

INFORGRAPHICS

In the Matter of show cause notice issued to **Defense Housing Authority Islamabad/Rawalpindi** for alleged violation of section 3 of the competition Act,2010.



Competition Commission
of Pakistan

www.cc.gov.pk

BACKGROUND ISSUE AND COMPLAINT

1 RESIDENT COMPLAINTS

- The Commission received several emails from the residents of DHA-1 raising concerns that the residents, specifically those in Phase-1 of DHA-1, have no choice or access to any alternate Cable Internet and Telephony Service (CIT Services) provider, but to subscribe to either PTCL or DHA-I Teleman, as the DHA-1 management was not issuing a No Objection Certificate (NOC) to Nayatel Private Limited to operate in Phase 1 and other sectors.



DATE OF ORDER

3 June 2021



BENCH MEMBERS

Ms. Shaista Bano
Ms. Bushra Naz Malik



SECTOR/MARKET

Cable Internet and
Telephony Service (CIT
Services) provider



NATURE AND SECTION VIOLATION

Abuse of Dominant Position
Section 3 of the Act



COMPLAINANT

On its Own
(Under Section 37 (1) of the Act)

2 VIEW OF AGGRIEVED PARTY

- On further inquiry, Nayatel also contended that DHA-1 refused to issue them a NOC for provision of a Right of Way (ROW) and to deal with it on terms and conditions similar to the ones offered to PTCL and DHA-I Teleman.



3 ENTRY BARRIERS

- Nayatel alleged that DHA's management had created a barrier to entry for Nayatel by offering dissimilar conditions and demanding a higher price for the ROW than the already existing internet service providers.

FINDINGS OF ENQUIRY REPORT

- DHA management had, prima facie, abused its dominant position in violation of Section 3 of the Act by not allowing Nayatel to operate in the relevant market.



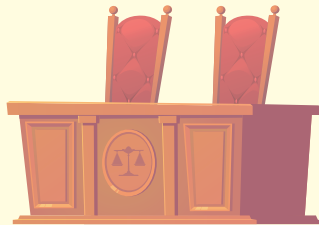
- The Enquiry Committee recommended to initiate proceedings against DHA under Section 30 of the Act.
- Considering the findings and recommendation of the Enquiry Committee, a show cause notice was issued to the management of DHA-1.

ISSUES FRAMED BY THE BENCH

- Whether the Respondent has abused its dominant position in contravention of Section 3 of the Act by not allowing Nayatel the right of way to lay down its infrastructure and provide the residents alternate CIT services in Phase-I and other sectors of DHA?
- Whether the Commission has jurisdiction to take cognizance of the alleged conduct?

FINDINGS OF THE BENCH

- For CIT service providers, the ROW could be considered as an essential facility for laying down their infrastructure across public and/or private areas for provision of CIT services to the residents of the area.
- DHA-I held a dominant position in the relevant market and had already granted ROW to four parties i.e. PTCL, Transworld, Wateen and its own subsidiary DHA-I Teleman for providing (G-PON) and allied CIT service to the residents of DHA-I.
- It was observed that the residents of DHA-I had limited options of choosing amongst the service providers and that the other service providers were being charged less rent than the rates offered to Nayatel.
- DHA-I had failed to provide any legitimate objective reasoning as to why there was disparity between the charges offered to Nayatel and other incumbents, which was found to be discriminatory and constituted application of dissimilar conditions to a same transaction.



DIRECTIONS

- *The Bench directed the Respondent to offer Nayatel, within 90 days from the date of the Order, to use the ROW on terms and conditions no less favorable than the incumbent service providers.*
 - *DHA-I was further directed to file a compliance report to the Registrar of the Commission no later than 7 (seven) days from the date such offer is made to Nayatel.*
- *In case of non-compliance of the directions of the Bench, DHA-I would be liable to pay PKR 2 Million for violating Section 3 of the Competition Act, 2010 in addition to appropriate penalties for non-compliance under Section 38 of the Act. The Respondent was further cautioned not to engage in anti-competitive behavior in the future.*

WHAT IS A DSL INTERNET?

DSL or (Digital Subscriber Link) is a type of high-speed internet connected to via Wi-Fi or an ethernet cable through a modem/router.



REMEDIES & PENALTY



- The Bench found that the Respondent had abused its dominant position in violation of Section 3(1) read with Section 3(3)(e), (g) and (h) of the Act.
- However, the Bench was inclined not to impose any penalty on the Respondent in order to provide the Respondent another chance to correct its behavior.

