

Alleged violation of competition laws

Show-cause notices issued to parties on ICH agreement

By Khaleeq Kiani

ISLAMABAD, March 10: On the directive of the Supreme Court, the Competition Commission of Pakistan (CCP) has issued show-cause notices to all parties of the International Clearing House Exchange (ICH) agreement which allegedly violated competition laws and provided monopoly to the Pakistan Telecommunication Company Limited (PTCL) over telecom traffic into and out of Pakistan.

The agreement was signed in August last year by 14 Long Distance and International (LDI) operators under which the parties shared among themselves the international incoming calls and varying termination rates were fixed by the Pakistan Telecommunication Authority (PTA) in accordance with a policy note of the ministry of information technology.

After an unanimous agreement among the LDI operators, the ministry issued a policy directive to the PTA in August last year for setting up the ICH for incoming international calls for long distance international, fixed line local loops, wireless local loops and mobile operators.

The PTA directed all LDI operators to conclude the ICH agreement. Within a week, the CCP pointed out in a policy note that the ICH exchange and policy directives were in violation of Section 4 of the Competition Commission Act which prohibited fixing of prices and sharing of quotas

in a collusive manner to restrict fair competition in the market.

But the PTA issued an implementation order on August 30 to fix approved accounting rates, settlement rates, access promotion contribution and subsequently directed all loop operators to suspend international circuits for international incoming traffic with all LDIs except PTCL which, according to a representation filed before the apex court allegedly were anti-competitive, illegal and void because it violated the CCP's policy order.

In its show-cause notices, the CCP has pointed out that the ICH agreement allowed the LDI operators to fix prices and allocate quota among themselves of incoming international calls in violation of competition laws as the agreement was "designed and implemented as a typical 'cartel' where there would be no incentive for any LDI operator to improve sales, enhance quality of service, invest in network or bring in additional traffic from overseas operators".

Moreover, representatives of the ministry of information technology and PTA on the ICH board apparently curtail the free-market commercial decision-making of the LDI operators and clearly impinge upon the regulatory role of PTA. The price for making calls to Pakistan has significantly increased which shall definitely decrease the vol-

ume of incoming international calls and the quota fixing would not allow an incentive to bring in additional calls leading to devastating long-term implications for the telecom sector. Also under the ICH agreement, the PTCL had become the sole LDI operator with exclusive rights to terminate all incoming calls, the CCP's notice said.

It was pointed out that circuits provided by the PTCL were not working properly and instead of rectifying the situation the PTCL had unilaterally suspended telecom services of at least one local operator, thus preventing, restricting and reducing competition in the telecom market.

The CCP said the prima facie the parties to the ICH agreement had also violated Section 38 of the Competition Act by entering into the ICH agreement without seeking prior clearance of the CCP which was required under an earlier policy order.

According to the show-cause notices, the CCP will provide an opportunity to the parties concerned over the next two days to present their viewpoint as required by the apex court and hold day-to-day hearing before imposing penalties for violations.

Under the CCP Act, violation of any provision of the law could lead to a penalty of Rs75m for each violation.

The apex court had directed the CCP to conclude the matter within 15 days.