

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(1) of the Competition Act, 2010)

**IN THE MATTER OF DECEPTIVE MARKETING PRACTICES BY CELLULAR MOBILE TELECOM
OPERATORS**

BY

Nadia Nabi/Irfan ul Haq

Dated:20-11-2013

Enquiry Report

I. Background

1. This Enquiry report is prepared pursuant to *sou moto* action taken by the Competition Commission of Pakistan (hereinafter referred to as “the Commission”), on newspaper reports and informal complaints and e-mails received, regarding the imposition of additional charges by cellular mobile telecom operators (CMTOs), namely: Pakistan Mobile Communications Limited (PMCL and hereinafter referred to as “Mobilink”), Pak Telecom Mobile Limited (PTML and hereinafter referred to as “Ufone”), Telenor Pakistan Private Limited (“Telenor”), China Mobile Pak Limited (CMPL and hereinafter referred to as “Zong”) and Warid Telecom Limited (“Warid”) on recharge of balance for prepaid connections.
2. These additional charges were introduced/imposed for the first time by all CMTOs in July 2011, and ranged from 1.0 to 1.5 percent on recharge of balance for prepaid connections under various titles such as operational charge, maintenance fee, administrative fee etc. Later on, the percentage of these additional charges was revised and increased by the CMTOs in 2012, and again in 2013 ranging from 3% to 5%.
3. The Commission conducted fact finding into the matter and observed the behavior of all the CMTOs by pursuing the websites of all the CMTOs and by writing to the latter. It appeared that competition concerns of substantive nature may emerge from the imposition of these charges. These charges apparently do not relate to any specific service being provided to the consumers, i.e. these charges constitute non-service tariff. Furthermore, these charges may constitute ‘hidden’ costs of acquiring cellular telecommunication telephony and data

services, giving the impression that the prices of such services are lower than they actually are in reality, thereby constituting a deceptive marketing practice in violation of Section 10 of the Competition Act, 2010 (hereinafter referred to as the “Act”).

4. Based on the information and fact finding observations, the Commission decided to initiate a formal enquiry under Section 37(1) of the Act. Pursuant to the powers contained in Section 28(2) of the Act, the Commission appointed Ms. Nadia Nabi, and Mr. Irfan ul Haq as Enquiry Officers (hereinafter collectively the “Enquiry Committee”) to conduct an enquiry as to whether any provision of the Act has been violated by the imposition of administrative/operational/maintenance charges by all CMTOs and to prepare a detailed Enquiry Report under Section 37 of the Act.
5. The Commission in its letter dated 30 June 2011 to Mobilink, Ufone, Telenor, Warid and Zong sought information regarding the implementation of these charges. The Commission desired comments regarding the details of, and the rationale behind the imposition of such charges/fees.
6. On 7th July 2011, the Commission received letters from two CMTOs. Telenor in its letter regarding administrative fee imposed by it stated:

We would like to inform you that the company’s commercial decision to impose this fee is for the purpose of sustaining the profitability of the company which is its prime objective as a business organization Such decisions are a part of the company’s normal functioning and where required, notified and/or approved to/by our regulator, the Pakistan Telecommunication Authority. Imposition of administrative fee is not an act which would effect competition in the market.

7. Ufone in its letter regarding the levy of maintenance charges levied by it stated:

This introduced charge corresponds to our standard year-end review of costs for providing services to our customers acquiring pre-paid charges. The said additional charge is a result of the dramatic increase of costs during the previous year and which

are anticipated to rise further during the coming year, as you would be well aware of. The charges imposed are in accordance with law and the regulations and rules where under we operate. It is suggested that you may contact the regulator (Pakistan Telecommunication Authority) for any further clarifications.

8. Another two letters were received from Zong and Warid on July 15, 2011, giving the rationale for imposition of additional fee/charges. Zong in its reply regarding operational charges levied by it stated:

The 1.5% operational charge has been levied in the wake of extraordinary increase in the operational costs. CMPak has to incur additional expenses in provision of its services to its customers and for maintaining quality of service. Most of these additional expenses are due to unprecedented power outages, extraordinary increase in the electricity and fuel prices and worsening security situation, which are all beyond the control CMPak.

9. Warid in its letter regarding maintenance charges imposed by it stated:

The reason/rationale behind the imposition of charges is to recover increased maintenance charges being incurred by Warid in relation to its system for provision of services which inter-alia include the following:

Inflationary adjustment against cost of doing business including rise in the fuel prices by 24% in last couple of months;

Maintaining state of the art capital intensive network;

Committing higher level and number of resources and expenditures to keep providing crystal clear communication to Warid subscribers;

Expanding services reach in rural markets of the country where costs of installation and maintenance are difficult to cover due to low uptake by customers.

10. Considering the reference made to their regulator, Pakistan Telecommunication Authority (PTA), by CMTOs in respect of additional fee/charges levied, the Commission deemed it appropriate to seek comments of PTA. On July 27, 2011 a letter was sent to PTA stating that

On preliminary fact finding, some of the cellular telecommunication companies have implied that the additional non service charges have been imposed with the knowledge and approval of PTA. We would like PTA's opinion on the matter in general and on the following questions in particular:

- 1. Whether the applicable laws, rules regulations or policies specifically allow cellular telecommunication companies to levy non service charges?*
- 2. Whether any or all cellular telecommunication companies approached PTA for soliciting approval regarding the abovementioned charges.*
- 3. Whether if PTA was approached, what was the rationale submitted to PTA by the cellular telecommunication companies?*
- 4. Whether PTA granted approval to the cellular telecommunication companies in this regard.*

11. On August 16, 2011, a response was received from PTA on levy of additional charges by CMTOs which, *inter alia*, provided:

We would like to inform you that as per Mobile Cellular mobile policy issued by the Government of Pakistan, PTA was required to regulate cellular mobile tariffs through retail price cap till such time the market becomes sufficiently competitive. In this regard, PTA used to regulate cellular mobile tariffs through price-cap Mechanism till 2005. However, PTA abolished price cap ceiling in 2005 when the market was sufficiently competitive after granting two additional cellular mobile licenses.

As far as the requirement of seeking PTA's approval is concerned, it may be noted that as per licenses issued to cellular mobile operators, the said requirement is applicable on significant market power operators only. It may be noted that PTA vide its determination dated August 25, 2004 declared Mobile Cellular market as relevant market Mobilink (PMCL) as SMP operator in this market since its tariff packages before announcing the same to general public. However, PTA again carried out market review of telecom markets in 2009 and observed that mobile cellular telecommunication market was sufficiently competitive and hence no operator had SMP position in mobile market as a result of

which they are not required to seek approval of tariffs from PTA. Nevertheless, they are required to give seven days advance notice to their customers in case of any change in tariffs as per Telecom Consumer Protection (Amendment) Regulations 2010.

It is also pertinent to highlight the tariffs offered by cellular mobile operators of Pakistan are amongst the lowest in the world. The current global recession had its adverse effects on cellular mobile industry. Resultantly, all the cellular mobile operators except Ufone are incurring losses. Average revenue per subscriber (ARPU) is also amongst the lowest in the world and operating costs of these operators have increased manifolds due to adverse economic conditions. In order to overcome these losses, the mobile operators have started charging those services which were historically being offered free of charge such as balance inquiry service, helpline charges and service charges etc. It may also be noted that provision of said services consumes network/ human resource of mobile operators and appropriate charging of these services not only keeps the mobile operators to provide quality services but also acts as deterrence against possible misuse of said services by users such as helpline service where lot of consumers used to make obnoxious calls to female centre agents when it was a free service.

12. A letter was sent on 19 August 2011 requesting all CMTOs to provide the following information:

- 1. List and details of all non-service charges/tariffs/fees being charged on prepaid and post-paid connections. Please specify when and why these charges were imposed;*
- 2. Itemized and total revenue earned by the imposition of the non-service charges listed in response to the preceding paragraph over the past five years.*

13. Ufone in its letter dated 26 August 2011 requested to extend the deadline for submission of information, to which the Commission acceded and granted extension up to 19 September 2011.

14. Similarly, Mobilink also requested for the extension in the submission of information up to three weeks, to which the Commission acceded and granted extension in the submission of information up to 19 September 2011.

15. Warid sent its reply vide letter dated August 29, 2011 which, *inter alia*, stated:

Warid hereby submits that it is charging/imposing all charges from/ on its customers in relation to provision of its cellular services which are in accordance with the terms of its licenses, Pakistan Telecommunication (Re- Organization) Act, 1996 and the regulations made there under. Warid's tariffs and charges are within the preview of Pakistan Telecommunication Authority ("PTA"). Warid is fully answerable to PTA for Levy and charging of Tariffs and charging against the provision of its cellular services and always observe the applicable laws of PTA. Hence, any further inquiries may be addressed to PTA in this regard.

16. In response to the aforementioned letter received from Warid, the Commission sent another letter stating:

The Commission is a statutory law enforcement body formed under the Competition Act, 2010(hereinafter called the 'Act') to ensure free competition in the economy. To undertake its mandate, the Commission has been given certain law enforcement powers under the act, including the power to call information from business undertakings. The Commission's letter dated 19 August 2011 was sent to Warid in the exercise of the power granted to the Commission under Section 33(1) of the Act.

As a matter of principle, business undertakings must conform to all the laws of the country including the Competition laws. Adherence to one law does not mean that no further obligations can exist under another law. Therefore, regardless of its submission to PTA and, thus, must supply the information as required by the Commission.

17. On September 16 2011 Warid requested to extend the date of submission till September 30, 2011, in response to which extension till 23 September 2011 was

granted. Finally, submissions from Warid were received on 21 September 2011 stating that:

Warid has carried out an internal financial scrutiny to find out the information sought by the Commission in the above referred letter. Kindly note that all charges/tariffs/fees levied by Warid are related only to the provision of its services. Therefore in our opinion Warid has never levied any non service charges/tariffs/fees being charged on prepaid and post-paid connections. Therefore no incidental revenue calculation can be provided as required by the respectable Commission.

18. On 16 September 2011 Mobilink sent its letter wherein information regarding the nature of enquiry, complaint pertaining to the requested information and the exact nature of charges was sought. In response to that letter, Mobilink was duly explained that number of competition concerns have been raised by the public regarding imposition of non-service charges by various telecom companies on the reload of balance on pre-paid connections. On 22 September a letter was again received from Mobilink, which, *inter alia*, provided:

We are also not entirely clear on term 'non service charges' considering that all our charges are ultimately relatable to services. However, we understand that all our charges are ultimately relatable to services.....

Regarding the reason for imposition of such charges/fees, please note that this is meant to recover inter-alia part of the costs of providing the services. It may also be noted that PMCL has been suffering losses since 2008.

Please be advised that all these charges are most fully in the knowledge of the industry regulator, namely the honorable Pakistan Telecommunication Authority, since the beginning. If there were anything untoward, the industry regulator, who is also statutorily responsible for ensuring Competition, would surely have intervened.

19. Similar replies were received from Ufone and Telenor vide their letter dated 16 and 19 September 2011 respectively.

Ufone stated:

PTML, in its capacity of a telecommunication services provider, doesn't charge any "non-service charges" from its subscribers, as only applicable charges with respect to services rendered are charged from PTML subscribers.

Ali Sibtain Fazli and Associates stated on behalf of their client i.e. Telenor:

Our client hasn't imposed any non-service charge on its consumers and any charges that are deducted by the company are related to the telecommunication services provided by including voice, SMS, Internet, Value added services or overall network/customer services provided by the company.

In case the Commission's letter is referring to the 6.55 service fee deducted at time of recharge from a prepaid consumer then this is a "service fee" which is charged to cover the incremental cost of operations that include but not limited to:

- 1. Network maintenance charges*
- 2. Network operation charges*
- 3. Network Security Costs*
- 4. Sales and Distribution costs*
- 5. Customer Services Costs*

These charges were imposed as our client was and is bearing significantly higher extra cost of operations mainly driven by the following:

*Power Shortages in the country
Very High Inflationary pressure
Devaluation of Rupee*

Since this is a holistic charge on the overall services provided by company and covers all the products/ services provided by company therefore a simpler and non confusing methodology was adopted to deduct the amount from prepaid recharge made by consumer' as recharge can be used for any of the services provided by company This approach is also easier and more transparent from consumer understanding point view as every time a customer recharges his or her account he gets SMS (and can also check balance) informing about the actual amount transferred and hence deductions are much more visible as opposed to use of products/services whereby such SMS

intimations, about exact charges deducted from consumer, are not feasible.

20. During the course of enquiry, it was observed that additional charges introduced under various titles in year 2011 have been revised and increased in the year 2012. In order to confirm whether the CMTOs have increased these additional charges, letters were sent to all five companies wherein it was requested to provide the details of charges applied since January 2012.
21. Mobilink in its reply vide letter dated June 08, 2012 confirmed that no change has been made in the rate of operational fee since January 2012. It was observed that Mobilink increased operational fee from 1% to 2% on 22 November, 2011.
22. Ufone in its reply of 11 June, 2012 stated that the maintenance charge has been increased from 1.1% to 2% as of 30 May, 2012.
23. Telenor in their letter dated June 13, 2012 stated that service charges have been revised from 6.5% to 7% with effect from 15 February, 2012.
24. Zong also confirmed that the rate of operational fee has been changed from 1.5% to 2% with effect from 07 June, 2012.
25. Warid did not respond to letters sent by the Commission. Whereas news posted on Warid website mentioned that maintenance charge on all recharges are being increased from 1.5% to 2% from 07 June, 2012.
26. In 2013, again an increase in aforementioned charges was announced by Telenor, Ufone and Mobilink which became effective from July, 2013 whereas Zong had already implemented the increase in charges in June 2013. Warid also revised these additional charges in September 2013.

II. TELECOM INDUSTRY¹

27. Pakistan's mobile communication services market comprises some of the world's largest and most experienced telecom companies including Orascom (Egypt), Telenor (Norway), Warid Telecom (Abu Dhabi Group), China Mobile and Etisalat (a UAE based company). Cellular mobile facilities are now available to over 90 % population of the country, as the total mobile subscribers have reached to more than 100 million. Tele-density of the country touched 68.39%, reflecting a hike of 6.7% over the previous year. The number of mobile subscribers at the close of FY2011 stood at 108.9 million, showing a growth rate of 10%, double than that of the last year. Mobile penetration rose to 65.4% from 60.4% in the previous year. There has been an increase in the number of Cell Sites from 30,126 in June 2010 to 31,303 at the conclusion of FY2011. Mobilink continues to lead the mobile subscribers market with 30.7% share chased by Telenor (24.5%), Ufone (18.9%), Warid (16%) and Zong (10%).

Mobilink

Mobilink is Pakistan's largest telecom operator, and had been given the status of Significant Market Player (SMP) by the PTA. It is Pakistan's first GSM telecom operator. The company was founded in 1994 by Motorola and later sold to Orascom, the Egyptian conglomerate, who currently own it. Mobilink is Pakistan's oldest active telecommunications operator as per PTA's Annual Cellular Subscriber data, till June 2011 Mobilink had 33.38 million subscribers. Wind Telecom, an Italian private company, holds 51.7% shares in Orascom Telecom Holding SAE, Egypt ("OTH"), which has a 100% own subsidiary PMCL or Mobilink in Pakistan. Amalgamation of two leading international telecommunication groups, VimpelCom Limited (VimpelCom) and Wind Telecom will result in indirect change in control of OTH and its subsidiary in

¹ Pakistan Telecomm Authority website

http://www.pta.gov.pk/annual-reports/pta_ann_rep_11.pdf

http://www.pta.gov.pk/index.php?option=com_content&task=view&id=265&Itemid=135

Pakistan i.e. PMCL or Mobilink; the fact that Telenor (Norway) will have 31.7% equity shares and 25% voting shares in VimpelCom.²

Telenor

Telenor Pakistan is 100% owned by the Telenor Group of Norway which is among the largest mobile operators in the world with over 26.67 million subscribers. The company is Pakistan's second largest telecom operator and has been bolstered by over \$2 billion invested in the country thus far. It acquired a GSM license in 2004 and began commercial operations on March 15, 2005. According to Pakistan Telecom Authority, up till June 2011, it had a reported subscriber base of 26.7 million.

Ufone

Ufone started its operations in 2001 as a subsidiary of PTCL. Later on Ufone became a part of the Emirates Telecommunication Corporation Group (Etisalat). Ufone is Pakistan's third largest telecom operator and is just narrowly behind Telenor. Pakistan Telecommunication data shows that Ufone has a subscriber base of over 20.53 million subscribers.

Warid

A joint venture between Abu Dhabi Group & SingTel Group, Warid started its Telecom operations in Pakistan in 2004. After a partial equity buy-out in 2007, Singapore-based SingTel owns 30% of the Warid. The company is Pakistan's fourth largest telecom operator, although it is only 2-4% behind Telenor and Ufone in terms of market share. SingTel also has business interests in telecom companies throughout Asia. Warid has a subscriber base of 17.38 million customers.

Zong

² http://cc.gov.pk/images/Downloads/vimpel_wind_telecom_merger.pdf

The pioneering overseas set up of China Mobile came through acquisition of a license from Millicom to operate a GSM network in Pakistan. CMPAK subsequently founded Zong, as China Mobile's first venture outside of China. Zong is Pakistan's fifth largest telecom operator, however the company has pursued an aggressive approach to growth through technology investment, marketing, and less expensive products. Zong's subscriber base comprises of more than 13 million subscribers.

III. UNDERTAKINGS

28. Mobilink, Telenor, Zong, Ufone and Warid are the companies incorporated under the Companies Ordinance, 1984 and are engaged in the business of providing cellular/mobile communication services. Therefore, all of them are undertakings in terms of clause (q) of sub-section (1) of Section 2 of the Act.

IV. INCREASE IN CHARGES on recharge of balance for prepaid connections

29. Before 2011, there were no such charges with the name of maintenance, administration or operational fee charged from prepaid customers. All CMTOs simultaneously levied additional charges effective from the month of July 2011. The following table shows the percentage and date of implementation of charges by all CMTOS in 2011 and also increase in charges in 2012 & 2013:

Charged introduced in July 2011

S. No	Company Name	Charges/Fee Levied.	Effective Date
1	Telenor	1.5% Admin Fee	04 July 2011
2	Ufone	1.1% Maintenance charge	01 July 2011
3	Mobilink	1% + 1% Operational fee.	01 July + 22 November
4	Warid	1.5% Maintenance Charge.	25 July 2011
5	Zong	1.5% Operational Charge	01 July 2011

Charges increased in 2012

1	Telenor	2% to 3% (Service Fee)	02 July 2013
2	Ufone	2% to 4% (Maintenance Charge)	04 July 2013
3	Mobilink	2% to 5% (Operational Fee)	01 July 2013
4	Warid	2% to 4% (Maintenance Fee)	04 September 2013
5	Zong	2% to 3% (Operational Charge)	13 June 2013

Charges increased in 2013

V. DECEPTIVE MARKETING PRACTICES

30. Section 10 prohibits an undertaking from engaging in such deceptive marketing practices that give false or misleading information to consumers relating to price, character of goods. For ease of reference, Section 10 of the Act is reproduced in relevant parts as below:

S. No	Company Name	Increase in Charges/Fee Levied.	Effective Date
1	Telenor	1.5% to 2% (Service Fee)	15 February 2012
2	Ufone	1.1% to 2% (Maintenance Charge)	30 May 2012
3	Mobilink	(no change) 2% (Operational Fee)	01 July 2011
4	Warid ³ http://www.waridtel.com/	1.5% to 2% (Maintenance Fee)³	07 June 2012
5	Zong	1.5% to 2% (Operational Charge)	07 June 2012

10. Deceptive marketing practices.- (1) *No undertaking shall enter into deceptive marketing practices.*

(2) *The deceptive marketing practices shall be deemed to have been resorted to or continued to if an undertaking resorts to*

(a)

(b) *The distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use or quality of goods;*

(c)

31. Section 10 protects an ordinary consumer from deceptive marketing practices. An ordinary consumer does not have the time and resources to acquire and process sufficient information for rational decision-making. Even well-informed consumers may often base their decisions on custom and feelings rather than on an analytical process. Different types of consumers possess different information processing and perception abilities. The Commission in its earlier order in the matter of deceptive marketing practices by telecom companies has held that the word ‘consumer’ under Section 10 has to be construed liberally and should not be restricted with the use of words ‘average’, ‘reasonable’ or ‘prudent’. Such restricted interpretation would result in shifting the onus from the undertaking to the consumer. The Bench while quoting the *Rossella Incardona Æ Cristina Poncibo* held⁴:

Taking peculiar circumstances of the Pakistani consumer into account, more so in the telecom industry where the consumers range is of widest amplitude.....we should not “favour a return to unregulated laissez-faire marketing that would transfer the burden of evidence from the seller, who has the advantage of intimate knowledge of the product, to the buyer, who of necessity must make many, often instantaneous choices in the course of a day”.

⁴ <http://cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

32. 'False information' is an oral or written statement or representation that is contrary to truth or fact and implies either conscious wrong or culpable negligence. Whereas 'misleading information' is an oral or written statement or representation that is capable of giving a wrong impression or idea and is likely to lead into error of conduct, thought and judgment and tends to misinform or misguide owing to vagueness or omission.
33. Moreover, "misleading" particularly, in respect of telecom practices has been described under Regulation 8 of the Telecom Consumer Protection Regulations, 2009. The relevant Regulation is reproduced as follows:

A commercial practice is misleading action if:

It contains false information, and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average Consumer in relation to one or more of the matters listed below, and it causes or is likely to cause him to take a Transactional Decision that he would not have taken otherwise:

- a. The existence or nature of the Service;*
- b. The main characteristics of the Service, such as its availability, validity, benefits, risks, after-sale consumer assistance, complaint handling, date and method of provision, delivery, fitness for purpose, usage, quality, specification and results to be expected from its use;*
- c. The extent of Operator's commitments and motives of Commercial Practices.*
- d. The tariff and the manner of tariff in which it is calculated and the existence of the specified tariff advantage.*

34. Although the levy of these additional charges has been introduced under different heads, however, the nature of charges remains the same and that is deduction of certain amount at the time of every reload of balance purchased by customers. Such additional charges appear to be non-service charges against which no particular service is being rendered to the customers.

35. Levy of additional charges has been explained by the CMTOs as charges which ultimately relate to services provided by them to their customers, in the following words:

Warid

all charges/tariffs/fees levied by Warid are related only to the provision of its services. Therefore in our opinion Warid has never levied any non service charges/tariffs/fees being charged on prepaid and post-paid connections.

Mobilink

we understand that all our charges are ultimately relatable to services. Regarding the reason for imposition of such charges/fees, please note that this is meant to recover inter-alia part of the costs of providing the services.

Ufone

PTML, in its capacity of a telecommunication services provider, doesn't charge any "non-service charges" from its subscribers.

Telenor

hasn't imposed any non-service charge on its consumers and any charges that are deducted by the company are related to the telecommunication services provided..... service fee deducted at time of recharge from a prepaid consumer is a "service fee" which is charged to cover the incremental cost of operation.

36. All the undertakings have submitted similar replies and insist that they have not imposed any non-service charges and that the additional charges which are the subject matter of this Enquiry Report are in furtherance of the cellular services rendered by them.

37. Service provision is an economic activity whereby the buyer gets some benefits in return of payment of certain fee. The word 'service' has been defined under Section 2(1) (o) the Act. The word service under the Act means service of any description whether industrial, trade, professional or otherwise. From the definition of word services it appears that 'service' is an economic activity in the form of consumable

benefit made available to potential users for a certain price and includes the provision of facilities in connection with banking, financing, insurance, telecom, transport, processing, entertainment, amusement etc.

38. However, from the above it appears that these charges are deducted at the time of recharge of pre-paid connection and no particular service is rendered against them. Neither any of CMTO has provided any satisfactory explanation or services being provided against the new additional charges. Customers are already paying for cellular telephony services availed from their respective telecom operator under their relevant subscribed packages. Therefore, *prima facie*, these additional charges do not provide any justification as to what value has been added and what extra benefit has been offered to subscribers that would amount to a particular 'service'.
39. Another reason/rationale provided by the CMTOs/undertakings for the levy of additional charges is “*company’s commercial decision to impose this fee is for the purpose of sustaining the profitability of the company which is its prime objective as a business organization*” (Telenor); **OR** is to recoup the expenses due the “*dramatic increase of costs during the previous year and which are anticipated to rise further during the coming year*” (Ufone) **OR** *to incur additional expenses in provision of its services to its customers and maintaining quality of service*” (Zong) **OR** “*to recover increased maintenance charges being incurred by warid in relation to its system for provision of services*” (Warid).
40. These additional charges have been levied to maximize the profits and re-coup the incremental cost as claimed by the CMTOs. However, what is the value addition/extra benefit passed on to customers and new investment made against these additional charges remains unexplained by the all these CMTOs. It is also interesting to note that all CMTOs having different business sizes and dynamics introduced charges in 2011 which were of similar nature, had similar range and levied at the same time and were also increased by the same percentage in 2012.

41. In proportion to the tele-density, cellular sector has the highest share in telecom revenues. During FY 2011, cellular revenues enhanced by 11% to reach Rs. 262,761 million in comparison with Rs. 236,047 million last year. Rise in telecom revenues is mainly attributed to the swelling of revenues of mobile services, as other services except WLL have reported reduction in their total revenues.
42. These additional charges apparently will generate large revenues in billions of rupees on a yearly basis. Given the nature of charges introduced by all the CMTOs, the customers have no option of avoiding these charges and are bound to spend extra money on every recharge. If a customer recharges Rs.100 balance, he will have to pay a certain percentage of additional fee apart from the amount deducted at the time of recharge of pre-paid connection and also the charges being paid earlier to avail the services from his respective cellular operator.
43. Deduction of operational, administration or maintenance charges has impact on the actual price of cellular telecommunication services availed by the customers, thereby making them more expensive than as reflected in their package details. Further, pre paid customers of all telecom operators pay a certain amount at the time of recharge but they are not aware of value addition/benefit or any specific service being rendered against these additional charges. This additional levy, *prima facie*, gives a misleading/deceptive impression as to price paid for services availed by the customers and the nature of extra charges levied on them.
44. This competition concern was shared with all the CMTOs duly informing them that it constitutes a, *prima facie*, violation of Section 10(2)(b) of the Act. In response Mobilink stated vide its letter dated 10 January 2013 that:

“for the complete information and disclosure to the customers Mobilink has defined two heads under which such service charges are deducted namely: service charges; & operational fee.....” and that“2% operational fee is charged against the maintenance of the customer’s account etc”

Ufone in its letter dated 28 January 2013 responded:

PTML informed the Pakistan Telecommunication Authority (PTA) of the increase in Maintenance Charges each time.....and the subscriber each time through print media advertisement in accordance with the Telecom Consumer Protection Regulations 2009. Upon such information being imparted to the public, such imposition cannot be deemed to be a deceptive marketing practices as provided under Section 10 of the Act.”

Telenor stated vide letter dated 24 January 2013:

This is a holistic charge on the overall services provided by company and covers all the products/services provided by company therefore a simpler and non confusing methodology was adopted to deduct the amount from the prepaid recharge made by consumer; as recharge can be used for any of the services provided by company. This approach is also easier and more transparent from consumer understanding point of view as every time a customer recharges his or her account gets SMS (and can also check balance) informing about the actual amount transferred and hence deduction are much more visible as opposed to use of product/service whereby SMS information about exact charges deducted from consumer, are not feasible.

Warid in its letter dated 04 January 2013 stated:

It duly informed all its customers prior to imposition of any charges or fee including the Maintenance Fee and the same was consented to by the customers who thereafter elected to recharge their prepaid accounts through specific method having been informed about the imposition of, inter alia, the Maintenance Fee.

Zong replied on 10 January 2013 and requested for extension of fourteen days to submit its response, however, that response is still pending.

45. All the CMTOs in their response have emphasized on informing their customer of imposition of maintenance or operational fee at the time of recharge of prepaid connection. However, none of them has commented on the impact of such levy/charges on the price. The tricky part is that apparently operators are advertising

to sell their voice call or SMS and other telephony services in the most lucrative way i.e. cheap call or cheap SMS etc. but it appears that they have cleverly passed on an additional burden to the consumers in the form of these additional charges deducted at the time of recharge.

46. In fact these charges appear to be hidden costs of acquiring cellular telecommunication telephone and data services and give the impression that the prices of such services are lower than they are in reality. Therefore, such levy appears to add to the revenue of the companies by deceiving the customers as to the price of cellular telephony services availed by them.

VI. CONCLUSION/FINDINGS

47. In view of above, imposition of additional charges in the form of maintenance, operational or administration fee, *prima facie*, gives a misleading/deceptive impression to an ordinary consumer as to the actual price paid for making a call or sending an SMS or other services availed in contravention of Section 10(2)(b) of the Act. Further, such new levy of additional does not inform the customer as what value has been added or extra benefit has been provided and appears to be a false information/deceptive measure as to the nature of service rendered against them, *prima facie*, constituting a deceptive marketing practice in violation of Section 10 (2)(b) of the Act.

48. In view of the above, the Enquiry Committee is of the opinion that, it is necessary in the public interest to initiate proceedings under Section 30 of the Act against Mobilink, Ufone, Warid, Zong and Telenor for, *prima facie*, violation of Section 10 (2)(b) of the Act.

Nadia Nabi
Enquiry Officer

Irfan ul Haq
Enquiry Officer