banks led by Standard Chartered Bank and Barclays Bank. **Rupee loan**: upto USD 1 billion equivalent INR by SBI Group.
March 25, 2010	Bharti Airtel announces that the due diligence for acquisition of Zain Africa was completed and the definitive agreements were to be finalized soon. Upon signing the definitive agreements, the parties would move towards obtaining required approvals.[7]
March 30, 2010	Parties sign the definitive agreements in Netherlands.[8]

[4] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_150210.pdf
[5] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_170210.pdf
[6] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_220310.pdf
[7] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_260310.pdf
[8] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_310310.pdf

STRUCTURE OF THE ACQUISITION[9]



* The fifteen jurisdictions are: 1) Burkina Faso, 2) Chad, 3) Republic of the Congo, 4) Democratic Republic of the Congo, 5) Gabon, 6) Ghana, 7) Kenya, 8) Malawi, 9) Madagascar, 10) Niger, 11) Nigeria, 12) Sierra Leone, 13) Tanzania, 14) Uganda and 15) Zambia.

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[9] This structure is purely on the basis of newspaper reports and other similar sources in the public domain and we cannot vouch for the accuracy of the same. Please refer to the following source for information on the structure of acquisition - http://www.moneycontrol.com/news/business/exclusive-sunil-mittal-defendszain-deal_449339-2.html

COMMERCIAL CONSIDERATIONS

❖ Is the transaction expensive for Bharti Airtel?

Bharti Airtel is paying Zain an enterprise value of USD 10.7 billion[10] which is 10 times the enterprise value ("**EV**") to Earnings Before Interest, Taxes, Depreciation and Amortization ("**EBIDTA**") multiple for Zain.[11] Out of the total acquisition price, USD 8.3 billion will be paid in cash within three months from the date of closing and USD 700 million will be paid after one year from the date of closing.[12] Further, Bharti Airtel will assume debt to the tune of USD 1.7 billion on the books of Zain Africa.[13]

A deeper probe into the deal and Zain Africa reveals many skeletons in the closet which may make the acquisition price extremely burdensome for Bharti Airtel. Zain Africa has made a net loss of USD 112 million in the nine months to September 2009.[14] Seven of Zain's African units are loss-making, including its highest revenue earner, the Nigerian arm, Zain Nigeria.[15] In the nine months ended September 2009, losses in these markets added up to $248 million, much more than the profits earned by the remaining eight regions.[16] It will be a major challenge for the Indian telecom giant to turn around Zain Africa's operations in these seven African regions, which are currently reeling under losses. The turnaround would be tougher in loss-making regions including Nigeria, Kenya, and Ghana where Zain plays second fiddle to market leaders MTN, and Safaricom.

The valuation multiple that Bharti Airtel is shelling out to buy Zain Africa is upwards of ten times on EV/ EBITDA multiple based on current EBITDA of Zain Africa. This valuation is glaringly high given that Bharti Airtel itself is available at 7.2 times EV to EBITDA.[17] Even if significant EBITDA growth of 20-22% for the next two years is factored in, the deal would still be upwards of 6 times to 6.5 times on EV/EBITDA multiples.[18] This would make it amongst the most expensive emerging market telecom players on figures after two years.

The deal is highly volatile and carries huge commercial risk for Bharti Airtel. To acquire a financially sinking company, Bharti Airtel has incurred exceedingly expensive loan worth USD 8.3 billion at an interest rate of 195 basis points over LIBOR.[19] The loan would be a drag on Bharti Airtel's earnings with no immediate returns expected from the loss-making target. Adding to Bharti Airtel's woes is the risk on

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[10] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_150210.pdf
[11] Shubham Majumder, Regional Head of Telecoms Research - Asia, Macquarie Capital Securities, as reported at http://www.moneycontrol.com/news/business/bharti-paying-10-times-evebidta-for-zain-macquarie_448382.html
[12] http://www.bseindia.com/xml-data/corpfiling/AttachHis/Bharti_Airtel_Ltd_170210.pdf
[13] Ibid
[14] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Zain-board-approves-sale-of-African-assets-to-Bharti/articleshow/5720720.cms
[15] Ibid
[16] http://economictimes.indiatimes.com/markets/stocks/stocks-in-news/SPV-strategy-long-term-effect-bode-well-for-Bharti-stock/articleshow/5720921.cms
[17] http://www.moneycontrol.com/news/business/tele-talk-is-bharti-overpaying-for-zains-assets_442296-1.html
[18] Supra No.11
[19] http://economictimes.indiatimes.com/news/news-by-industry/banking/finance/banking/Banks-to-earn-100-million-from-Bharti-Zain-deal/articleshow/5725360.cms

foreign exchange exposure as the equipments will be purchased in dollars but the revenue will be generated in local currencies.[20]

The extremely high cost of acquisition, interest payable on loans availed and meager revenues for next few years make this deal a very costly investment for Bharti Airtel.

- **What attracted Bharti Airtel to takeover Zain Africa?**

Bharti Airtel, clearly motivated by its African dreams, paid a glaring 'opportunity cost' to take over Zain Africa. Experts comment that the deal is overpriced and Zain Africa is not a worthy investment. Did Bharti Airtel make a mistake by choosing Zain Africa? Did Bharti Airtel act in haste and made a wrong decision? Will Bharti Airtel be able to repeat its Indian success in Africa? Questions are aplenty and we attempt to find few answers.

Expansion was necessary

Bharti Airtel left the world gasping in horror with its 'out of the box' decision to hand over every core function from IT to networks, to IBM in 2004.[21] The idea was to remain and grow as a core telecom company which it did and did with elegance. In the telecom space, Bharti Airtel notched up its 100 millionth customer last May and also overtook BSNL to become India's largest telco by revenues that year[22] but there was continuous drop in the margin of profit over the years.

The visionaries who lead the company could easily notice the mounting competition in the Indian telecom market with 13 service providers battling out for a chunk of the revenue. Bharti Airtel identified various speed breakers to its growth in India. The Indian telecom market has almost reached its saturation point with scope of expansion left only in the inner part of rural India. Being a core telecom company it could not diversify its portfolio into other business and geographic expansion into new markets was the only strategic alternative to escape slowing profit growth in India.

"*Mittal wants to diversify and find new markets for future growth, and most of the growth is in the developing world, Africa is a place India understands",* says Kurt Hellstrom, former World Chief Executive for Ericsson AB and a Bharti Airtel board member during 2004-2009.[23] The next round of telecom revolution is expected to happen in Africa and this emerging market will be ideal for Bharti Airtel's business aspirations in the days to come. Also, it was indispensable for Bharti Airtel to reduce its dependence on the fast-saturating Indian wireless market.[24] This realization is what compelled Bharti Airtel to establish its presence in Africa. Hence, this investment, despite being on the costlier side was a business necessity for Bharti Airtel.

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[20] http://www.moneycontrol.com/news/business/execution-risk-looms-large-for-bhartiafrica_448705.html

[21] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Sunil-Mittal--Akhil-Gupta-One-dares-to-dream-other-makes-it-real/articleshow/5720950.cms

[22] Ibid

[23] http://www.compassnewspaper.com/NG/index.php?option=com_content&view=article&id=44534:from-zain-to-bharti-airtel-the-coming-of-the-indians&catid=37:info-tech&Itemid=709

[24] Supra No.16

Long-term benefits are alluring

Even with all the financial drawbacks, Zain Africa is a strategic investment for Bharti Airtel from a long-term perspective. Post acquisition, Bharti Airtel will become fifth largest service provider in terms of the number of subscribers.[25]

Largest mobile operators by the number of subscribers[26]	
Company	**Total subscribers in millions (approx.)**
China Mobile	525
Vodafone Group	309
Telefonica	202
America Movil Group	186
Bharti Airtel-Zain Africa	179
China Unicom	147
Deutsche Telekom Group	102
Telenor Group	101
Sistema Group	97
Reliance Communications	94

Acquisition of so many assets and access to so many markets through one single transaction happen very rarely. The size of Zain Africa's business diversifies Bharti Airtel's risk portfolio away from its concentration in South Asia.[27] The combined businesses will be able to withstand global business shocks much better and will give it additional leverage in capital investments and with key vendors.[28]

Africa is where the next round of telecom growth is due. With the aim to enter into the continent and to widen their risk portfolio from India, it made sense for Bharti Airtel to invest into Africa. Zain's African business was considered a natural target for Bharti Airtel, which has thrived in an Indian market with low incomes and tariffs and a heavily rural population – characteristics shared by African nations.[29] The multi-geography strategy will be a blessing in the long run. For Bharti Airtel, this is the start of being a truly global player.

[25] http://bseindia.com/stockinfo/anndet.aspx?newsid=760d3aa9-e175-4697-b0ce-46606b76a127&param1=1

[26] The latest global rankings are based on fourth-quarter 2009 connections data and are calculated on a proforma basis. Data source: http://business.rediff.com/slide-show/2010/apr/20/slide-show-1-tech-bharti-among-top-10-telcos.htm#contentTop

[27] http://www.financialexpress.com/news/columnbhartiszainchallenge/596671/

[28] Ibid

[29] http://www.reuters.com/article/idUSTRE62N2OP20100324

The African market has high growth potential for Bharti Airtel as the region is currently under-penetrated.[30] The average revenue per user of Zain Africa is quite high and that justifies its current valuation by Bharti Airtel. If Bharti Airtel can attain operational synergies with Zain Africa, it can go for more such acquisitions in the coming days as the Indian market is gradually getting saturated.[31]

Valuation – Should it be as per EV to EBITDA or EV per subscriber basis?

It cannot be concluded that Bharti Airtel is paying too much for Zain Africa. When the deal in question is of this size and stature, the best way to weigh the deal is from an EV per subscriber point of view and not EV to EBITDA.[32] No doubt, the deal is expensive from an EV to EBITDA perspective because the deal comes in at 10 times EV to EBITDA. However, on an EV per subscriber basis, the deal may not be that expensive especially in light of the precedents with similar valuation. The acquisition of 26% stake in Tata Tele by DoCoMo, acquisition of stake in Spice Telecom by Telecom Malaysia and the mega acquisition of 68% stake taken by Vodafone in Hutch Essar were all valued on an EV per subscriber basis and the valuation is comparable to the one in hand.[33]

Financing is strategically managed

Bharti Airtel has structured this acquisition as a leveraged buyout[34] and the loan for financing the transaction has been availed by the two SPVs created in Netherlands and Singapore for the purposes of this acquisition.[35] The SPVs will take the borrowings, aggregating to USD 8.3 billion, on its balance sheet.[36] Bharti Airtel Netherlands BV will avail loan to the tune of USD 5.5 billion and the Singapore SPV will borrow the rest of the amount.[37] Once Bharti Airtel is able to transplant its Indian model to Africa, the negative earnings per share of the African assets on Bharti Airtel's financials would diminish.

Bharti Airtel's decision to opt for the SPV route makes a lot of sense since it will not impact the parent's balance sheet in the near term. At the end of the quarter to December 2009, Bharti Airtel's debt-equity ratio was 0.4 and this would have shot up to 1.2, had Bharti Airtel taken the loan on its books.[38] That would have limited Bharti Airtel's ability to raise funds in the future for expansion into new third generation technologies through participation in the 3G spectrum allocation. Hence, Bharti Airtel has structured the acquisition strategically and routed it through the SPVs keeping Bharti Airtel's standalone financials intact. However, that does not absolve Bharti Airtel from overall responsibility of a borrower since it has provided a guarantee to bankers for the loan that will be in the SPV's books.[39]

[30] http://economictimes.indiatimes.com/opinion/interviews/Under-developed-sub-Saharan-region-offers-huge-opportunities-for-growth/articleshow/5601009.cms
[31] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Zain-deal-to-enhance-Bharti-share-on-long-term-Experts/articleshow/5723696.cms
[32] http://www.moneycontrol.com/news/business/tele-talk-is-bharti-overpaying-for-zains-assets_442296-1.html
[33] Ibid
[34] Defined below
[35] http://www.moneycontrol.com/news/business/bharti-airtel-forms-2-special-vehicles-for-zain-deal-paper_448685.html
[36] Supra No.16
[37] Ibid
[38] http://www.livemint.com/2010/03/25234952/Due-diligence-on-Zain-assets-o.html
[39] http://economictimes.indiatimes.com/markets/stocks/stocks-in-news/SPV-strategy-long-term-effect-bode-well-for-Bharti-stock/articleshow/5720921.cms

Leveraged Buyout

A leveraged buyout, or LBO, is an acquisition of a company or division of another company, financed with a substantial portion of borrowed funds. The acquirer resorts to a combination of a small investment and a large loan to fund the acquisition.

Typically, the loan capital is availed through a combination of repayable bank facilities and/or public or privately placed bonds, which may be classified as high-yield debt.

The debt will appear on the acquiring company's balance sheet and the acquired company's free cash flow will be used to repay the debt. In the alternative, the acquiring company could float a Special Purpose Vehicle ("**SPV**") as a 100% subsidiary with a minimum equity capital. The SPV can leverage this equity to gear up significantly higher debt to buyout the target company. The target company's assets can be used as collaterals for availing the loan and once the debt is redeemed, the acquiring company has the option to merge with the SPV. The debt will be paid off by the SPV using the cash flows of the target company.

The purpose of leveraged buyouts is to allow companies to make large acquisitions without having to commit a lot of capital. In an LBO, there is usually a ratio of 70% debt to 30% equity. LBOs today focus more on growth and complicated financial engineering to achieve their returns. The acquisition of Tetley by Tata Tea is the most significant Indian LBO till date.

- **What will be Bharti Airtel's strategy for Zain Africa and the African continent?**

Zain Africa is in trouble and financial paralysis is looming over its head which makes Bharti Airtel's task to turn around the business of Zain Africa all the more difficult. Further, it will be a nightmare for Bharti Airtel to achieve this task in a totally foreign environment.

Negating the misfits

It is believed that the deal lacks geographical, cultural and commercial synergies. Therefore the first step to progress would be negating the misfits between the two giant enterprises.

It may be argued that deal has immense geographical synergy as Bharti Airtel is getting access into 15 African markets through one single transaction. However, the geographical disparity between India and Africa goes without saying. The terrain and the climate, though consequential only to a lesser extent, can pose critical problems for Bharti Airtel especially when it comes to infrastructure development. Further, tackling 15 regulatory regimes single handedly may not be easy at all.

Culture misfit is all the more striking. The experience with MTN in the past exposes the gravity of culture misfit which can destroy the deal – if left unattended. This aspect of a cross border deal involving two parties from two different jurisdictions is normally undermined but the abandoned Alcatel Lucent deal in the past sends across a very strong message.[40] The Franco-American deal was called off because the French and Americans never found the synergy in the deal. It was touted as being one of the most profitable deals which never happened.[41]

Bharti Airtel will have to put in a lot of effort to align the varied cultures; with 15 countries to tackle it definitely will be a nightmare. A major barrier for Bharti Airtel would be language which will be crucial to take the business and services to the masses. Further, the political instability in the continent and the lack of political support like in India will aggravate the situation for Bharti Airtel. It will be truly inspiring to see how Bharti Airtel will emerge a winner, overcoming the operational challenges varying from corruption and political instability to inadequate electricity and theft of equipment.

The deal lacks commercial synergies also. Bharti Airtel had revenues of USD 8 billion last year and profit of USD 2 billion. For nine months of this fiscal year, it has had profits of USD 1.5 billion. Zain Africa has actually made a marginal loss of USD 112 million and the revenues are also just about USD 100 million or give or take a little more.[42]

Bharti Airtel – Zain: Comparative Table				
		Bharti Airtel	Zain (Africa)	Combined
Revenues	($ bn)	8.03	3.64	11.67
	(Rs cr)	36961.60	16744.0	53705.60
Net Profit/Loss	($ bn)	1.84	-0.1	1.74
	(Rs cr)	8469.90	-310.6	8159.30
EBIDTA	($ bn)	3.30	1.2	4.50
	(Rs cr)	15167.80	5520.0	20687.80
EBIDTA margins	(%)	40.00	32.0	-
Source: Business Standard, April 15, 2010				

Hence, the first and foremost task for Bharti Airtel will be nullifying the disparities between the two companies to leverage the worth of the enterprises to the maximum and reap profits in the times to come. Combination of Zain Africa's local talent right across Africa and Bharti Airtel's experienced management cadre will prove to be a competent mix to deal with all the ground level issues.[43]

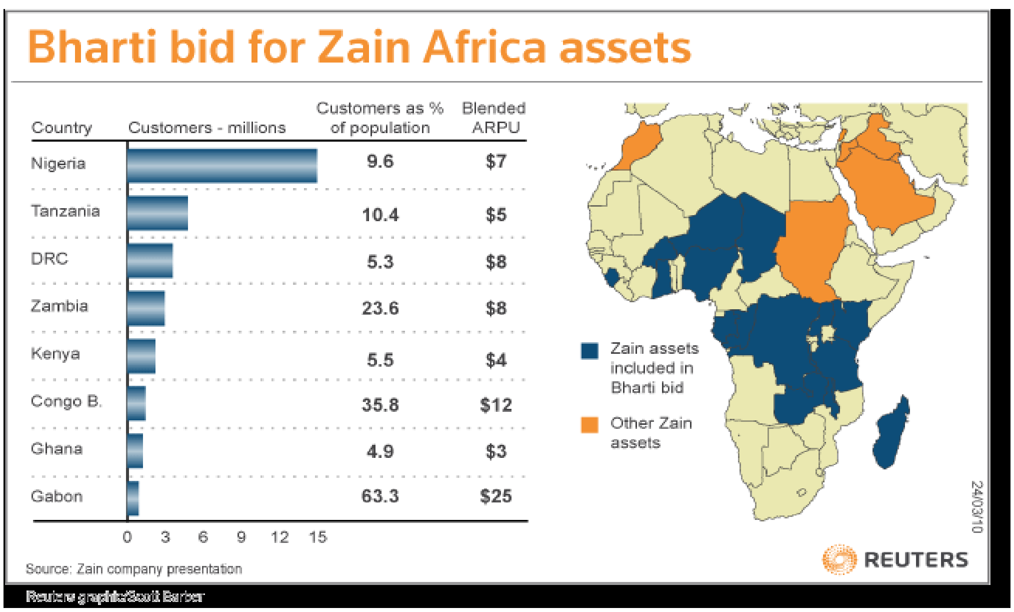
[40] http://www.moneycontrol.com/news/business/tele-talk-is-bharti-overpaying-for-zains-assets_442296-1.html
[41] http://www.moneycontrol.com/news/business/tele-talk-is-bharti-overpaying-for-zains-assets_442296-1.html
[42] Ibid
[43] http://www.financialexpress.com/news/columnbhartiszainchallenge/596671/

Exploiting the untapped market

The key to revive the business of Zain Africa and restore profitability is replicating Bharti Airtel's low-cost, outsourced model of operations in Africa.[44] To make the investment in Zain lucrative for Bharti Airtel, Zain needs to grow at 20-21% EBITDA in the next two-three years. The growth of Zain would largely depend on how well Bharti Airtel would be able to exploit the largely untapped telecom market in Africa.

Bharti Airtel has vast growth possibilities in the African market. Only one in two Africans owns a mobile phone and Zain has a strong presence in most countries.[45] It has a 50-75% market share in seven countries and a 25-50% share in six, providing a strong platform for Bharti Airtel to build upon.[46] Even though the company is running on losses now, Bharti Airtel can utilize the infrastructure and the facilities of Zain Africa to harness the potential of African markets.

Monthly average revenue per user (ARPU) on the Continent averages USD 7.5, which is higher than India's ARPU of USD 5.[47] African customers use 100 minutes per month, versus 450 minutes per month in India.[48] The figures clearly evidence that fact that Zain Africa's profitability is lower than Bharti Airtel's, despite average higher spending by its users.



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[44] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Zain-board-approves-sale-of-African-assets-to-Bharti/articleshow/5720720.cms

[45] http://business.in.com/article/big-bet/africas-seduction-of-sunil-mittal/10652/1

[46] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Zain-board-approves-sale-of-African-assets-to-Bharti/articleshow/5720720.cms

[47] http://www.moneycontrol.com/news/market-edge/analysts-differbharti-zain-valuations-rating_441969.html

[48] http://infotech.indiatimes.com/articleshow/msid-5725997,flstry-1.cms

Minute's factory model

Bharti Airtel's attempt will be to try and replicate their 'minute factory' model which is the low-cost, high volume model in Africa.[49] Bharti Airtel has already mastered the minute factory model and is an expert at it. The trick is to make its customers talk more by making the call rates cheap and concentrate on the rural population.[50] Africa is too good an opportunity for Bharti Airtel to experiment the model that it has mastered in India, particularly its rural strategy. With a population of a billion spread out in 56 countries, Africa's cell phone penetration is comparable to that of India 10 years back.[51] The demand for mobile services is growing at a rate of 25% across these countries.[52] The 'minute's factory' made Bharti Airtel, the market leader in India, the same should work in Africa as well but it is difficult to ascertain how elastic the African market would be to drops in tariff. Historically, the Indian market has shown high elasticity to drops in tariffs but if similar elasticity is not witnessed in Africa it would be difficult for Bharti Airtel to attain its projected goals.

Also, Bharti Airtel will have to significantly expand the coverage and capacity to accommodate the burgeoning volume of minutes that Bharti Airtel is aiming at.[53] Massive investments might be required to elevate the standard of infrastructure, equipments and employees of Zain Africa to suit Bharti Airtel.

It is evident that Bharti Airtel has to invest not just money but a lot of time and efforts also to turn around the business of Zain Africa.

Matchbox strategy

Indian mobile service providers including Bharti Airtel have adopted a 'matchbox strategy' of distribution, which essentially means any shop that sells matches should also sell mobile SIM cards and top-up vouchers, helping build a vast dealer network.[54] Such a vast distribution and advertising patterns is completely alien to Africa and if Bharti Airtel can recreate the strategy in Africa then it will add huge impetus to Bharti Airtel's pursuit for success. Further, marketing the brand 'Bharti Airtel' in Africa to establish it as a reliable, customer friendly brand is crucial.

- **How have the investors reacted to the deal?**

Despite Bharti Airtel's optimism, 8.2 million shares of the company have changed hands since the deal was announced till March 25, 2010.[55] The value of the shares has fallen to 16-month low of Rs 272.45.[56] Investors are apprehensive of the deal being largely debt-funded. Though, Bharti Airtel has the history of keeping its debts low (it is just 0.4 times the 2010 EBITDA), the deal could stretch its balance sheet a tad

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[49] http://www.zeenews.com/news613492.html
[50] http://infotech.indiatimes.com/articleshow/msid-5725997,flstry-1.cms
[51] http://ibnlive.in.com/news/sunil-mittals-big-bold-african-safari/111187-7.html
[52] http://business.in.com/article/big-bet/africas-seduction-of-sunil-mittal/10652/1
[53] http://www.moneycontrol.com/news/business/bharti-paying-10-times-evebidta-for-zain-macquarie_448382-1.html
[54] http://infotech.indiatimes.com/articleshow/msid-5725997,flstry-1.cms
[55] http://www.zeenews.com/news613492.html
[56] Ibid

too much.[57] The upcoming 3G auction adds to the worry. Investors consider Bharti Airtel's present valuation of USD 2 billion debt ridden company at ten times its EBITDA is not worthwhile.

Credit rating agencies Crisil and S&P have placed Bharti Airtel's long-term banking facilities and debt programmes on "rating watch with negative implications". The macroeconomic set-up of the continent is also not suitable. Also, investors are wary as to how Bharti Airtel will fare in African market, with 15 different regulatory bodies.

- **Is the Bharti Airtel – Zain deal comparable to the failed Bharti Airtel – MTN deal?**

Sr. No.	Bharti Airtel – MTN	Bharti Airtel – Zain
1.	*Negotiation:* • First round of negotiation between May 5, 2008 and May 25, 2009 – Failed • Second round of negotiation between July 30, 2009 and September 30, 2009 – Failed	*Negotiation:* • One round of negotiation between February 15, 2010 and March 30, 2010 – Successful
2.	*Structure:* • 'Strategic merger' leading to a full merger subsequently. • Bharti Airtel proposed to acquire 49% in MTN and MTN and its shareholders proposed to acquire 36% economic interest in Bharti Airtel through Global Depository Receipts. • National Treasury of South African Government proposed a Dual Listed Structure to retain the identities of both the companies. • It was proposed that Bharti Airtel would continue its listing in India while MTN would remain listed on Johannesburg Stock Exchange. • Post DLC, the shareholders of MTN would hold shares of MTN and Bharti Airtel and shareholders of Bharti Airtel would hold shares of Bharti Airtel and MTN. By way of equalization agreement ("**Equalization Agreement**"), the shareholding of	*Structure:* • Bharati Airtel directly acquired 100% shareholding of Zain Africa, the Netherlands based holding company of the entire African operations of Zain. • Bharti Airtel exclusively holds operations in 15 countries and Zain has no stake in the operations in these countries. • Leveraged buy-out. Bharti Airtel has incorporated two SPVs in Singapore and Netherlands for the purposes of the transaction. • The two SPVs will avail loans for funding the acquisition and Bharti Airtel has extended a corporate guarantee for the same.

[57] Supra No.55

Sr. No.	Bharti Airtel – MTN	Bharti Airtel – Zain
	the shareholders of both the Companies would be equalized in a predetermined ratio. • Also, the shareholders of Bharti Airtel and MTN would hold stake in both the Companies in the equalization ratio.	
3.	*Post-deal attributes:* • Combined revenues of over USD 20 billion. • Combined customer base of 250 million in 24 countries.	*Post-deal attributes:* • Combined revenues of USD 13 billion. • Combined customer base of around 179 million in 18 countries.
4.	*Valuation:* • The valuation of the transaction was USD 24 billion. • The value of 36% economic interest acquired in Bharti Airtel by MTN and its shareholders had to be deducted from this value. • Each consumer valued at USD 349.	*Valuation:* • The valuation of the transaction was USD 10.7 billion. • USD 9 billion in cash and Bharti Airtel will assume debts on the books of Zain to the tune of USD 1.7 billion. • Each consumer valued at USD 252.
5.	*Stumbling blocks:* • Both the companies wanted to retain their independent identities. • Economic nationalism – South African Government insisted on MTN remaining a South African Company and clarified that the necessary approvals would be granted only if DLC structure was adopted. • DLC Structure was not viable without amending the corporate and exchange control laws of India. • Shareholders of MTN including Public Investment Corporation, the largest shareholder was not happy with the deal.	*Stumbling blocks:* • Pending arbitration regarding ownership of Zain Nigeria initiated by Econet Wireless, a minority shareholder of Zain Nigeria. Bharti Airtel has obtained sufficient legal indemnity from Zain to compensate Bharti Airtel for any losses suffered/legal fees paid due to the pending dispute. • Objections raised by Government of Congo in light of contravention of the terms of license by Zain Congo.

❖ What will be the equation between Bharti Airtel and MTN?

"*They've decided to venture into the forest on their own. They would have been in a better position if we were holding their hand*." MTN Chief Executive Officer, Phuthuma Nhleko commented on the Bharti Airtel – Zain deal.[58]

It is a curious case of Bharti Airtel and MTN who are *friends turned foes*. Call it irony or unfortunate, Bharti Airtel's major competitor in Africa would be none other than MTN with which the company had held close talks for a strategic merger.[59] Bharti Airtel and MTN have learned much about each other during their two rounds of negotiations. Each stage yielded thousands of pages of documents containing such details as vendor contracts, supplier pricing arrangements and the costs of installing and maintaining cell-phone towers.[60] So, between the two competitors it's an open battle and the competition is as fair and transparent as it can ever be.

MTN is the market leader in Africa and has a clear margin over Zain Africa in most of the markets. MTN's USD 3.2 billion cash hoard and its market experience in sub-Saharan Africa, portray MTN as a company, Bharti Airtel may have been better off having on its side.[61] MTN is preparing its arsenal to face the competition from Bharti Airtel in the days to come. It has devised a plan of action to boost its business which includes sponsoring the 2010 FIFA World Cup happening in Johannesburg[62] to market itself better. Tackling its once fiancé would be a herculean task for Bharti Airtel because MTN is a much superior company. MTN has a USD 31 billion market capitalization, 28% operating margins, and expects to add 20 million subscribers in 2010 to its 116 million customer base, mostly in markets like Nigeria, Ghana and Iran.[63] The combined entity after Bharti Airtel – Zain deal would lead to a group with approximately 160-170 million subscribers, including 42 million subscribers of Zain in Africa. Bharti Airtel shares have declined 6.1% this year compared with MTN's 2.6% gain.[64]

Bharti Airtel has limited overseas experience. It started operating in Sri Lanka in January 2009, and acquired Warid Telecom, a 3-million-subscriber company based in Dhaka, Bangladesh two months ago for USD 300 million. SingTel[65], Southeast Asia's largest phone company, which owns a 31% stake in Bharti Airtel, may help in this respect. It has operations in eight countries spanning Australia to Pakistan. By comparison, MTN operates in 21 different countries, each with its own regulatory conditions. More than 80% of its earnings come from outside its home market.[66]

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[58] http://timesofindia.indiatimes.com/biz/india-business/To-sign-Zain-agreements-soon/articleshow/5724757.cms
[59] http://trak.in/tags/business/2010/03/31/bharti-zain-acquisition-deal/
[60] http://www.bloombergutv.com/industry-news/telecom-industry-news/47892/zain-deal-pits-mtn-against-mittal.html
[61] Ibid
[62] http://www.financialexpress.com/news/zain-deal-could-help/580148/
[63] Supra No.60
[64] http://www.businessweek.com/news/2010-03-25/mittal-s-zain-deal-pits-mtn-against-former-suitor-update1-.html
[65] Founded in 1879 in Singapore, SingTel is Asia's leading communication group with operations and investments in more than 20 countries across the world. With significant operations in Singapore and Australia (through wholly-owned subsidiary SingTel Optus), the Group provides a comprehensive portfolio of services that include voice and data services over fixed, wireless and Internet platforms.
[66] http://www.telegraphindia.com/1100326/jsp/business/story_12264813.jsp

Interestingly, Bharti Airtel has bought the operations that MTN once coveted. Zain made its entry into Africa in 2006 through the acquisition of Celtel International BV. MTN had also made a bid of USD 2.7 billion to acquire Celtel International which was outbid by Zain, by offering USD 3.4 billion. Zain bought companies in 13 African countries, all of which it is now selling to Bharti Airtel.[67]

After two rounds of failed negotiations between Bharti Airtel and MTN, the third round concludes with the Bharti Airtel – Zain combined entity pitted against MTN in its home turf and the battle is on.

LEGAL AND REGULATORY CONSIDERATIONS

ODI Regulations

Any Indian company that wishes to acquire or invest in a foreign company outside India must comply with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 ("**ODI Regulations**").

Under the ODI Regulations, an Indian company is permitted to invest in a joint venture or a wholly owned subsidiary upto 400%[68] of the net worth of the Indian company, in the form of equity, loan or guarantee, as on the date of the last audited balance sheet without seeking the prior approval of the Reserve Bank of India ("**RBI**") *inter alia* if the Indian company:

a) is not on the RBI's caution list or under investigation by the Enforcement Directorate;
b) routes all the transactions relating to the investment in the joint venture or the wholly owned subsidiary through only one branch of an authorized dealer; and
c) files the prescribed forms with the RBI.

Regulation 13 of the ODI Regulations permits a wholly owned subsidiary set up by an Indian company to set up a step down subsidiary. Extant ODI Regulations are ambiguous on whether setting up further down line subsidiaries will require prior approval of the RBI.

In the instant case

In the current structure, Bharti Airtel has two SPVs, one in Netherlands and the other in Singapore to execute the deal. The SPVs will in turn be used to acquire Zain Africa International BV located in Netherlands to acquire the African assets of Zain. Considering that Zain Africa International BV would be a further down line subsidiary of the Netherlands SPV, there is an ambiguity in the ODI Regulations as regards whether this would require prior approval of the RBI.

There is a debate on whether an Indian company can set up vertical wholly owned subsidiaries beyond two step down subsidiaries since Regulation 13 can be interpreted to cover multiple layers of step down

[67] http://www.compassnewspaper.com/NG/index.php?option=com_content&view=article&id=44534:from-zain-to-bharti-airtel-the-coming-of-the-indians&catid=37:info-tech&Itemid=709

[68] This ceiling is not applicable where the investment is funded out of balances held by the Indian party in its Exchange Earners' Foreign Currency (EEFC) account.

subsidiaries. While the RBI's approach on such ambiguity is unclear, we understand based on the earlier precedents that RBI has recently been liberal and has permitted Indian entities from setting up multiple layers of step down wholly owned subsidiaries vertically.

Guarantees Regulations

Considering that Bharti Airtel would extend a corporate guarantee to the bankers for the loan that has been taken by the Netherlands and Singapore SPVs for financing the transaction[69], Regulation 5 (b) of Foreign Exchange Management (Guarantees) Regulations, 2000 ("**Guarantees Regulations**") would be attracted.

According to Regulation 5 (b) of the Guarantees Regulations, a company in India promoting or setting up outside India, a joint venture company or a wholly-owned subsidiary, may give a guarantee to or on behalf of the latter in connection with its business; provided that, the terms and conditions stipulated in the ODI Regulations for promoting or setting up such company or subsidiary are complied with.

Accordingly, in the instant case, Bharti Airtel would have been required to adhere to the ODI Regulations while providing the corporate guarantee on behalf of its SPVs and hence the guarantee provided by Bharti-Airtel in favour of its SPVs together with any equity or any debt investment made in the SPVs shall not exceed 400% of net-worth of Bharti-Airtel.

Anti Trust Laws

Competition Act, 2002 ("**Competition Act**") was enacted to replace the erstwhile Monopolies & Restrictive Trade Practices Act, 1969 and provide institutional support to healthy and fair competition. The Competition Act seeks to:

- prohibit anti-competitive agreements including cartels;
- prohibit abuse of dominant position; and
- regulate combinations (mergers and amalgamations, and acquisitions).

The provisions relating to (i) anti-competitive agreements; and (ii) abuse of dominance were made effective from May 20, 2009. However, the provisions relating to regulation of the combinations are yet to be notified.

If substantive provisions relating to Combinations are notified, would it have a bearing on the current acquisition?

In terms of the Competition Act, parties to the proposed combination must determine whether the proposed transaction triggers the applicable threshold limits viz. with respect to the size of the assets of the parties or the turnover as prescribed under Section 5 (c) of the Competition Act. Since the provisions for regulating combinations (mergers and amalgamations, and acquisitions) have not yet been notified, there is currently no requirement for any mandatory notification to Competition Commission of India

[69] http://economictimes.indiatimes.com/markets/stocks/stocks-in-news/SPV-strategy-long-term-effect-bode-well-for-Bharti-stock/articleshow/5720921.cms

("**CCI**") about the Bharti-Zain transaction. However, if such regulations were notified, given the magnitude of the assets and/or turnover of the parties involved, it may have triggered the threshold limits, thereby, mandating Bharti Airtel and Zain Africa to notify to the Competition Commission of India ("**CCI**") providing the details of the proposed acquisition. Once such notification has been made to CCI, CCI shall do its due investigation on the basis of the criterion laid down under the Competition Act (inter alia level of combination of the market, market shares) to determine whether the acquisition causes or is likely to cause an adverse appreciable effect on competition within the relevant market in India and the CCI shall give its ruling within a maximum period of 210 days. Further, the Competition Act provides for extra territorial jurisdiction of the CCI to probe into an overseas acquisition if it causes or is likely to cause an adverse effect on competition in relevant market in India.

The Nigerian Hurdle

The dispute in respect of ownership of Zain's Nigerian unit ("**Zain Nigeria**") may create concerns for Bharti Airtel. As a matter of brief background, Econet Wireless International ("**Econet**"), a major telecom player in Nigeria, claimed that its pre-emption rights in the form of 'right of first refusal'[70] in respect of shares had been breached when Econet's predominantly Nigerian partners decided to sell their shares in Vee Networks (or V-Mobile) to Zain in 2006. Consequently, Econet tried to prevent the sale of the shares to Zain through the UK courts, but the judge ruled that the UK was not the appropriate place for such legal proceedings as the matter was more closely connected with Nigeria.

Since then, Econet has commenced ongoing legal proceedings in the Nigerian courts. The dispute is, at present, before a court appointed tribunal and would be resolved through arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL). Econet has also applied for interim measures to prevent Zain from selling, transferring, disposing of, dealing with or otherwise encumbering the disputed stake until the matter is resolved.

It is pertinent to note that in 2008, Zain generated about a fifth of its EBITDA in Nigeria and about 22% its total sales. Considering that till the time the ownership issue over Zain Nigeria is resolved, Zain faces a hurdle in transferring its Nigerian assets to Bharti Airtel.

Right of First Refusal for shares

A Right of First Refusal ("**RoFR**") is a contractual right that gives the holder a right to entitlement to shares, according to the specific terms, before the shares are made available to a third party or the public at large by the seller. However, if the holder turns down the option to takeover, then the underlying shares may be made available to any such third party or the public at large, as the case may be.

A RoFR differs from a Right of First Offer ("**RoFO**"). A RoFO requires the seller to enter into a good faith negotiation with the holder of the RoFO and should they fail to negotiate the terms of purchase, the seller may offer the underlying shares to sell to a third party or public at large, as the case may be.

[70] Defined below.

The Congo Controversy

Delay in getting regulatory approvals from the Republic of Congo for the Bharti Airtel – Zain deal is another major problem that Bharti Airtel has been facing in closing this transaction. Recent news reports state that the Government of Republic of Congo said that they had not been informed of Bharti Airtel's deal with Zain and that the deal was a "clear violation of the law in our country"[71]. Further, the Congolese government has claimed that the deal is in contravention of Zain's local mobile license.

Apparently, Congo's telecom minister has been quoted by local newspapers stating that the parties have been accorded 30 days to remedy the situation or face sanctions / penalties. Consequently, Bharti Airtel is currently in the process of getting regulatory approvals for the accord. According to Congolese government officials, fines / penalties could run to one percentage point of local turnover with other sanctions being a reduction in the duration of the operating licence, a suspension or outright withdrawal of the Zain's telecom licence.

Zain made USD 154 million in revenues from its Congolese subsidiary, formerly Celtel, in the nine months ending September 2009. It has a 53% market share in the nation which has a population of 4 million.[72]

The Gabon Glitch Resolved

While the last steps towards the finalization of the Bharti-Zain deal were being taken by the parties, the Government of Gabon raised a regulatory objection to the deal alleging that Zain had not complied with certain telecom regulations in Gabon. The government of Gabon, in their statement to the press[73], had said that it "disapproves" of the sale of Zain's Gabonese assets to Bharti and reserves the right to take "all necessary measures". The government of Gabon further indicated that Gabon's telecom regulator shall review the sale process before its finalization. Apparently, Zain holds more than 60 percent of the mobile market in Gabon[74].

However, off late there has been some good news from Gabon, newspaper reports[75] suggest the government of Gabon has given its approval to the sale of Zain's assets in Gabon to Bharti.

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[71] http://www.telegraphindia.com/1100414/jsp/business/story_12337285.jsp
[72] http://www.globaltelecomsbusiness.com/Article/2463625/Congo-objects-to-Bharti-Zain-Deal.html?ArticleID=2463625&POS=1174484
[73] http://economictimes.indiatimes.com/news/news-by-industry/telecom/Government-of-Gabon-disapproves-of-Zain-sale-to-Bharti-/articleshow/5739541.cms
[74] http://business.maktoob.com/20090000452942/Gabon_govt_objects_Bharti-Zain_deal/Article.htm
[75] http://economictimes.indiatimes.com/news/international-business/Kuwaits-Zain-says-Gabon-approves-sale-to-Bharti/articleshow/5875744.cms

TAX PERSPECTIVE

Why was the acquisition routed through Netherlands?

Netherlands, with its efficient tax regime coupled with an investor friendly business environment, has emerged as a preferred offshore jurisdiction in the world for setting up of holding companies. Netherlands also provides various incentives under its tax regime including tax exemption on dividend payments and capital gains through the participation exemption regime.

Netherlands being a part of the European Union ("**EU**") may also act as a passport for future investments in other European (and non-European) jurisdictions and has access to the EU directives with respect to free movement of people, goods, services, and capital. Netherlands has also entered into double tax avoidance treaties with many of the African nations wherein Zain has subsidiaries and assets and to that extent it would provide for an efficient repatriation of profits from the businesses setup in such jurisdictions.

Netherlands also boasts one of the widest networks of bilateral investment treaties[76] and has entered into close to 100 such treaties with various jurisdictions.[77] Since most African nations are evolving economies and to that extent may face certain political uncertainties, bilateral investment treaties provide much required safety to a foreign investor with respect to its investments. It would be interesting to note that more than half the jurisdictions in which Zain Africa has subsidiaries have entered into a bilateral investment treaty with Netherlands.

Repatriation of profits from Zain Africa

The structure adopted by Bharti Airtel for acquisition of Zain Africa is conducive from a tax perspective specifically with respect to repatriation of profits from Zain Africa to Bharti Airtel.

Under the domestic tax laws of Netherlands, no taxes are levied on dividends distributed between two Netherlands resident companies, subject to compliance with the applicable participation exemption conditions. Thus, it should provide for a tax free transfer of profits from Zain Africa to Bharti Airtel Netherlands BV. Further under the Netherlands-Singapore tax treaty, dividends paid by Bharti Airtel Netherlands BV to Singapore SPV would not be subject to any taxes in Netherlands since the Singapore SPV holds at least 25% of the share capital of the company declaring the dividends.

Under the domestic tax laws of Singapore, foreign sourced dividends are exempt from Singapore corporate taxes, provided the foreign sourced dividends have been subjected to tax in the foreign jurisdiction and the headline tax rate of the foreign jurisdiction is at least 15%. The headline tax rate in Netherlands is at the rate of 25.5% and further the condition of the income being subjected to tax would also be met since the income would be considered taxable (albeit exempt); thus the dividends received by Singapore SPV would be exempted from corporate taxes in Singapore.

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[76] A bilateral investment treaty is an agreement intended to promote and protect foreign direct investment and establish the terms and conditions for private investment by nationals and companies of one state in another state.
[77] http://www.unctad.org

It should be noted that Singapore does not levy any withholding taxes on distribution of dividends; therefore dividends distributed by Singapore SPV to Bharti Airtel would only be taxable in India (when distributed) at the rate of 33.22%[78] as per the provisions of the Income Tax Act, 1961.

It is interesting to note that majority of the leverage has been taken at the Singapore SPV and Bharti Airtel Netherlands BV level; however, since they may not have operating profits it may not be possible to claim the deductions for interest expenses. Further, India does not provide for group consolidation. Therefore, it would not be possible for Bharti Airtel to offset the interest expenses of Singapore SPV and Bharti Airtel Netherlands BV against its profits.

EPILOGUE

After Bharti Airtel's grueling encounters with MTN, even this deal comes with its own set of problems, including the high acquisition price paid by Bharti Airtel to acquire a loss making entity, objections raised by the minority shareholder of Zain Nigeria, Governments of Congo and Gabon and an alarming culture misfit. According to Forbes, "*investors know that it's easier for Sania Mirza to win the Wimbledon than for Bharti to make money in Africa*."[79]

After two missed calls with MTN, this time Bharti Airtel may have successfully connected with Zain which has resulted in it becoming the seventh largest mobile groups in the world by subscriber connections and the second-largest African operator group behind MTN. Considering the out of the ordinary efforts that Bharti Airtel has put in order to fulfill its goal of entering the untapped African telecom market, the position seems to be well deserved.

Bharti Airtel has a tough task ahead to convert the business of Zain, neck deep in losses, to a profitable venture. Alien culture, terrain and political set up will make matters worse for Bharti Airtel. However, the exceptional performance of Bharti Airtel over the years is a standing testimony to its business acumen, expertise and strategic advantages with which Bharti Airtel may author an African episode to its success story.

*Team M&A would like to thank Mr. Shreyas Jhaveri for his contribution in this dissection.

As you would be aware, we have been providing regular information on latest legal developments. M&A Lab is our initiative to provide you knowledge based analysis and more insight on latest M&A deals. You can direct your views / comments / suggestions on our initiative to siddharth@nishithdesai.com, nishchal@nishithdesai.com, sambhav@nishithdesai.com, ajay@nishithdesai.com and aruns@nishithdesai.com.

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78 Tax rate mentioned herein are inclusive of surcharge of 7.5% and education cess of 3%.
79 http://business.in.com/printcontent/10652