

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad

email: registrartribunal@gmail.com

Tel No: 051-9320208, Fax No: 051-9320203

No. 1465 /Reg./CAT/2024

Dated: 11-07-2024

Defence Housing Authority

Vs.

Competition Commission of Pakistan & others

NOTICE

Appeal No.06/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **11-07-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2024.

S. W.

(SAEED AFZAL)

Registrar

REGISTRAR

Competition Appellate Tribunal
Government of Pakistan
Islamabad

Defence Housing Authority Lahore,

Through its Secretary, Office at Commercial Area, Y-Block,
Phase-III, DHA **Lahore.**

Altaf Ur Rehman, (Advocate)

ARK Law Associates, Suite No. T-5 & 6, Grace Centre,
1-B Canal Park Gulberg-II, **Lahore.** (0300-8451781)

✓ **Competition Commission of Pakistan,**

ISE Tower, 7th Floor, 55-B, Jinnah Avenue, **Islamabad.**

Wateen Telecom Limited,

Through Mr. Sajjid Farooq Hashmi

4th Floor, New Auriga Complex, Main Boulevard, Gulberg II, **Lahore.**

Muhammad Ali Raza (Advocate Supreme Court)

Ali Raza & Partners,

2nd Floor, Building No.3, Shahbaz Centre,

Shahra-e-Suharwardhy, G-6/1, **Islamabad.** (051-2624792)



Chairman Secretariat
Diary No. 7/4
Date Received 12-7-24
Date Forwarded 12-7-24

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad

email: registrartribunal@gmail.com

Tel No: 051-9320208, Fax No: 051-9320203

No. 1470 /Reg./CAT/2024

Dated: 11-07-2024

Wateen Telecom Limited

Vs.

Competition Commission of Pakistan

NOTICE

Appeal No.04/2023

Take notice that under rule 51 of the Competition Appellate Tribunal Rules, 2015, attested copies of the Judgment dated **11-07-2024** is enclosed for information and record.

2. Given under my hand and stamp of the Tribunal, this 11th day of July, 2024.

S. Afzal

(SAEED AFZAL)

Registrar

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Competition Appellate Tribunal
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Wateen Telecom Limited,

Through Mr. Sajjid Farooq Hashmi

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(051-2624792)



✓ **Competition Commission of Pakistan**

ISE Tower, 7th Floor, 55-B, Jinnah Avenue,
Islamabad.

BEFORE THE ISLAMABAD HIGH COURT ISLAMABAD

Writ Petition No. 145 /2011

DEFENCE HOUSING AUTHORITY, LAHORE
ACTING THROUGH ITS SECRETARY,
HAVING ITS MAIN OFFICE AT COMMERCIAL AREA
Y-BLOCK, PHASE-III, DHA, LAHORE

PETITIONER

VERSUS

1. COMPETITION COMMISSION OF PAKISTAN
THROUGH ITS CHAIRMAN
HAVING ITS OFFICE AT 4-C,
DIPLOMATIC ENCLAVE G-5, ISLAMABAD

WATEEN TELECOM (PRIVATE) LIMITED
THROUGH ITS CHIEF EXECUTIVE OFFICER
HAVING ITS OFFICE AT
4th FLOOR, NEW AURIGA COMPLEX,
MAIN BOULEVARD GULBERG, LAHORE

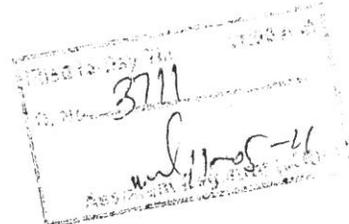
RESPONDENT

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN 1973 AGAINST THE IMPUGNED
ORDER DATED 22.03.2011 PASSED BY THE TWO MEMBERS BENCH
OF COMPETITION COMMISSION OF PAKISTAN.

Respectfully sheweth:-

That the instant Petition impugns decision dated 22.03.2011 by Chairperson and
Member of Competition Commission of Pakistan, given in pursuance of the show-

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REGISTRAR
Competition Appellate Tribunal



23

BEFORE THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD

In Re:

Writ Petition No. 1134 of 2011

Wateen Telecom Limited,
A company incorporated under the laws of Pakistan
Having its registered office at 4th Floor, New Auriga Complex, Main Boulevard,
Gulberg II, Lahore. *through Mr Sajjid farooq Hashmi -*
.....PETITIONER

Versus

Competition Commission of Pakistan,
Through its Chairman,
having its office at 4-C, Diplomatic Enclave, G-5 Islamabad.
.....RESPONDENT

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth:

1. That the Petitioner is a company, incorporated under the Companies Ordinance 1984, engaged in the business of providing telecommunication and media services, including but not limited to Long Distance and International (LDI), Wireless Local Loop (WLL), Optical Fibre Cable (OFC) & Telecom Infrastructure, and Hybrid Fibre and Cable, (HFC) service. The Petitioner holds numerous licenses for provision of telecommunication services as issued by the Pakistan Telecommunication Authority. The Petitioner is represented by the Company Secretary and Legal head who is fully conversant with the facts of the matter and is duly authorized to act for the Petitioner.

(Copy of the Petitioners WLL license and LDI is attached as Annexure A and A1)

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Competition Appellate Tribunal
Islamabad

Dated: 11.7.24

**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

- (1) Defence Housing Authority, Lahore.
(2) Watsen Telecom Limited.

... APPELLANTS

VERSUS

- (1) COMPETITION COMISSION OF PAKISTAN

...RESPONDENT

Appeal No. 06 /2023
Appeal No. 04 / 2023.

Present: Justice Mazhar Alam Khan Miankhel, Chairperson
Muhammad Asghar Ch., Member Technical
Raja Saad Sultan, Member Technical.

For the appellant No.1. Mr. Altaf Ur Rehman, Advocate

For the appellant No. 2. Mr. Hamza Sadiqui, Advocate

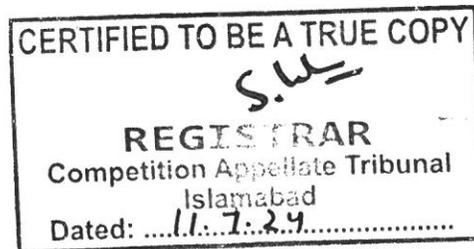
For the Respondent. Syed Faraz Raza, Advocate along with
Mr. Dawood Iqbal, Law Officer for CCP.

Date of hearing: 21.05.2024

JUDGMENT

Muhammad Asghar Ch., Member Technical

This order of Competition Appellate Tribunal will dispose of the appeals of M/s Defence Housing Authority, Lahore (DHA) (Appellant No.1) and Wateen Telecom Limited, (Appellant No. 2), filed under section 42 of Competition Commission of Pakistan Act 2010 (the Act), against the same order (the impugned order) of the Competition Commission of Pakistan (the Commission), dated 22.03.2011.



2. These appeals were initially filed in the Islamabad High Court under W.P No. 1465/2011. The Islamabad High Court vide its orders dated 04.11.2016, on the maintainability issue, raised by the Commission, remitted the petition along with annexures to the Competition Appellate Tribunal, to treat the same as an appeal and decide it in accordance with law. In the meanwhile, in the Writ Petition No. 710/2023 filed by DHA in CMA No. 01 of 2023, the Islamabad High Court ordered as under:-

“Notice. Meanwhile the impugned order dated 22.03.2011 shall remain suspended subject to deposit of Rs. 10 Million with Competition Appellate Tribunal. The fate of amount shall be subject to the decision of the Tribunal”.

3. The fact history of the case is that the Commission received informal complaints from the residents of DHA, Phase-V, Lahore, expressing their concerns that due to the exclusivity agreements between Appellant No. 1 & 2, they are forced to rely on only one Landline voice service provider, whose services are unreliable and poor in quality, and there is no other option to switch over to another or a different service provider. On the request of Commission, Appellant No.1 provided the copies of the exclusivity agreements with the Wateen Telecom Limited i.e Appellant No-2 for provision of landline-based voice and data services to the residents of DHA. Review of agreements discovered that Appellant No. 1 and 2 entered into the Strategic Service Agreements on 24.05.2006, whereby it was agreed to grant irrevocably certain rights and privileges to Wateen Telecom Ltd conditionally upon which Wateen Telecom agreed to provide Telecommunication services under WLL License granted to DHA i.e Appellant No.1 by Pakistan Telecommunication Authority (PTA) on 09.09.2004. Both the parties to the strategic services agreements agreed to share the revenue generated from the provision of such telecommunication services for

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a term of 30 years. Wateen Telecom would exclusively provide all telecommunication and media services (excluding television production) in all of the present and future, phases and expansions owned and under the control of DHA i.e Appellant No. 1.

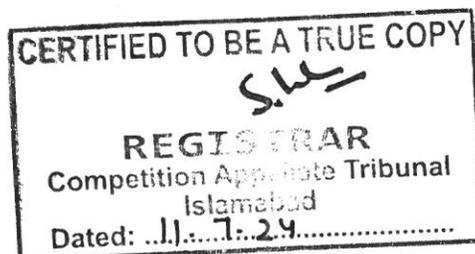
4. Both the appellants No. 1 and 2 entered into joint venture agreement on January 1, 2008 for a Hybrid Fibre Coaxial (HFC) network arrangements. The exclusive rights granted to procure, provide, install, set up and establish telecommunication equipment/ system and infrastructure in DHA's was the object of creating entry barriers for other service provider in the relevant market. The formal Enquiry was conducted which concluded that Appellants No-1 and 2 have entered into an agreement prima-facie prohibited under section 4 of the Act, having the object or effect of preventing, restricting or reducing competition within the relevant market. A formal Show Cause Notice (SCN) was issued for Commission's proceedings, which were conducted through regular attendance by both the appellants. Wateen Telecom / Appellant No-2 contended in the proceedings that he was offering the lowest rates to the subscribers and have a huge investment in laying out the Hybrid Fibre Infrastructure in Phase-V of Appellant No-1, therefore, he was rightful for signing the exclusive agreements and sharing the revenues. However, this point was not considered legal by the Commission as the lowest rate could not be sole determinant of competitiveness factors such as availability of choice, quality of service and after sales service, among others. The Commission found that Strategic Services Agreement between Appellant No. 1 and 2 are in violation of section 4 (1) read with section 4 (2) (b) and declared to be of no legal effect. Accordingly, Appellant No-1 (DHA) was penalized with an amount of Rs. 10 Million taking into account their cooperation and willingness to seek Commission's guidance in the matter and their admission of the fault and willingness to take all appropriate measures to modify any violative

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Competition Appellate Tribunal
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Dated:11.7.24.....

provisions of the Strategic Services Agreements. A penalty of Rs. 5 Million was imposed on Wateen Telecom i.e Appellant No.2 by the Commission taking into account their submission that they made huge investments when laying infrastructure in the DHA region and the fact that at that time, the law was not in place. Although there was an opportunity to rectify the violative agreements, which were continuing in 2011 when the Commission took the cognizance of the contraventions, under the Act.

5. Learned counsel for the Appellant No-1 in his arguments stated that at that point of time in 2004, 2006, no investor was ready for provision of such landline LLW voice / Data services. It had not sufficient know how of technologies as well as the knowledge of such service providers in the relevant market. The complaints were not factual but prompted. Technical expertise were not available to them both in technology and legal sectors, therefore, in that environment, the appellant was allowed to provide the Telecommunication services in that only inhabitant phase 05 of the DHA.

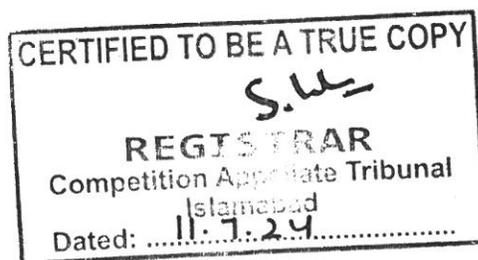
6. Learned counsel for Appellant No-2, i.e Wateen Telecom Ltd emphasised on leniency in penalty and insisted that the undertaking could be provided exemptions u/s 5 of the Act. They made huge investments in laying out the infrastructure in Phase-V, of DHA in absence of any other service provider. Moreover, no third party was excluded in the agreement for provision of Telecommunication Services in the said Phase. The Appellant No. 1 itself procured the services, within its control as he was Licensee of the PTA / PTCL. He owns the properties and could allow (ROW), Right of Way to any other such Agency / party, Wateen Telecom Ltd was only providing back end services, whereas the DHA was face of it with the consumers for providing connections. He argued and prayed that the exemption may be considered under Section 5 of the Act and the penalty of Rs. 5 Million be waived off.



7. Learned counsel for CCP assisted by Law officer submitted that the appellants have not taken new grounds to pursue their appeals in this Tribunal. All their above views, points and arguments were duly considered during the formal proceedings of the Commission. The leniency u/s 39 is not available to violations under section 3 and 4 of Chapter-II of the Act, however, the undertaking especially appellant No-2 could formally request the Commission on prescribed formats for exemptions from applicability of section 4 of the Act under specific conditions as admissible under the section 5 of the Act and the Rules made there under. Learned counsel further submitted that the strategic agreements were exclusive restrictive in nature. The Appellant No-2 never ever formally submitted application for exemption u/s 5 of the Act before and during the proceeding of the Commission. The learned counsel for the CCP finally prayed that in view of the admission and undertakings for compliance by the Appellant No-1, the appeals of both the appellants be dismissed.

8. We heard the learned counsel for the Appellants and the Law officer of the Commission.

9. It transpires through arguments and perusal of record that the case of appellant No. 1 (the DHA) was a case of admission of contravention of the Act. The Appellant No. 1 under Islamabad High Court directions in W.P No. 710/2023 has already deposited penalty amount of Rs. 10 Million with the Commission. The compliance report in this regard was issued by the Commission on 2.07.2023 to the Secretary, DHA, Phase-5, Lahore. The Appellant No. 2, Wateen Telecom Ltd contravened the provisions of section 4 of the Act through the exclusivity agreements with DHA and signed to share the revenues exclusively for a term of 30 years. The undertaking (Appellant No. 2) also did not apply for exemption u/s 5 of the Act before, during and after the proceeding and issuance of the impugned order.



10. In view of above, the appeals of both the appellants i.e., M/s Defence Housing Authority and Wateen Telecom Ltd are dismissed.

-Sd-

Chairperson

-Sd-

Member Technical-I

-Sd-

Member Technical-II

-Sd-

Announced in open court on
11.07.2024

