



PAKISTAN TELECOMMUNICATION AUTHORITY

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No. 15-53/11/CA/PTA

November 18, 2011

Subject: Determination on 'Anti-Competitive Practices of PTCL in the Broadband Market'

This is with reference to captioned subject.

2. The Authority is pleased to issue the Determination on 'Anti-Competitive Practices of PTCL in the Broadband Market'.
3. The Determination is attached herewith for your information and compliance please.


Zeeshan Gul
Director (Commercial Affairs)

To:

- M/s PTCL
- M/s LINKdotNET
- M/s Micronet Broadband

Cc:

- DG (S&D), PTA
- DG (L&R), PTA
- SO to Chairman, PTA
- PA to Member (Finance), PTA
- PA to Member (Technical), PTA



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**DETERMINATION ON COMPLAINT AGAINST ANTI-COMPETITIVE PRACTICES
OF PTCL IN BROADBAND MARKET**

Date of filing of Complaint: November 10, 2010 and February 28, 2011

Date of hearings: March 7, 2011, March 14, 2011 and March 31, 2011

The Authority Present:

Dr. Mohammad Yaseen: (Chairman)
Dr. Khawar Siddique Khokhar: Member (Technical)

Issue: ISPAK, LINKdotNET and Micronet Broadband complaints on anti-competitive practices against PTCL

DECISION OF THE AUTHORITY

BACKGROUND:

1. Briefly stated facts of the case are that ISPAK; and LINKdotNET along with Micronet (hereinafter called the "Complainants" collectively) filed complaints dated 10th November, 2010 and 28th February, 2011 respectively against Pakistan Telecommunication Company Limited (PTCL) wherein it was alleged that PTCL is involved in anti-competitive practices in the broadband service. Complainants apprised that cost to operators for providing DSL connection becomes higher as compared with PTCL's retail tariff and resultantly operators are suffering losses. Therefore, the Complainants requested the Pakistan Telecommunication Authority (the "Authority") for appropriate direction to PTCL for reduction of wholesale internet bandwidth prices in line with retail Digital Subscriber Line (DSL) prices, abolishing local loop sharing charges, allowing DSL operators to bring their optical fiber to all PTCL co-locations and separation of accounts of PTCL's retail DSL services to effectively check element of cross-subsidy.

2. The Complainants asserted that PTCL reduced its DSL retail tariffs and offered DSL broadband from Rs.1,999/- per month for 4 Mbps to Rs.9,999/- per month for 10 Mbps. They contended that PTCL's average wholesale internet bandwidth tariffs were Rs.8,000/- per Mbps. Complainants claimed that, based on subscription ratio of 1:10, total cost to ISPs for providing a 4 Mbits connection was Rs.4,550/- per month compared with PTCL's retail tariff of Rs.1,999/-

per month which resulted in loss of Rs.2,551/- per month against each 4 Mbps connection.. Complainants further apprised that PTCL also offered Student DSL bundled package of 1Mbps for Rs.850/- per month with 150 free voice minutes and free unlimited SMS at Rs.999/- which was an example of cross-subsidization by PTCL.

3. The complaint was referred to PTCL for comments. After receipt of comments from PTCL, the matter was fixed for hearing on 7th March, 2011. The representatives of PTCL, ISPAK, LINKdotNET and Micronet attended the hearing on the said date. Pursuant to the said hearing and detail discussion, DG (S&D), PTA ('Investigating Officer') was nominated with the mandate to investigate and check the actual contention ratio of PTCL.

4. In order to further proceed, another hearing was held on 14th March, 2011 which was attended by representatives of LINKdotNET, Micronet, ISPAK and PTCL. Complainants presented the cost of PTCL per DSL customer at contention ratios of 1:12, 1:21, 1:30 and 1:40. This comparison was done both for 1Mbps and 2Mbps DSL packages of PTCL. Complainants alleged that PTCL is providing broadband services to its customers at below cost and therefore involved in cross subsidization. They requested the Authority to assess the contention ratio of PTCL and find out actual cost of PTCL in providing retail broadband service. PTCL submitted that due to complexity involved in the matter, more time was required for submission of detailed response against the complaint and requested to allow them more time to submit appropriate reply in consultation with their legal counsel. Keeping in view the request made by PTCL, the Authority allowed PTCL to submit its response within 14 days time.

5. Pursuant to the direction of the Authority, the matter was further fixed for hearing on 31st March, 2011 wherein investigation report (the "Report") on contention ratios of PTCL, LINKdotNET and Micronet was submitted by the Investigating Officer to the Authority. However, some reservations regarding non-provision of data by PTCL were highlighted due to which analysis could not be done to the desired extent. PTCL was directed by the Authority to provide the required data within one (01) week time for analysis of contention ratio and submission of complete report to the Authority.

6. On 28th April, 2011 a final Report on contention ratio was shared with the Complainants. The Complainants were allowed to contest final Report, through proper documentation, within 30 days of the Report. Based on PTA's determined contention ratio, LINKdotNET and Micronet provided further submissions to the Authority on 8th June, 2011. These submissions were forwarded to PTCL on 16th June, 2011. Important points of submissions of the Complainants and PTCL's response thereon are given below:

i. DSL Cost Model of PTCL

Complainants' View: Complainants claimed that cost elements in PTCL's model were well off the mark. PTCL's cost model presented a distorted and much limited picture of actual cost structure of DSL operations. Level of different cost items in PTCL's DSL model, presented by the Complainants to the Authority, is as below:

Cost Item	Comments	Cost of 2Mbps DSL (Rs.)
Cost of Bandwidth (IP+DPLC)	2Mbps/month	582
Total cost of Network	per customer per month	254
Cost of Modem	per customer per month	67
Local Loop Charges	per customer per month	150
Operations, Maintenance & Customer Supports	per customer per month	200
Sales & Marketing Cost	per customer per month	221
Total		1,474

PTCL's Comments: PTCL claimed that its cost model covers all major cost elements of DSL services and presented level of different cost items in its DSL cost model which are depicted in below table:

Cost Item	Comments	Cost of 2Mbps DSL (Rs.)
Cost of Bandwidth (IP+DPLC)	2Mbps/month	582
Total cost of Network	per customer per month	35
Cost of Modem	per customer per month	46
Local Loop Charges	per customer per month	150
Sales & Marketing Cost	per customer per month	67
Total		880

PTCL also submitted that since the Complaint primarily alleged anti-competitive practices on account of predatory pricing and cross-subsidization, the Authority lacks jurisdiction to adjudicate upon the matter. Hence, the Complaint is liable to be rejected on this score alone.

ii. Separated Accounts of DSL Services

Complainants' View: LINKdotNET and Micronet submitted that as PTCL's cost accounts related to DSL services were not available to the Authority to determine actual cost of DSL services, the Authority was constrained to accept at face value whatever PTCL stated. Hence, it is not possible for the Authority to determine whether or not PTCL is engaged in cross-subsidy. They apprised that, by quoting example of British Telecom which was forced by Ofcom (the UK telecom regulator) to create a separate organization altogether, it was against the

international best practices which demonstrated that regulators had never been hesitant in ordering separation of accounts or even organizational separation if it is found essential to ensure level playing field. Complainants relied on the report of Ofcom, which is available at the link http://stakeholders.ofcom.org.uk/binaries/telecoms/policy/bt/tsr_statement.pdf. They requested the Authority that PTCL be ordered to separate its accounts for its DSL broadband business, separate the bandwidth provision and its measurement utilized by its DSL broadband services and to charge equivalent costs to its internal business units engaged in the DSL broadband business as it charges to its competitors.

7. After seeking comments from all the concerned, the matter was fixed for hearing on 23rd August 2011. LINKdotNET, Micronet, ISPAK and PTCL attended hearing on the said date. LINKdotNET and Micronet submitted that actual contention ratio of PTCL (1:27) was much lower than what was claimed by PTCL (1:40). So there was a case of anti-competitive practices on part of PTCL. PTCL submitted that Complaint was contrary to the facts as PTCL used contention ratio of 1:30 in its cost model which was close to the Authority's finding of 1:27. The Complainants further apprised that in the absence of actual visibility of DSL accounts of PTCL, it is not possible for the Authority to determine whether or not PTCL is engaged in cross-subsidy. Therefore, PTCL may be asked to separate its accounts for its DSL broadband business. PTCL submitted that as per directions of the Authority, separated accounts of PTCL for FY 2010-11 will be submitted to the Authority by 31st December, 2011. In response to PTCL's commitment to provide its separated accounts by 31st December, 2011, Complainants requested the Authority to dispose off their Complaints as no further proceedings were required.

FINDINGS OF THE AUTHORITY:

8. In light of the aforementioned discussion the following are the findings of the Authority:

8.1 The Authority under Section 4(1) (m) of Pakistan Telecommunication (Re-organization) Act, 1996 (the 'Act') is mandated to regulate competition in the telecommunication sector and protect interest of consumer rights. The Act under Section 26 further empowers the Authority to regulate the level of tariffs of telecommunication services including basic telephony services shall be regulated by the Authority in accordance with the regulations. Sub-section (e) of Section 26 of the Act provides that there shall be no cross subsidization of other telecommunication services by basic telephony services. Therefore, PTCL's argument with respect to jurisdiction of the Authority to entertain the instant matter is not valid.

8.2 As per requirements of 'Accounting Separation Regulations 2007' and 'Accounting Separation Guidelines 2007', PTCL, being an SMP operator, has submitted Audited Separated Accounts for the financial year 2007. These accounts comprised Profit & Loss Statement, Balance Sheet and Return on Capital Employed (ROCE) for each business unit and disaggregated activities along with supporting notes. PTCL prepared these accounts on historical cost basis. 'Guidelines on Costing Methodologies for Accounting Separation, 2007' defined following roadmap for preparation of separated accounts:

- | | |
|---|----------|
| • Fully Allocated Cost (Historical Cost Base) | 1st year |
| • Fully Allocated Cost (Current Cost Base) | 2nd Year |
| • Long Run Incremental Cost (Top Down Approach) | 3rd Year |

8.3 Accordingly, the Authority vide its letter dated 12th May, 2011 directed PTCL to submit its separated accounts for FY 2010-11 on current cost basis, in accordance with Accounting Separation Regulations/Guideline, 2007 with a direction to make necessary arrangements for submission of these accounts not later than 31st December, 2011.

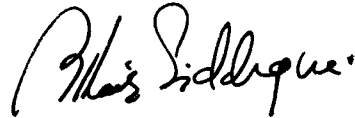
8.4 The Authority is also of the view that PTCL, owing to its position in both retail and wholesale segment of broadband services i.e. provision of internet bandwidth, shall provide separated accounts for broadband services, in addition to services already covered in Accounting Separation Regulations/Guidelines 2007. This information will enable the Authority to look into the anti-competitive practices and cross subsidy if any and dispose off complaints from other telecom operators in an informed and transparent manner."

THE ORDER:

9. Keeping in view the aforementioned facts and findings, the Authority hereby disposes off the complaints lodged by the Complainants and directs PTCL to prepare and submit its audited separated accounts for retail and wholesale segment of broadband services in addition to services already covered in Accounting Separation Regulations/Guidelines 2007 by 31st December, 2011.



Dr. Mohammad Yaseen
(Chairman)



Dr. Khawar Siddique Khokhar
Member (Technical)

This order is passed on 18 Nov 2011 and comprises 5 pages only.