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IN THE ISLAMABAD HIGH COURT, ISLAMABAD

FAO No. 72 /2011

Pakistan Telecommunication Company Limited
Headquarters, G-8 Markaz, Islamabad
Through its authorized representative
Mr. Muhammad Amer Shafique, General Manager (Regulatory Affairs), PTCL

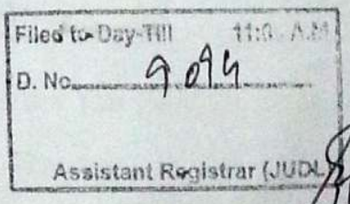
... Appellant

Versus

Pakistan Telecommunication Authority
Headquarters, F-5/1, Islamabad
Through its Chairman

... Respondent

APPEAL UNDER SUB-SECTION (1) OF SECTION 7 OF THE PAKISTAN TELECOMMUNICATION (RE-ORGANIZATION) ACT, 1996 (THE "ACT")



CLAIM IN APPEAL

This Appeal is being filed against Determination No. 15-53/11/CA/PTA dated 18 November 2011 issued by the Respondent (the "**Impugned Determination**") in the matter regarding complaint by ISPAK, LINKdotNET and Micronet Broadband (the "**Complainants**") against the Appellant for alleged engagement in anti-competitive

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

FAO No. 72 of 2011

Pakistan Telecommunication Company Limited
Vs
Pakistan Telecommunication Authority

DATE OF HEARING: 26-2-2014.
APPELLANT BY: Mr Azad Nafees Advocate.
RESPONDENTS BY: Mr Babar Sattar Advocate, for respondent No. 2.
Mr Faraz Khan Jadoon, Law Officer PTA.

RIAZ AHMAD KHAN, J.- This judgment is directed to dispose of FAO No. 72 of 2011.

2. Brief facts of the case are that the Pakistan Telecommunication Company Limited, appellant herein, is a public limited company, engaged in the business of provision of Telecommunication Services throughout Pakistan under a license issued by the respondent, the Pakistan Telecommunication Authority. Like PTCL there are other similar companies, who are providing Telecommunication Services to the masses. Infact PTCL provides services to these small companies and at the same time to the masses as well. Some of these companies by the name of ISPAK, LINKdotNET and Micronet Broadband filed complaints dated 10-11-2010 and 28-2-2011 against the appellant, wherein it was alleged that the appellant was involved in anti-competitive practices in the broadband service. The allegation was that the PTCL provides services at the lower rates to the masses and as a result the complainants are placed at a position, where they can not provide the same

service on the same rate. It was further alleged that since the complainants provide the DSL service at a higher rates; so, as a result they suffer losses. It was, therefore, prayed that a direction be issued to PTCL for reduction of rate of whole sale internet broadband services.

3. The respondent, the Pakistan Telecommunication Authority while adjudicating upon the complaints asked for comments from all the concerneds. The appellant submitted that as per direction of the authority separate accounts of PTCL for FY 2010-11 will be submitted before the authority by 31st December, 2011. In response to the appellant's commitment to provide its separated accounts by 31st December, 2011, the complainants requested the Authority to dispose of their complaints, as no further proceedings were required. In view of the above said situation, the Authority passed the following order:

> "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."

Feeling aggrieved of the above said order, present appeal was filed.

4. Learned counsel for the appellant submitted that the complaints were not maintainable, as the respondent had no jurisdiction to adjudicate upon the complaints. The complainants if had any grievance, could invoke the jurisdiction of Competitive Commission. It was further submitted that infact the complainants had already invoked the said jurisdiction and therefore, the complaints were not maintainable. It was further submitted that the complaints were violative of Article 18 of the Constitution of Islamic Republic of Pakistan, as the same were meant to prohibit a healthy competition.

5. On the other hand, learned counsel for the respondent submitted that the complainants, no doubt had filed complaints with the Competitive Commission and thereafter the present complaints were filed before the respondent. Since, the Competitive Commission has the powers to investigate a case under Suo-Motu powers, therefore, the complaints are pending there, but the appellant is not party to that. It was further submitted that U/S 4(m) of the Pakistan Telecommunication (Re-organization) Act, 1996 the respondent has the powers to regulate competition in the telecommunication sector and protect consumer rights. As such, the Authority had the jurisdiction to entertain the complaints. The learned counsel further submitted that the appellant had given consent before the respondent/Authority and against a consenting order, appeal was not competent. It was further submitted that the appellant is a huge Public Limited Company, which provides services to different companies for onward sale of the same to the public, but at the same time provides those services to the general public as well. The PTCL has got different types of services; so, by reducing price of one service and increasing the price of the other, PTCL creates a situation for the complainants, which not only causes loss to the complainants, rather it becomes impossible for the complainants to run their business or compete with the PTCL. The respondent/Authority only directed PTCL to submit/check the separate accounts of retail prices of PTCL and wholesale segment. By comparison of the two, the Authority could come to know as to whether PTCL was actually providing services at reduced prices against the prices of the complainants or not. Even final order was not passed and the same was challenged before this Court.

6. I have heard learned counsel for the parties and have also perused the record.

7. Admitted position in the present case is that the appeal has been filed against a consenting order and the same is not competent. Furthermore, the contention of learned counsel for the petitioner that the Authority had no jurisdiction to entertain the complaints is not correct. There is no doubt that the Competitive Commission is empowered to adjudicate upon such like complaints, nevertheless concurrent jurisdiction is available to the Competitive Commission as well as the respondent/Authority. In this respect, contention of learned counsel for the appellant is that by establishment of the Competitive Commission impliedly jurisdiction of the Authority has been ousted but it is not correct. Since, different companies are involved in the same business, so in order to maintain a healthy competition among the companies, the jurisdiction of the authority can not be considered as ousted.

8. The contention that the complaints were in violation of Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973 is also not correct. Under Article 18 of the Constitution, every citizen has a right to enter upon any lawful business; however, the same could be regulated in the interest of fair competition, under sub clause (b) of Article 18 ibid. In other words, one object of free trade and business is to maintain a healthy competition therein. The object of freedom of business is also to avoid monopoly of any person. The respondent, in the present case, has only called record of the petitioner to determine as to whether fair competition exists in the market or not. No final order was passed, so the appeal is incompetent on this score as well.

9. In view of the above said circumstances, I find no force in this appeal and the same is hereby dismissed.

(RIAZ AHMAD KHAN)
JUDGE

Approved for reporting.

Tanveer Ahmed.