



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

IN THE MATTER OF

**INTERNATIONAL CLEARING HOUSE AGREEMENT
AMONG LDI OPERATORS**

(File No. 2(291)/AGR/EXMP REG/CCP/11)

Dates of hearings:

December 13, 2011
January 31, 2012

Present:

Ms. Rahat Kaunain Hassan
Chairperson

Mr. Abdul Ghaffar
Member

Dr. Joseph Wilson
Member

Ms. Vadiyya S. Khalil
Member

Mr. Shahzad Ansar
Member

Mr. Mueen Batlay
Member

On behalf of:

M/s. Transworld International	Mr. Zulfiqar Qazilbash, VP Communications Mr. Naveed Malik, VP Finance
M/s. Telenor LDI Communications	Mr. Haider Latif, Manager (Legal Affairs) Mr. Affan Hassan Khan Lodhi Mr. Abdul Mobeen
M/s. Wise Communications Systems (Pvt) Limited	Lt (Col.) Shafiq Ahmad Abbasi, Vice Chairman Advocate Asia Batool, Director Law & Regulatory Affairs
M/s. Multinet Pakistan	Malik Arif Munir, Head of Corporate Voice. Mr. Fahad, Regional Manager
M/s. Circlenet Communications (Pvt) Limited	Mr. Muhammad Wajahat Zeeshan Khan, Consultant
M/s. Witribe Pakistan Limited	Mr. Imran Qureshi, Director Carrier & Govt Relations, Mr. Jawad Latif, Consultant Regulatory Affairs
M/s. Pakistan Telecommunication Company Limited (PTCL)	Mr. Sikandar Naqi, SEVP Mr. M. Amer Shafique, GM (Reg Affairs) Mr. Aziz ur Rehman, SM (CP&S)
M/s. 4B Gentle International (Pvt.) Limited	Mr. Abdul Waheed
M/s. Dancom Pakistan (Pvt.) Limited	Mr. Aurangzeb
M/s. Worldcall Telecom Limited	Mr. Gul Ahmed, Senior Advisor Regulatory Affairs
M/s. ADG LDI (Pvt.) Limited	Mr. Abdul Sattar, FCA
M/s. Telecard Limited	Brig (Rtd) Shahid Naeem Butt Mr. Rizwan Muzaffar Cheema
M/s. Wateen Telecom Limited	Mr. Junaid Sheikh
M/s. Redtone Communications Pakistan (Pvt.) Limited	Mr. Iftikhar Butt
M/s. Link Direct International Limited	Mr. Tariq Sultan, Head GR Sahibzada Uzair Hashim

ORDER

1. This order disposes of the Exemption Application jointly filed by Long Distance and International licensees namely; (i) Pakistan Telecommunication Company Limited (PTCL); (ii) Multinet Pakistan (Private) Limited; (iii) 4B General International (Private) Limited; (iv) Wi-tribe Pakistan Limited; (v) Dancom Pakistan (Private) Limited; (vi) Wise Communication System (Private) Limited; (vii) Worldcall Telecom Limited, (viii) ADG (Private) Limited; (ix) Link Direct International (Private) Limited; (x) Telecard Limited; (xi) Circle Net Communications Pakistan (Private) Limited; (xii) Wateen Telecom Limited; (xiii) Redtone Telecommunications Pakistan (Private) Limited; and (xiv) Telenor LDI Communications (Private) Limited (hereinafter collectively referred to as “LDI Operators”, and the PTCL and LDI Operators collectively referred to as the “Applicants”), under Section 5 of the Competition Act, 2010 (hereinafter referred to as the “Act”) to seek exemption for their proposed International Clearing House Agreement (hereinafter referred to as the “ICH Agreement”) entered between PTCL and the LDI Operators.

2. The issue presented before the Commission was whether the proposed ICH Agreement would escape the *per se* condemnation of Section 4 of the Act, and meet the criteria laid down in section 9 of the Act for exemption from the application of section 4.

3. Through the ICH Agreement, the LDIs intended to assign their rights, granted to them by the PTA under the LDI license, to terminate incoming international traffic to PTCL. During the period the ICH Agreement were to be in effect, each LDI were to “suspend and keep suspended all interconnection capacities in relation to Pakistan Incoming Traffic at its end.”¹ PTCL were to act as the sole LDI operator with the right to exclusively terminate all incoming traffic to Pakistan.² PTCL were to sell its call terminating services to foreign carriers at the Approved Settlement Rates of the PTA, and each LDI would get a pre-

¹ Article 2.1, International Clearing House Agreement.

²Article 2.2, Id.

determined fixed quota from PTCL to terminate calls at its network, and receive a fixed share of revenues generated from all incoming international traffic.

4. The ICH Agreement, in essence, (i) was giving PTCL the monopoly to receive all incoming international traffic; (ii) having a single rate for incoming international traffic; and (iii) dividing the market share of incoming international traffic.

5. The Applicants gave the following arguments to support the ICH Agreement. ICH would:

- a. Stabilize the Pakistan international incoming traffic rate as per PTA directive/determination;
- b. Curb the grey traffic, which is badly effecting the rate stabilization and harming the country as well as the whole LDI industry, as all the traffic will land into Pakistan through a single channel;
- c. Create a vital impact on the national economy in terms of huge influx of foreign exchange in the country, increased taxes for the Government of Pakistan due to increase in revenue, and revenue for the telecom industry for increasing the tele-density in the country;³
- d. ICH would not fix price, but only PTA's Approved Settlement Rates would be implemented;
- e. ICH would have no control on the production of voice minutes towards Pakistan;
- f. ICH would have no adverse impact either on local phone subscribers or overseas callers calling to Pakistan;
- g. ICH would divert balance of foreign exchange payments on account of telecom in Pakistan's favour; and
- h. ICH would have great impact on Pakistan's economy and foreign exchange earnings and will aggregate to USD 37.5 million per month.⁴

³ Points a to c are from: Cover letter, exemption application, dated 6 September, 2011.

⁴ Points d to h are from the presentation made before the Commission on 13 December 2011.

6. Transworld Associates Private Limited (hereinafter “TWA”) operates and owns its own undersea fiber optic cable system. TWA has a submarine cable system that connects Pakistan to two major communication hubs in the Middle East and onwards and provides internet and international communication connectivity to Pakistan’s internet Service Providers, and telecommunication service providers. TWA being a competitor of PTCL strongly objected to the formation of ICH and became a necessary party to the proceedings and gave a detailed presentation in this regard.

7. TWA gave the following arguments against the formation of ICH. ICH arrangement may not be in the long term interests of the industry and country as:
 - a. It will not curb grey traffic since there are other technology options for those who wish to engage in illegal activities. In fact higher APC will encourage more grey traffic;
 - b. More Grey traffic will result in reduced inflow of foreign exchange and undeclared revenue will result in loss to exchequer;
 - c. The LDI’s reliance on PTCL for its voice business will allow PTCL to influence his decision on which carrier to use for his data business also;
 - d. LDIs will become dependent on PTCL who will have unfair advantage in developing new international business and routes in future;
 - e. A strategic asset of the country, TWA will be forced to relinquish its commanding market share in this market segment without adequate justification or compensation;
 - f. PTCL will share revenue in the near term in order to “buy off” and incentivize the LDIs to reduce investments on developing their infrastructure and rely on PTCL network;
 - g. There is no existing legal curb on PTCL to use its dominant position to manipulate the market in its favor – its has successfully fought off PTA attempt to set limits by declaring it a “significant market power;”
 - h. It will significantly weaken the ability of the alternate international carrier (TWA) to compete with PTCL for LDI business, the most lucrative part of the telecom sector;
 - i. Increasing incoming termination rates will provoke foreign operators to increase outgoing termination rates vice versa, affecting local consumer who in-turn will have to pay more;

- j. Reliance on single operator will result in local consumer impacted by higher prices and declining quality;
 - k. Reliance on single operator will result in overall weakening of Pakistan's international communications infrastructure and also impact the domestic telecom sector due to brain drain and job losses;
 - l. It will hurt and possibly shut down significant number of the foreign and local technology product and service companies that service this sector as PTCL will become the only "real" international network operator;
 - m. Rollback to a monopolistic infrastructure will result in loss of foreign investor confidence since it directly goes against written and implied guarantees given by GOP; and
 - n. It is effectively rolling back the clock on 10 years of deregulation and re-establishing PTCL's infrastructure monopoly.⁵
8. PTCL on behalf of LDI industry of Pakistan, vide its letter dated 7th February 2012, through General Manager, Regulatory Affairs, first submitted its response to concerns raised by TWA during the hearing held on 31st January, 2012, wherein point-wise rebuttal to TWA objections have been given. Subsequently, however, PTCL through an even dated letter signed by Mr. Sikandar Naqi, SEVP (Corporate Development) requested the Commission to allow PTCL to withdraw their application for exemption as "*the industry has not reached consensus on the modalities of ICH operations.*"⁶ ADG (Pvt) Ltd. and Link-Direct in their letters of the same date have requested withdrawal of the subject exemption application stating that they "*have decided to shelf [the ICH Agreement] for the time being.*"⁷ Since, the idea will not be implemented, therefore, we do not consider this as a live case".
9. The Commission has been engaged in this matter since October 2011, *inter alia* filing of the application, examining written submissions, conducting hearings

⁵ Presentation made by TWA at a hearing held on 31 January 2012. Copy of presentation is part of the Commission's record.

⁶ PTCL letter dated 7 February 2012, bearing reference No. RA/C&PS/ICH/2012; ADG (Pvt) Ltd. letter dated 7 February 2012; Link-Direct Letter dated 8 February 2012, bearing reference No. LDI/CCP/ICH/Notice/271

⁷ Id, ADG letter; Link-Direct Letter.

and taking presentations from the parties; all now, forming part of the record. These proceedings, however, have now become moot with the request of the Applicants to withdraw their application.

10. In view of the foregoing, while the withdrawal of the exemption application is being allowed it may be noted that if in future the Applicants enter into such agreement/arrangement, notwithstanding, any authorization obtained from any other authority such agreement/arrangement prior to its execution would require clearance from the Commission, as, prima facie, it has serious competition concerns and would attract the provisions of the Competition Act, 2010.

11. Accordingly, the Applicants are hereby allowed to withdraw their application.

(Rahat Kaunain Hassan)
Chairperson

(Abdul Ghaffar)
Member

(Dr. Joseph Wilson)
Member

| (Vadiyya S. Khalil)
Member

(Mueen Batlay)
Member

(-Shahzad Ansar)
Member

ISLAMABAD, THE 8TH OF FEBRUARY, 2012.