

IN THE COMPETITION APPELLATE TRIBUNAL

2ND Floor, Federal Courts Complex, G-11/1, Islamabad
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Tel No: 051-9320208, Fax No: 051-9320203

No. 1447 /Reg./CAT/2024

Dated: 11-07-2024

Pakistan Broadcasters Association

Vs.

Competition Commission of Pakistan & others

NOTICE

Appeal No.88/2022

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.



(SAEED AFZAL)

Registrar

REGISTRAR

Competition Appellate Tribunal
 Government of Pakistan
 Islamabad

Pakistan Broadcasters Association (Through its Authorized Representative)
 Mr. Muhammad Ali Butt, Office at 177/2, 1st Floor, I.E.P. Building,
 Liaquat Barracks, Shahrah-e-Faisal, **Karachi**.

Waqas Ahmad Mir Barrister-at-Law, Advocate High Court,
 Axis Law Chambers, 5-S, Gulberg II, **Lahore**.

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

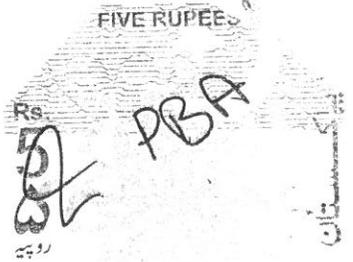
M/S Labbaik (pvt) Ltd,
 Bol Headquarters, Bol Road, Creek Cantonment, Ibrahim Haideri, **Karachi**.

M/S Bol Enterprises (pvt) Ltd,
 Bol Headquarters, Bol Road, Creek Cantonment, Ibrahim Haideri, **Karachi**.

M/S Bol Media Network,
 Bol Headquarters, Bol Road, Creek Cantonment, Ibrahim Haideri, **Karachi**.

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

BEFORE THE COMPETITION APPELLATE TRIBUNAL, ISLAMABAD



Appeal No. _____ / 2022

PAKISTAN
COURT FEE

Pakistan Broadcasters Association, association registered under the Societies Registration Act, 1860, through its authorized representative Mr. Muhammad Ali Butt, Office at 177/2, 1st Floor, I.E.P. Building, Liaquat Barracks, Shahrah-e-Faisal, Karachi

...APPELLANT

Versus

Competition Commission of Pakistan, 7th Floor, 55-B, Islamabad Stock Exchange Tower, Jinnah Avenue, Islamabad

...RESPONDENT

M/s Labbaik (Pvt.) Limited, Bol Headquarters, Bolistan, Bol Road, Creek Cantonment, Ibrahim Haideri, Karachi.

M/s Bol Enterprises (Pvt.) Limited, Bol Headquarters, Bolistan, Bol Road, Creek Cantonment, Ibrahim Haideri, Karachi.

M/s Bol Media Network, Bol Headquarters, Bolistan, Bol Road, Creek Cantonment, Ibrahim Haideri, Karachi.

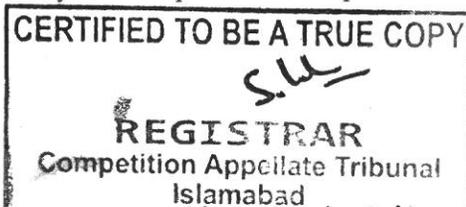
...COMPLAINANT RESPONDENTS

APPEAL UNDER SECTION 42 OF THE COMPETITION COMMISSION ACT 2010 AGAINST ORDER DATED 01 DECEMBER 2021 PASSED BY THE RESPONDENT COMPETITION COMMISSION OF PAKISTAN

Respectfully Sheweth:

INTRODUCTION:

1. That the titled Appeal is being filed by Pakistan Broadcasters Association (the "Appellant" or "PBA") against the Order dated 01 December 2021 (the "Impugned Order") passed by the Respondent Competition Commission of Pakistan (CCP).



**BEFORE THE
COMPETITION APPELLATE TRIBUNAL, ISLAMABAD**

PAKISTAN BROADCASTERS ASSOCIATION

.... APPELLANT

VERSUS

- (1) **COMPETITION COMMISSION OF PAKISTAN**
- (2) **M/S LABBAIK (PVT) LIMITED, BOL HEADQUARTERS, BOLISTAN, BOL ROAD, CREEK CANTONMENT, IBRAHIM HAIDERI, KARACHI.**
- (3) **M/S BOL ENTERPRISES (PVT) LIMITED, BOL HEADQUARTERS, BOLISTAN, BOL ROAD, CREEK CANTONMENT, IBRAHIM HAIDERI, KARACHI.**
- (4) **M/S BOL MEDIA NETWORK, BOL HEADQUARTERS, BOLISTAN, BOL ROAD, CREEK CANTONMENT, IBRAHIM HAIDERI, KARACHI.**

...RESPONDENTS

Appeal No. 88/2022

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

For the appellant: Mr. Waqqas Ahmad Mir, Advocate

For the Respondent No.1: Mr. Dawood Iqbal, Law Officer for CCP.

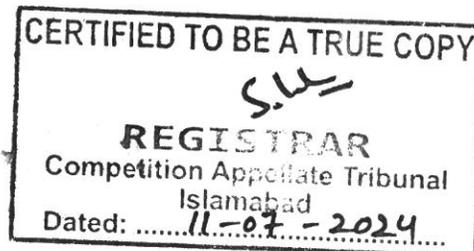
For the Respondent Nos. 2 to 4: Nemo.

Date of hearing: 16.05.2024

JUDGMENT

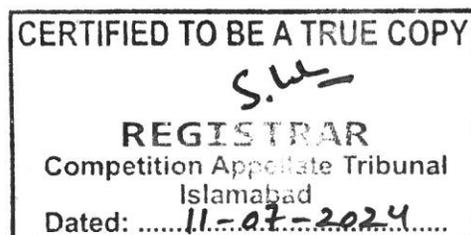
Muhammad Asghar Ch., Member Technical

This Judgment will dispose of the appeal filed by M/S Pakistan Broadcasters Association (PBA), the appellant, under section 42 of Competition Commission of Pakistan Act 2010 (the Act), against the order (the impugned order) of Competition Commission of Pakistan (the Commission) dated 01.12.2021.



2. Brief facts of the case are that M/s Bol Media Network, M/s Labbaik (Pvt) Limited and M/s Bol Enterprises (Pvt) Limited, a diversified digital & print media platform (the complainants), filed a complaint against M/s Pakistan Broadcasters Association (PBA), the appellant, M/s Broadcaster Advertisers Council (BAC) and M/s Medialogic (Pvt) Limited for prima-facie violation of Section 4 of the Competition Act, 2010, alleging that the appellants were violating the Act by not granting them ratings through their conduct and three restrictive written agreements between PBA, PAS and Medialogic. In these agreements, executed in 2017 and 2018, the Broadcasters who were not the members of PBA, were excluded to be the members of BAC and that BAC was not to endorse the services provided by Medialogic being the official industry currency. It was further agreed that the BAC approval would be necessary in case Medialogic grants rating to their customers. The said agreements were claimed to be in violation of Section 3 and 4 of the Act.

3. The Commission constituted an Enquiry Committee u/s 37 (2) of the Act on 16.08.2018, which submitted its report in October, 2018, with the recommendations to proceed further in the complaint under section 3 and 4 of the Act for creating the dominant position because of restrictive agreements in between the PBA, BAC and Medialogic. The Commission initiated the proceedings under section 30 of the Act, issued Show cause notices and provided opportunity of defense, which was amply done by the appellant. During the Enquiry proceedings and proceedings in the Commission, the Bol Media Network filed a criminal original petition No. 108 of 2018 in Human Rights Case No. 34069 of 2018 before the Supreme Court of Pakistan, seeking contempt proceedings against PEMRA for not complying with orders of the court dated 26.06.2018.



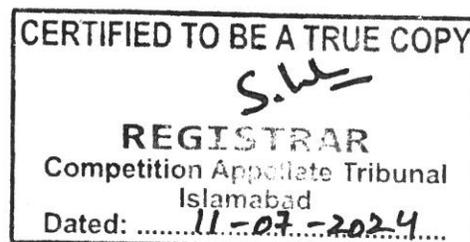
4. The CCP, while analysing the issues, i.e, Whether the agreements / arrangements between PBA, BAC and Medialogic, are in violation of Section 4 of the Act, and Whether the Commission has the jurisdiction to take cognizance of this matter, pursuant to the orders passed by the Supreme Court of Pakistan, concluded in impugned order dated 01.12.2021 that for alleged anti-competitive practices, Competition Law is the special law for all such purposes and the Commission has the powers to take cognizance in such matters and can issue directory instructions for compliance. In support thereto, the Commission cited LPG Association of Pakistan Vs. Federation of Pakistan etc. WP No. 9518. Accordingly, the directions were issued in the final orders of the Commission inter-alia to file the commitments, with the undertakings that they shall not repeat violations and shall act in accordance with the law, failure to comply with orders within 30 days shall entail a penalty in accordance with Section 38 of the Act.

5. The learned counsel for the appellant (PBA) in his arguments at the Bar provided historical evolution of Television Audience Measurement (TAM) Techniques, as a guidance for advertising companies. He referred to PBA's Article of Association, according to which any Broadcaster, Telecaster may become its member by following certain policy guidelines. Learned counsel further submitted that the August Supreme Court Order had rendered the issue at hand infructuous and it was no longer a live issue. As per the said Order of Supreme Court, Bol Media Network, in light of consent of all parties, was to apply for subscription from PEMRA and the rating companies were required to follow the terms and conditions of their licenses. Therefore, the issue of Bol Media Network's licensing and TV rating services is now subject to the regulations of PEMRA. Both the impugned order and the Enquiry Report failed to take this development into consideration while

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Islamabad
Dated:11-07-2024..

making its findings, thus the same are liable to be set aside. Finally, the learned counsel for the appellant argued that the Enquiry Report and the Impugned Order have failed to prove that the agreements are anti-competitive by object or by effect and the apex court had already, through its orders directed PEMRA to regulate TAM Data and ratings. He prayed that the Tribunal may kindly be pleased to accept the appeal and set aside the impugned order dated 01.12.2021.

6. The learned Law officer for the CCP, referring to the impugned order, argued that the PEMRA Ordinance 2002, contains no provision to provide enforcement mechanism in anti-competitive practices. It is a special law which covers licensing activities as elaborated in the matter of 'Telecommunication Company Limited' 2019 CLD 116 and in the matter of different Housing Authorities and others. As analysed by the inquiry and during the Commissions proceedings, the impugned agreements, in essence, excluded non PBA and non BAC members from receiving ratings/services from Medialogic. Medialogic was also threatened monetary consequences if it provides ratings to non PBA members. Three agreements executed by the appellant with the BAC and Medialogic were violative of Section 4 of the Act, i.e, restrictive in nature, however the penalties were not imposed and directory instructions were issued by the Commission, in view of that the Complaints had already been resolved by the Supreme Court through consent decree and law regulating the TAM data and ratings were changed. In the written arguments the Commission submits that the Apex court only determined that the PEMRA has the authority under section 39 of PEMRA Ordinance to make rules about issuing licenses to companies for the provision of TAM ratings to different TV Channels in Pakistan. The Commission further states that PEMRA Ordinance 2002 does not suggest any mechanism to carry out antitrust / anti-competitive practices related enquiries / investigations to provide remedy for



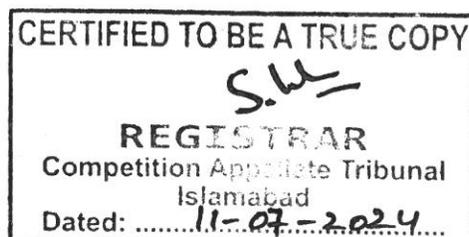
anti-competitive behavior. However, the Act provides mechanism for initiating / conducting proceedings under section 30 and to call information and conclude enquiries under the sections 33-37. Moreover the Act provides to determine financial penalties in such anti-competitive situations, specific to restrictive agreements. It was further argued that the Competition Law (Act), is a special law encompassing all spheres of commercial and economic activities in the country to deal with business competitions and contraventions thereof. A special law governing a specific subject matter overrides a statute which governs general matters on the same subject. In support to above proposition, the CCP cited Islamabad High Court Judgment, titled "Sui Northern Gas Pipelines Limited Vs. President Secretariat (Public)" PLD 2018 Islamabad 51, and M/s Federal Bank for Cooperatives Vs. Commissioner of Income Tax (2021-PTD 1203, Islamabad). CCP accordingly emphasized that these directory instructions should stay and appellant should submit compliance report in the impugned order dated 01.12.2021 along with the undertakings not to repeat such violations.

7. We have heard the arguments of both the parties and perused the record.

8. As per record, the Bol Media Network, filed a Criminal Original Petition No. 108/2018 in Human Rights Case No. 34069/2018 in the Supreme Court of Pakistan. The Court passed the following interim orders and directions to the PEMRA on 27.09.2018.

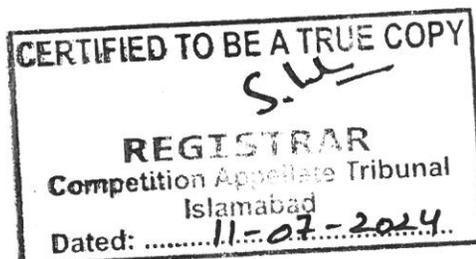
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"In order to streamline the matters involving television channels, advertisers, Pakistan Broadcasters Association and the Rating Companies, we direct the PEMRA to take the following steps:

- i) PEMRA shall register all six rating companies in accordance with the terms and conditions and requirements of the draft Regulations which have already



been made a part of this order shall be duly notified. This exercise shall be completed within one week. Any company which does not seek registration or is not registered without any fault or omission on its part on or before the said date shall cease its business till such time that it gets itself registered with PEMRA in accordance with the procedure prescribed in the afore noted Regulations.

- ii. All six media rating companies shall provide data, / information / material regarding Televisions Audience Measurement (TAM/TRP) regarding viewership to PEMRA on daily basis which shall be made available on the website of PEMRA and may accessed by the channels, media companies and the advertisers on payment of a notified monthly fee/charge. Such fee may be revised by PEMRA from time to time in consultation with the stakeholders.
- iii. PEMRA shall immediately negotiate and fix access charges with rating companies which shall be payable to PEMRA and transmitted to rating companies on monthly basis. PEMRA may, however, deduct an agreed percentage for meeting its administrative and other expenses.
- iv. The rating companies shall not, under any circumstances or for any reason, provide such data and information to PBA, advertising agencies, media outlets or any other third party. any violation of this provision shall entail immediate suspension of business of such a rating company and such other penalties are specified in the Regulations.



- v. On the basis of such rating, the advertisers shall be free to choose the channel(s) on which they wish to telecast their advertisements.
- vi. The advertisers and / or Media Advertising companies shall be free to access the data furnished by one or more of the media rating companies on payment of the requisite fee.
- vii. In order to ensure transparency and pre-empt any possibility of conflict of interest, it is directed that the designated representative of PBA on the Board of Directors of PEMRA shall not participate in incidents relating to viewership rating or rating companies is discussed, deliberated or decided.
- viii. Broadcasters and channels who are not members of PBA shall also be rated by rating companies and their data shall also be provided to PEMRA for the purpose of being uploaded on its website.
- ix. In addition to the six rating companies already operating in the market , any other company that wishes to enter into the rating business may do so after fulfilling the legal, procedural and regulatory requirements and payment of such fee as may be determined by PEMRA from time to time.

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We specifically prohibit and restrain PBA from entering into any agreement or arrangement with any other company or entity that may have the effect of cartelization, creation of monopoly, anti-competitive behaviour, exclusion of any competitor or in any manner affecting free, fair and open competition in the Television Audience Measurement Market.



9. We have perused the apex court orders and find that in the interim order dated 27.09.2018, all the restrictive agreements as mentioned in the impugned order were discussed and finally the petition was disposed of by assigning the TAM Rating Data issue to the PEMRA for regulating the business through formulation of Regulations. Accordingly, the PEMRA developed draft regulations in consultation with stake holders. In these interim o

rders, it was noted that TAM Rating Service Regulations 2018 were uploaded on PEMRA website. In its orders in the same Criminal Original Petition No. 108/2018, the apex court specifically prohibited and restrained PBA from entering into any agreement or arrangements with any other company or entity that may have the effect of cartelization, creation of monopoly, anti-competitive behaviour, exclusion of any competitor or in any manner affecting free, fair and open competition in the Television Audience Measurement Market. The Supreme Court however did not closely examine the violative agreements under the Competition Act, 2010.

10. In the final order dated 10.01.2019, the Supreme Court of Pakistan finally held the following:

“With the consent of all the stakeholders, these matters are disposed of in the terms of BOL Media Network shall apply for subscription of PEMRA; the rating companies shall follow the regulations and the terms and conditions of the license on the basis of which they have been granted their license; as regards the payment to the rating companies, PEMRA shall ensure prompt payments are made and in case of failure of any client to do so, obviously the requisite information shall be provided to it”.

11. We are of the view that although the Supreme Court have already adjudicated the dispute between the parties under the constitutional provisions and PEMRA Ordinance 2002, however the Commission’s Enquiry and proceedings provide detailed discussions



and investigations about the three agreements between PBA, BAC and Medialogic and found them violative of section 4 of the Act, a special law to deal with economic and business activities and contraventions there under and to restore the fair competitive market conditions. We have noted that violations of Section 4 of the Act was committed by the appellant along with BAC and Medialogic, but the CCP in consideration of the fact that the Supreme Court have redressed the grievances of the complainant regarding TAM Ratings, did not impose any penalty, however the Commission issued directions of prohibitory nature to the appellant under section 31 (b) of the Act to provide a safeguard against any such future violations.

12. In view of above, we are not inclined to accept the appeal. It is, therefore, dismissed with no costs.

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Chairperson

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Member Technical-I

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Member Technical-II

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**Announced in open court on
11.07.2024**

