



F. NO: 5(114)/REG/ADG/SCP-LHR/CCP/13
COMPETITION COMMISSION OF PAKISTAN
GOVERNMENT OF PAKISTAN

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Director General (Legal)/Registrar

March 04, 2013

Show Cause Notice No. 1/2013

M/s. Pakistan Telecommunications Company Limited
Through its Chief Executive Officer/ President
PTCL Headquarters, G – 8/4,
Islamabad

SUBJECT: SHOW CAUSE NOTICE UNDER SECTION 30 OF THE COMPETITION ACT, 2010 PURSUANT TO THE ORDER DATED 21-02-2013 OF THE HON 'ABLE SUPREME COURT OF PAKISTAN IN C.P.L.A. NO. 102-L/2013

1. WHEREAS, the Competition Commission of Pakistan (the 'Commission') has received the Order dated 21-02-2013 of the Hon 'able Supreme Court of Pakistan in C.P.L.A. No. 102-L/2013 titled "*M/s ADG LDI Private Limited Vs. M/s Brain Telecommunication Limited etc.*" on 27-02-2013 in the matter of establishing International Clearing House for incoming international telecommunication traffic in Pakistan; (Copy of the Order is attached as '**Annex-A**)
2. AND WHEREAS, the Hon 'able Supreme Court of Pakistan through the said Order directed the Commission to treat the Writ Petition No. 26636/2012, filed by the M/s Brain Telecommunication Limited before the Honourable Lahore High Court, Lahore; as representation (the '**Representation**') under the Competition Act, 2010 (the '**Competition Act**') and to decide the same within fifteen (15) days of the receipt of the said Order, by issuing notices and after hearing all the undertakings concerned and attending to the issues raised in the Representation; (Copy of the Representation is attached as '**Annex-B**').
3. AND WHEREAS, the above-mentioned Representation filed before the Commission states, *inter alia*, the background of establishment of International Clearing House Exchange as follows:
 - a. There are 14 companies licensed by Pakistan Telecommunication Authority (PTA) to operate as Long Distance & International (LDI) telecommunication service operators (the '**LDI Operators**'); (List of LDI Operators is attached as '**Annex B1**')
 - b. The LDI Operators, had earlier applied vide application dated 09-09-2011 for an exemption under Section 5 of the Competition Act from the application of Section 4 of the Competition Act for their then proposed International Clearing House Agreement;
 - c. While hearings were being conducted before the Commission in exemption application, a request after 05 months was filed by the applicants/LDI Operators to withdraw the exemption application. The Commission while allowing the withdrawal applications, disposed off the matter vide Order dated 08-02-2012 with a condition that in future such arrangements are subject to clearance from the Commission; (Copy of the Order dated 08-02-2012 is attached as '**Annex-C**')

- d. The Ministry of Information Technology (**MOIT**), after unanimous agreement of all the LDI operators issued a policy directive dated 13-08-2012 to PTA for establishment of International Clearing House Exchange for international incoming calls for long distance international, fixed-line local loops, wireless local loops and mobile operators (hereinafter the '**Directive**'); (Copy of the Directive is attached as '**Annex-D**')
- e. On 23-08-2012 a letter was issued by PTA (the '**Implementation Letter**') to direct all the LDI Operators to conclude the International Clearing House Agreement (the '**ICH Agreement**') in light of the Directive; (Copy of the Implementation Letter and the ICH Agreement are attached as '**Annex-E & F**')
- f. On 28-08-2012 the Commission issued a policy note (the '**Policy Note**') and apprised the MOIT and PTA about the factual background of the ICH Agreement and also observed that the proposed ICH Exchange under the Directive directly violates Section 4(2)(a) and 4 (2)(b) of the Act; (Copy of the Policy Note is attached as '**Annex-G**')
- g. On 30-08-2012 the Commission through its special order (the '**Special Order**') directed PTA to confirm whether the LDI operators were in fact entering into an agreement to establish the proposed ICH Exchange under the Directive and stated its stance on the subject in light of its Policy Note; (Copy of the Special Order is attached as '**Annex-H**')
- h. PTA in furtherance of its Implementation Letter issued a letter dated 30-08-12 (**PTA's Applicable Rates Letter**) to fix, *inter alia*, the Approved Accounting Rate (AAR), Approved Settlement Rate (ASR), Access Promotion Contribution (APC); (Copy of the PTA's Applicable Rates Letter is attached as '**Annex I**')
- i. PTA notified all Loop Operators vide letter dated 25-09-12 (the "**Suspension Letter**") to suspend international circuits for international incoming traffic with all LDIs except Pakistan Telecommunication Company Limited (PTCL) with effect from 01-10-12 in order to ensure the termination of international incoming traffic only on PTCL's network; (Copy of the Suspension Letter is attached as '**Annex-J**')

4. **AND WHEREAS**, the Representation seeks the declaration that ICH Agreement and Directive issued by MOIT followed by actions taken by PTA and LDI operators are anticompetitive, illegal and void, *inter alia*, on grounds mentioned below:

- a. Filing of exemption application for ICH Agreement and pursuing it for 05 months establishes beyond doubt that all LDI operators were fully aware that ICH Agreement is in violation of Section 4 of the Competition Act;
- b. No policy made by any Ministry can undermine the express provision of law, in this case the Competition Act. Establishment of International Clearing House is violation of Commission's Order dated 08-02-12;
- c. The ICH Agreement essentially permits and allows the LDI Operators to fix the prices and allocate quota amongst themselves of incoming international calls in Pakistan in contravention of clauses (a) & (b) of subsection (2) of Section 4 read with subsection (1) of Section 4 of the Competition Act;
- d. The ICH Agreement has been designed and implemented as a typical 'Cartel' where there would be no incentive for any LDI operator to improve sales or enhance quality of service or for that matter to invest in improving its network. Further with fixed quota

there would be far less incentive for any LDI Operator to bring in additional traffic from overseas operators;

- e. Having representatives of MOIT and PTA on the ICH Board curtails the free market commercial decision making of the LDI operators and clearly impinges upon the regulatory role of PTA;
- f. The price for making calls to Pakistan has increased significantly which shall definitely decrease the volume of international incoming calls per month. This decrease would have devastating long term implications for the telecom sector in the country.
- g. Under the ICH regime, PTCL has become the sole LDI Operator with the exclusive rights to terminate all incoming traffic to Pakistan. M/s Brain Telecommunications Limited has been constrained to suspend all international circuits for international incoming traffic with all LDI Operators except PTCL. Whereas circuits provided by PTCL are not working properly/facing down time. Instead of rectifying the situation PTCL has unilaterally suspended the telecom services of Brain Telecommunication Limited causing it business loss and irreparable loss and damage to reputation;

5. **AND WHEREAS**, in view of the Representation, *prima facie*, violations regarding preventing, restricting and reducing competition in the relevant market by the LDI Operators in terms of Section 4 of the Competition Act are made out, hence, in terms of clause (k) of subsection (1) of Section 2 of the Competition Act, the relevant product market for the purposes of this notice is the market for the provision of LDI telecommunication being terminated in Pakistan and the relevant geographic market comprises the whole of Pakistan (the 'Relevant Market');

6. **AND WHEREAS**, in terms of the foregoing, the LDI Operators are engaged in the provisions of services in the Relevant Market and are undertakings in terms of the provisions of clause (q) of subsection (1) of Section 2 of the Competition Act;

7. **AND WHEREAS**, in terms of the Representation and in particular clause 2 of the ICH Agreement, LDI Operators have agreed to terminate all the incoming international incoming traffic exclusively on M/s Pakistan Telecommunication Company Limited's (the 'PTCL') network and to suspend all interconnection capacities of other LDI Operators, thereby preventing, restricting and reducing competition in the Relevant Market, which is in *prima facie* violation of subsection (1) of Section 4 of the Competition Act;

8. **AND WHEREAS**, in terms of the Representation and in particular clause 3 and 4 & Annexure A to the ICH Agreement, it appears that LDI Operators have agreed to fix the rates of incoming international calls including AAR, ASR, APC and LDI Share, which is tantamount to price fixing, *prima facie* violation of clause (a) of subsection (2) of Section 4 read with subsection (1) of Section 4 of the Competition Act;

9. **AND WHEREAS**, in terms of the Representation and in particular clause 4 & Annexure-A to the ICH Agreement, it appears that LDI Operators have agreed to fix the quota of incoming international calls to share the customer base/revenues collected as per the fixed percentages, *prima facie*, in violation of clause (b) of subsection (2) of Section 4 read with subsection (1) of Section 4 of the Competition Act;

10. **AND WHEREAS**, in terms of the Representation and in particular clause 9.1 & 11.2 of the ICH Agreement, it appears that ICH Agreement leaves no incentive for any LDI Operator to improve sales, enhance quality of service or invest in improving its network and that with fixed quota LDI Operators would have less incentive to bring additional international traffic, which would create entry barriers and thereby limiting the technical development or investment in the Relevant

Market, *prima facie*, in violation of clause (d) of subsection (2) of Section 4 read with subsection (1) of Section 4 of the Competition Act;

11. **AND WHEREAS**, in terms of Representation, the ICH Agreement grants a monopoly to PTCL to terminate all incoming international traffic which apparently has been abused by PTCL by unilaterally suspending telecom services of M/s Brian Brain Telecommunication Limited, *prima facie*, in violation of Section 3 in general read with clause (a), g & (h) of subsection (3) of Section 3 of the Competition Act;

12. **AND WHEREAS**, in terms of the Representation, *prima facie* the LDI Operators have violated the provisions of clause (b) & (e) of subsection (1) of Section 38 of the Competition Act by entering into the ICH Agreement without seeking prior clearance of the Commission in terms of the Order dated 08-02-2012 passed by the Commission;

13. **NOW THEREFORE**, as per the Commission's mandate under the Competition Act and in pursuance of Hon 'able Supreme Court's Order dated 21-02-2013, you are called upon to respond to this notice in writing within seven (7) days of the date of this notice and place before the Commission facts and material in support of your contention, and avail the opportunity of being heard through a duly authorized representative on 12th March 2013 at 3:00 p.m. at the office of the Commission located at 8th Floor, ISE Towers, 55-B, Jinnah Avenue, Blue Area, Islamabad, to present your views on all the issues raised in this notice in general, and to explain as to why an appropriate order under clause (b) of subsection (1) of Section 31 of the Competition Act may not be passed and/or a penalty may not be imposed under clauses (a), (b) & (c) of subsection (2) and subsection (3) of Section 38 of the Competition Act for the abovementioned violations.

14. In case you fail to appear for the hearing on the abovementioned date and time, the Commission shall proceed in accordance with law. Due to the time constraint, the matter, if deemed necessary by the Commission, shall proceed on day-to-day basis to ensure expeditious conclusion and disposal of the matter.



Ikram Ul Haque Qureshi
Director General (Legal)/ Registrar

IKRAM UL HAQUE QURESHI
Registrar
Competition Commission of Pakistan
Government of Pakistan
Islamabad

Enclosure: As above and may be read as an integral part of this notice.