

GOVERNMENT OF PAKISTAN
Ministry of Law and Justice
(COMPETITION APPELLATE TRIBUNAL)

In the Competition Appellate Tribunal, Islamabad

No. 1-26 of 2012
Dated: 20-03-2013

From:

The Registrar
Competition Appellate Tribunal
Islamabad

To:

1. 1 link (Guarantee) Limited
Karachi.
2. Bank of Khyber,
Peshawar
3. Mr. Hasan Aziz Rana,
Country Head Legal Affairs Division,
Askari Bank Limited, Head Office,
Rawalpindi.
4. President/Chief Executive Officer,
Main Branch, KASB Bank,
Karachi
5. President/Chief Executive Officer,
Soneri Bank Limited,
Lahore.
6. President/Chief Executive Officer,
Barclays Bank Limited, Corporate Office,
Karachi.
7. President/Chief Executive Officer,
Burj Bank Limited, Head Office,
Karachi
8. President/Chief Executive Officer,
United Bank Limited,
Karachi
9. President/Chief Executive Officer,
National Bank of Pakistan, Head Office,
Karachi
10. President/Chief Executive Officer,
Faysal Bank Ltd. Registered & Head Office,
Karachi
11. President/Chief Executive Officer,
Summit Bank Limited Head Office,
Karachi

Office of the Director General (Legal) Registrar
Competition Commission of Pakistan
Date: 20.03.13



12. President/Chief Executive Officer,
NIB Bank, Karachi
13. President /Chief Executive Officer,
Al barka Bank (Pakistan) Limited, Karachi.
14. President/Chief Executive Officer,
Habib Metropolitan Bank Limited, Head Office,
Karachi
15. President/Chief Executive Officer,
Tameer Microfinance Bank Limited,
Karachi
16. President/Chief Executive Officer,
Silk Bank Limited,
Karachi.
17. President/Chief Executive Officer,
Samba Bank Limited,
Karachi.
18. President/Chief Executive Officer,
Bank Alfalah Limited, Main Branch,
I.I. Chundrigar Road,
Karachi.
19. President/Chief Executive Officer,
Habib Bank Limited, Habib Bank Plaza,
Karachi.
20. President/Chief Executive Officer,
Meezan Bank Limited,
Karachi.
21. President/Chief Executive Officer,
Allied Bank Limited, 10-B,
Block E-II, Main Boulevard, Gulberg-III,
Lahore
22. President/Chief Executive Officer,
The Bank of Punjab, 10-B, Block E-II,
Main Boulevard, Gulberg-III,
Lahore
23. Bank Al Habib,
Principal Office, Mackinnons Building,
I.I. Chundrigar Road,
Karachi
24. JS Bank Limited,
1st Floor, Shaheen Commercial Complex,
Dr. Ziauddin Ahmed Road,
Karachi
25. Standard Chartered Bank,
Standard Chartered Building,
Ziauddin Ahmed Road, Karachi

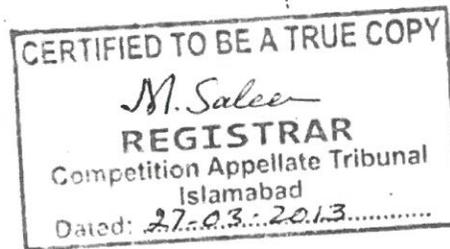


26. **President/Chief Executive Officer,
Kashf Microfinance Bank, 387-E,
Johar Town,
Lahore.**
27. **The Competition Commission of Pakistan
through its Registrar,
7th Floor, 55-B, ISE Tower, Jinnah Avenue,
Islamabad**

Subject:- **Appeal No.1-26 of 2012 1 link (Guarantee) Limited and
Other Banks Vs. Competition Commission of Pakistan**

JUDGMENT

All the appeals are accepted and the order passed by the Competition Commission of Pakistan, dated 28-06-2012 is set aside.



M. Saleem
(Muhammad Saleem)
Registrar
REGISTRAR
Competition Appellate Tribunal
Government of Pakistan
Islamabad

GOVERNMENT OF PAKISTAN
Ministry of Law and Justice
(COMPETITION APPELLATE TRIBUNAL)
2nd Floor, State Life Insurance Corporation of
Pakistan Building No.5, China Chowk

F. No.1 of 2012 to 26 of 2012-A/CAT

Islamabad, 29th March, 2013

The Registrar
Competition Commission of Pakistan
ISE Building
Blue Area Branch
Islamabad.

Dear Sir,

Please find enclosed herewith a copy of detailed Judgment regarding the case of 1 Link Guarantee Ltd. and other Banks vs. Competition Commission of Pakistan, Islamabad.

Yours truly,

for 
(Muhammad Saleem)
Sr. PS/DDO

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL**

(Appellate Jurisdiction)

Present:

Mr. Justice Faqir Muhammad Khokhar
(Former Judge, Supreme Court of Pakistan
Chairperson

Mr. Khalid A. Mirza
Member

Raja Imran Aziz
Member

(CompAT Appeals No. 1 of 2012 to 26 of 2012)

1. (CompAT Appeal No. 1 of 2012)
1 link (Guarantee) Limited
Karachi.
2. (CompAT Appeal No. 2 of 2012)
Bank of Khyber,
Peshawar
3. (CompAT Appeal No. 3 of 2012)
Mr, Hasan Aziz Rana,
Country Head Legal Affairs Division,
Askari Bank Limited, Head Office
Rawalpindi.
4. (CompAT Appeal No. 4 of 2012)
President/Chief Executive Officer,
Main Branch, KASB Bank,
Karachi
5. (CompAT Appeal No. 5 of 2012)
President/Chief Executive Officer,
Soneri Bank Limited,
Lahore.
6. (CompAT Appeal No. 6 of 2012)
President/Chief Executive Officer,
Barclays Bank Limited
Corporate Office, Karachi.
7. (CompAT Appeal No. 7 of 2012)
President/Chief Executive Officer,
Burj Bank Limited, Head Office,
Karachi



8. (CompAT Appeal No. 8 of 2012)
President/Chief Executive Officer,
United Bank Limited,
Karachi
9. (CompAT Appeal No. 9 of 2012)
President/Chief Executive Officer,
National Bank of Pakistan,
Head Office, Karachi
10. (CompAT Appeal No. 10 of 2012)
President/Chief Executive Officer,
Faysal Bank Ltd. Registered & Head Office,
Karachi
11. (CompAT Appeal No. 11 of 2012)
President/Chief Executive Officer,
Summit Bank Limited Head Office,
Karachi
12. (CompAT Appeal No. 12 of 2012)
President/Chief Executive Officer,
NIB Bank, Karachi
13. (CompAT Appeal No. 13 of 2012)
President /Chief Executive Officer,
Al barka Bank (Pakistan) Limited,
Karachi.
14. (CompAT Appeal No. 14 of 2012)
President/Chief Executive Officer,
Habib Metropolitan Bank Limited,
Head Office, Karachi
15. (CompAT Appeal No. 15 of 2012)
President/Chief Executive Officer,
Tameer Microfinance Bank Limited,
Karachi
16. (CompAT Appeal No. 16 of 2012)
President/Chief Executive Officer,
Silk Bank Limited,
Karachi.
17. (CompAT Appeal No. 17 of 2012)
President/Chief Executive Officer,
Samba Bank Limited,
Karachi.
18. (CompAT Appeal No. 18 of 2012)
President/Chief Executive Officer,
Bank Alfalah Limited, Main Branch,
I.I. Chundrigar Road, Karachi.
19. (CompAT Appeal No. 19 of 2012)
President/Chief Executive Officer,
Habib Bank Limited, Habib Bank Plaza,
Karachi.

20. (CompAT Appeal No. 20 of 2012)
President/Chief Executive Officer,
Meezan Bank Limited,
Karachi.
21. (CompAT Appeal No. 21 of 2012)
President/Chief Executive Officer,
Allied Bank Limited, 10-B,
Block E-II, Main Boulevard, Gulberg-III,
Lahore
22. (CompAT Appeal No. 22 of 2012)
President/Chief Executive Officer,
The Bank of Punjab, 10-B, Block E-II,
Main Boulevard, Gulberg-III,
Lahore
23. (CompAT Appeal No. 23 of 2012)
Bank Al Habib,
Principal Office, Mackinnons Building,
I.I. Chundrigar Road,
Karachi
24. (CompAT Appeal No. 24 of 2012)
JS Bank Limited,
1st Floor, Shaheen Commercial Complex,
Dr. Ziauddin Ahmed Road,
Karachi
25. (CompAT Appeal No. 25 of 2012)
Standard Chartered Bank,
Standard Chartered Building,
Ziauddin Ahmed Road,
Karachi
26. (CompAT Appeal No. 26 of 2012)
President/Chief Executive Officer,
Kashf Microfinance Bank, 387-E,
Johar Town,
Lahore.

Appellants

Vs.

✓
Competition Commission of Pakistan,
7th Floor South, ISE Towers, 55-B,
Jinnah Avenue, Islamabad.

Respondent

For the appellants

1. Syed Ali Zafar, Advocate
Supreme Court of Pakistan
2. Raja Zafar Khaliq Khan, Advocate
3. Sardar Taimoor Aslam, Advocate
4. Mr. Umar Farooq Adam, Advocate
5. Mr. Mustafa Ahmed, Advocate
6. Mr. Asad Holepota, Advocate
7. Mr. Nadir Burney, Advocate

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For the Respondents:

1. Mr. Amjad Hameed Ghauri, Advocate,
Supreme Court of Pakistan
2. Mr. Waqqas Mir, Advocate
3. Mr. Ikram-ul-Haq Qureshi
Registrar/DG (Legal) CCP
4. Mr. Amir Zaman,
Assistant Director, CCP
5. Ms. Mehreen Ibrahim
Assistant Director, CCP

Dates of hearing:

18-12-2012, 09-01-2013, 20-02-2013,
07-03-2013, 19-03-2013, 20-03-2013

JUDGEMENT

Mr. Khalid A. Mirza, Member

This judgment disposes of appeals filed by 1-Link (Guarantee) limited (“1-Link”) and the 25 banks constituting its network, against the Order dated June 28, 2012 (“the Order”) of the Competition Commission of Pakistan (“CCP, “the Commission”). The Order held 1-Link and the aforesaid 25 banks in contravention of Section 4(i), in particular Section 4(2)(a), of the Competition Act, 2010 (“the Act”) and imposed penalties as specified in para 104 of the Order:

1. To recapitulate, the essential facts are that 1-Link, a company limited by guarantee and owned by 11 leading banks, operates an electronic switch to establish a network of 29 banks (including the 11 banks that founded and owned 1-Link) in order to facilitate their customers through the provision of a variety of services via Automated Teller Machines (“ATM”) owned by these banks, including, importantly, cash withdrawal services. The 1-Link switch is interconnected (since 2006) with the only other electronic switch centre in Pakistan that is solely owned and operated by a subsidiary of Muslim Commercial Bank, under the name and style of MNet, which has 15 member banks several of whom are also members of 1-Link. The entire arrangement, blessed and mandated by the banking regulator, the State Bank of Pakistan (“SBP”), and under whose close

direction and watchful oversight its functions, represents a major advancement in the provision of banking services to the ordinary, retail bank customer. It enables a bank customer to go to any ATM window in Pakistan --- whether or not operated by his/her bank --- and benefit from the convenience of several services provided at the retail level such as cash withdrawals, making a remittance/inter-bank funds transfer, payment of utility bills, balance queries etc.

2. While peripheral to the main business of banking, and not in any way whatsoever a critical part of a bank's profit-making activities, the facilitation and convenience provided by this arrangement is significant to promote the maintenance of bank accounts by retail bank customers and to inculcate the banking habit. Particularly in developing countries, this facilitation is deemed by banking regulators (who are also vitally concerned with the development of banking) and by the banks themselves as central to the overall promotion and betterment of banking, the advancement of the banking industry, and for enhancing the relevance of banks as service-oriented institutions in the eyes of the ordinary bank customer. While there could be, and probably are, structural variances between jurisdictions as regards the delivery of this kind of facilitation in view of differences in cultural ethos and circumstances, the essential aim and content, as also the effect, is the same.

3. It appears that sometime in mid-2011 the Commission noticed that banks were charging the same fees for ATM services. In reply to a query posed by the Commission, SBP, advised on August 24, 2011 that "banks are free to determine the rates of charges of various services they provide to their customers" --- a statement, which in general terms, reflected SBP's manifest policy thrust, but was perhaps not entirely true (and which was later clarified by SBP in the specific context of



ATM fees). In any case, the Commission chose not to quiz SBP any further and decided to conduct a surprise search and inspection of 1-Link's office. Based on the material recovered during the course of this inspection, an Enquiry Report was prepared by a Committee set up by the Commission which concluded, in effect, that there was sufficient *prima facie* evidence of collusion with respect to ATM charges, implicating both 1-Link as well as the banks constituting the 1-Link network (i.e. 1-Link's founding banks plus the banks that subsequently acceded to become members of the 1-Link network).

4. It was on the basis of the Enquiry Report that show cause notices were issued by the Commission and two hearings held on May 3, and June 12, 2012. The Commission then proceeded to issue its Order on June 28, 2012 wherein allegations of collusion with respect to inter-bank fund transfers and utility bill payments were effectively dropped whereas the allegation of price fixing with respect to the all-important cash withdrawals facility (which is really the centre-piece of the service insofar as the ordinary bank customer is concerned) was stated to have been proved and established. In view of this, as specified in the Order, 1-Link and the 11 founding banks have been fined Rs. 50 million each and the remaining member banks have been fined Rs. 10 million each.
5. Before proceeding any further, we would like to compliment the Commission on the detailed and comprehensive "speaking order" issued by it. We would also like to place on record our deep sense of appreciation for the erudite and painstaking assistance provided by the Counsel for the Commission, Mr Waqqas Mir, and the leading Counsel for the appellants, Mr Ali Zafar.
6. It is not for us to examine the constitutional vires of the statute under which the Competition Appellate Tribunal was

established, viz the Competition Act, 2010, and also questions relating to the validity of the various Competition Ordinances that preceded the Act. We would also not like to address questions relating to the alleged procedural irregularities of the Commission raised in the proceedings before us, i.e.:

- whether or not an opportunity of hearing should have been granted at the enquiry stage;
- whether or not the Commission conducted a full and fair trial in accordance with the norms of natural justice;
- whether or not the Commission proceeded to issue its Order without properly concluding the hearing of the case (a matter that could have been settled easily had the Commission's representatives been able to furnish the relevant order sheets issued at the end of each hearing);
- whether or not the Commission was sufficiently inquisitorial with reference to the SBP's role;
- whether or not the statement of the SBP's representative should have been recorded on oath;
- whether or not the Commission should have given notice of the penalty it intended to impose and then should have imposed it after giving the appellants an opportunity of being heard;
- whether or not the Commission should have included within the scope of its inquiry and/or

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subsequent proceedings MNet and its member banks who were under the same regulator and acted in precisely the same manner as members of 1-Link; and

- under what circumstances an offence committed prior to enactment of the relevant law continues to be in effect after the enactment.

7. While all the issues raised above are of great import --- these relate to the Commission's validity and its modus operandi --- these are either matters that should be more appropriately adjudicated by other forums or are such that would need special indepth attention and we would have proceeded to do so had it been crucial to the resolution of this case. We feel that these issues, and others of this nature, are likely to be raised again in future cases and we are sanguine that that there will be ample opportunities for these matters to be duly addressed comprehensively and adjudicated.
8. Instead, we would like to deal with the core competition issue in this case, namely: did 1-Link and its network of banks collusively fix the fee for cash withdrawals and are thus culpable under Section 4(1), particularly 4(2)(a), of the Act? And in the event the answer is in the affirmative, are there strong mitigating circumstances or reasons --- not excluding the grounds for exemption under Section 5 of the Act --- that it would be reasonable to condone this offense notwithstanding the strong abhorrence with which any form of cartelization is viewed by almost all competition agencies and the current, almost standard, norm not to exempt cartels from exemplary penalties. We are, however, of the considered view that an extreme, rigid, "heavens may fall" sort of approach to the applicability of competition law causes more harm than good.

This cannot possibly be the intention of the law. At the same time, paradoxically, both the strength and the weakness of competition law lies in the flexibility of its application --- it seems that, in the final analysis, the efficacy of a competition agency (and its value addition for the economy) ultimately depends upon how reasonable it can be based on a fair and objective appreciation of the circumstances of each case. It is incumbent on a competition agency to be judicious and reasonable in applying the law if it is to achieve the avowed objective of enhancing economic efficiency and protecting the consumer from anti-competitive behavior.

9. This does not in any sense suggest that the Competition Commission should compromise when a violation of the Act has occurred or that cartelization by way of price fixing (which is a most grave violation of competition law) should be spared just because the collusive conduct is de minimis in either scope or effect. Nor do we feel that the per se nature of this violation should be modified or adjusted by an effects based, rule-of-reason approach once the fact of collusion by competitors with the object of reducing competition is established. We concur with Counsel for the Commission that in such an eventually the Commission need not go any further --- in fact, if it does, it may be damaging a cornerstone of competition law. Just as we would not like to give too much credence to defence of competition law violations by seeking refuge in technicalities or by alleging procedural infirmities on the part of the agency, similarly we find it difficult to appreciate it when the occurrence of an offence is demonstrated by piecing together bits of information often relying on a web of technicalities and which possibly may not be that clear (or may even disappear) when viewed in a broader context. Again, we agree with Counsel for the Commission that violations under competition law must be established in substantive terms.

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10. The record as well as arguments of the Counsel for the Commission suggest essentially three pieces of information that could possibly tantamount to a violation under Section 4:

- i) minutes of an 1-Link Board meeting in which a decision was taken that banks in the network may charge Rs. 15/- to their customers which is the maximum allowed by SBP;
- ii) minutes of another meeting of the 1-Link Board which shows a decision taken by the Board suggesting that the total fee be raised from Rs. 15/- to Rs. 20/- per transaction and that SBP be approached to approve the proposed new fee ceiling of Rs. 20/-; and
- iii) also, a schedule of essentially inter-bank fees relating to the services provided at ATM windows in which the customer is mentioned in brackets against the bank paying the total fee of Rs. 15/- for a cash withdrawal transaction "confirming", as it were, the decision to pass on the charge to the customer.

11. Further, the fact that these matters were discussed and agreed in the Board of 1-Link which had nothing to do with what fees its constituent banks charged its customers --- which really should be the economic decision of each bank rather than a collective decision of bank representatives sitting on the Board of 1-Link --- was taken as positive proof of collusive conduct on the part of the banks through their representatives on the 1-Link Board and by the other member banks that have acceded to the 1-Link network. *Prima facie*, and technically, there can be little doubt about this view, and it has indeed been most eloquently urged by the Commission's counsel. But is it?

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12. It is important to bear in mind the following facts:

- (a) The fee of Rs. 15/- (of which an aggregate of about Rs. 4/- covers the switch fee to 1-Link plus the settlement fee to Faysal Bank) is well below the actual cost incurred of around Rs. 30/- (now probably much higher). In view of this, it is really quite obvious that the banks do not need any "economic" rationale to take a decision that the fee as per the ceiling prescribed needs to be passed on to the customer. Effectively, the decision by the 1-Link Board simply re-affirms and comforts the network banks that they can recover "something" or a small portion of the cost (i.e. up to the SBP prescribed ceiling) and that the ATM network is not a total losing proposition. The subsequent decision for approaching the regulator to raise the fee to Rs. 20/- must be viewed in the same vein.
- (b) Both the decisions of the 1-Link Board do not even remotely suggest or indicate in any way that the Banks must not charge less than Rs. 15/- (or Rs. 20/- as per the later decision). It is, of course, well-known and understood --- particularly if the cost is well above the ceiling set by the regulator --- that the ceiling becomes the price. An agreement purportedly to this effect by the competitors is really quite meaningless --- in fact, nonsensical!. It does not deserve to be given any attention by a competition agency.
- (c) The cap of Rs. 15/- was fixed by the regulator in 2004. When the inter-connectivity with MNet was established in 2008, MNet was directed to reduce its fee from Rs. 40/- to Rs. 15/-. With the inflation that has occurred over the last 10 years (the 1-Link network became operational in 2003) the fee of Rs. 15/- has now, in relative terms, very little significance, if any.
- (d) In 1-Link's schedule of charges, the customer is simply mentioned in brackets against the bank being debited for cash withdrawal fees of Rs. 15/-. This is obviously the reflection of a logical expectation and is by no means mandatory. In fact, in terms of customary bank practice, the expectation is that priority customers would not be charged any ATM fees at all. Also, it is noteworthy that Citibank and HSBC do not levy any ATM fees on their customers. Also, for years Allied Bank and JS Bank did not levy

any fees on their customers. While we appreciate that in a cartel, it is the agreement that matters and not actual conduct, it is quite clear that the "agreement" (by way of a decision in the 1-Link Board) merely re-affirmed what was possible and the banks were quite free to do whatever they wished, quite overtly (not covertly, as usually occurs when cartelists deviate from what they have agreed).

13. While the Commission has diligently investigated and spotted technical irregularities that have *prima facie* violated the Act, we are of the opinion that it has erred in not advertng to the broader perspective in its totality. The aim of SBP and the banking industry as a whole has been to institutionalize a global platform and product designed to facilitate, energize, and enhance the entire banking system thus taking it to a higher more modern, operational level. The two switches to whom all banks in the country are linked along with *inter se* connectivity between the switches constitutes an electronic network covering the entire banking system facilitating the retail customer with certain essential services largely at a low, pre-determined, certain cost (barring, of course, instances where banks choose not to debit the fee). This global product which spans all competitors in Pakistan's banking sector is closely monitored and supervised by the banking regulator. And the regulator effectively determines the fees by walking a tight rope between what is affordable by the customer and what is "sufficiently remunerative" (not profitable) for the banks so that they do not look upon the system as too big a drain on their resources and lose interest in it.

14. Whether or not the corporate veil of 1-Link is pierced to reveal the 11 banks that first set up this switch as a joint venture --- a jointly administered unit --- in 2003, and later formalized the structure through incorporation, the fact of the matter that this operation was set up as a facilitation by the

founding banks and the banks that subsequently joined or acceded to the network. The common services provided by 1-Link and MNet constitute a beneficial infrastructure that is a boon for the entire banking Industry. 1-Link is, in effect, self-sustaining and not really a profit-making unit. Its real aim, and the rationale for its existence, is the promotion and enhancement of e-banking services amongst its network banks. Its performance is assessed and its relevance is enhanced by the growth that occurs in e-banking and the utilization of ATMs. 1-Link is, therefore, vitally concerned with what the banks charge each other and what they charge their customers since all this is a crucial part of the incentive structure that promotes e-banking and the use of ATMs. The proceedings of 1-Link's board and the minutes of these meetings on record are fully consistent with this *raison de'tre* of 1-Link.

15. Viewed in this broad and real context, the case for the violation of Section 4(1) falls down. A beneficial pan-banking infrastructural product promoted by the regulator and functioning under the aegis and at the behest of the regulator emerges quite clearly. As far as one can see, there is obviously no question of any consumer harm. Instead, one can see substantial economic benefits. If you break up this picture and effectively dis-assemble this pan-banking industry product, you could possibly observe some of its component parts being technically in violation but this should, and must, give way to a consideration of the overall product (which represents the bigger, more relevant picture). It would be really a travesty to look at the component parts to seek violations for penalization. This would be somewhat similar to regarding motor cars sold with fitted radios by a dominant car manufacturer as an abuse of dominance (by tying two products – cars and radios). We feel competition agencies would serve the purpose of their existence and establish their relevance as agents for the

betterment of the economy if they also looked at the whole forest and its value rather than merely looking at the defects in individual trees.

16. The appellants have placed on record an affidavit filed by a senior official of SBP in connection with a constitutional petition filed by 1-Link in the Sind High Court . This document is significant in as much as it states SBP's position vis-i-vis 1-Link in unequivocal terms; and further the averments it contains appear to be in consonance with the pan-banking industry infrastructure mentioned earlier. It is also clear from para 5 of the affidavit, reproduced below, that SBP had a significant role in keeping the ATM charges at Rs. 15/- in the interest of the bank customer:

"5. During the course of proceedings, the CCP enquired from SBP the background of Rs. 15/- being charged by banks which was explained through letter and personal hearing on 12 June, 2012 that SBP had a major role in keeping the charges at Rs. 15/- in the interest of consumers. At the end of the hearing, it was informed by CCP that it would come up with further analysis on the matter soon. However, contrary to this, CCP announced its decision on 28 June, 2012 without any further analysis and also ignoring all the clarifications made by SBP in a premeditated manner. The decision is flawed, against the public interest and unwanted intrusion in the domain of SBP."

17. It seems that SBP effectively fixed the fee by capping it at well below cost. There is no doubt whatsoever that this was in fact the fee determined by the banking regulator that could be passed on to the consumer. Without quibbling with technicalities, it would ludicrous to expect banks to compete below this level i.e. to expect a bank to make the business judgment of charging say Rs. 10/- or Rs. 12/- in order to compete with other banks! The greater likelihood --- and this is

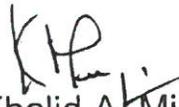
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what actually happened --- is for banks to either charge Rs. 15/- or nothing (e.g. in the case of premium clients).

18. We note that there appear to be elements of irrelevance in the proceedings of the Commission and in the Order. The deliberation with respect to market definition in the context of an alleged per se violation is not clear and could possibly send out the wrong message to parties engaged in or contemplating collusive conduct. Also, para 104 of the Order appears irrelevant. Although Counsel for the Commission assured us to the contrary, the para clearly seeks to justify the penalties imposed by the Commission. The fact of the matter is –without going into any detail – that apart from somewhat selective and perhaps incomplete facts the inferences drawn appear faulty and suspect. As noted earlier, it is Commission’s primary duty to apply the competition law in a just and reasonable manner in the context of our peculiar circumstances and societal ethos.

In view of the foregoing, these appeals are allowed and the Commission’s impugned Order dated June 28, 2012, is set aside.


Mr. Justice
(Faqir Muhammad Khokhar)
Chairperson


Khalid A. Mirza
Member


Raja Imran Aziz
Member

Islamabad, 20th March, 2013

