

COMPETITION COMMISSION OF PAKISTAN  
Government of Pakistan

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ENQUIRY REPORT  
*(Under Section 37 of the Competition Act, 2010)*

IN THE MATTER OF ALLEGED TIE-IN BY WATEEN TELECOM IN DHA 5 LAHORE

Qasim Khan | Zulfiqar Ali

Dated: November 23, 2016

## **BACKGROUND**

1. This Enquiry report (hereinafter 'the ER') is prepared pursuant to several informal complaints lodged with the Competition Commission of Pakistan (hereinafter 'the Commission') by residents of DHA, Phase V, Lahore against Wateen Telecom Ltd (hereinafter 'the Respondent') around November, 2015. The primary contention raised in these complaints was that in the absence of any other cable service providers, the customers were being forced by the Respondent to buy or subscribe to additional services such as voice and internet (hereinafter 'additional services'), failing which, they would be unable to enjoy analog or cable television only connection (hereinafter 'the primary service'). This ER gives its findings as to whether the action of the Respondent thus mentioned appears to be an abuse of a dominant position in violation of Section 3 of the Competition Act, 2010 (hereinafter 'the Act')
2. In a notice issued to its customers by the Respondent dated 6 November, 2015 bearing the subject title 'Discontinuation of TELEVISION only offerings', the Respondent informed its customers that starting from December 16th, 2015, they would be unable to enjoy the primary service on a standalone basis and in order to continue enjoying the service they would have to subscribe to the primary service along with the newer digital technology or one or both of the additional services under the package titles of 'dual play' or 'triple play' respectively. A copy of this notice is being reproduced below for reference:



6 November, 2015

**SUBJECT: Discontinuation of Analogue TV Only Offerings**

Dear Valued Customer,

On behalf of Wateen Telecom, we would like to thank you for your patronage and for choosing Wateen as your service provider of choice.

Over the past years, Wateen has taken considerable efforts in order to improve its efficiency and service delivery and we hope you will continue to accompany us on our journey to provide you with unparalleled products & services.

In continuation of our efforts to serve you better, we are aligning our services and effective December 16, 2015, Wateen's "Analogue TV (Cable TV) Only service" will discontinue. Customers will now be able to subscribe to one of the following:

TV Only (Analogue + Digital),

Dual Play (Internet + TV) or

Triple Play (Internet +TV+ Voice)

All existing Analogue TV only customers will be required to subscribe to new packages prior to December 16<sup>th</sup>, 2015. Current Dual and Triple Play customers will remain unaffected and may disregard this message.

In case you have an Analogue TV only package, we request you to please visit our Business Centre at: 21-J, Main Commercial Area, Phase-V, DHA, or call our helpline: 111-365-111 for assistance or queries.

Thank you!



Wateen Telecom Limited  
Main Walton Road,  
Opp. Bab-e-Pakistan  
Walton Cantt., Lahore  
UAN: 111-999-919 Fax: +92-42-38389999  
Email: info@wateen.com  
Web: www.wateen.com

3. On enquiring as to why the Respondent had started restricting its customers to bundled only offers, the Respondent said that it was obligated to do so under the regulations and notifications of the Pakistan Electronic Media Regulatory Authority (the 'PEMRA'). The Respondent also shared a letter from PEMRA to the Respondent and PEMRA's notice in this regard. A copy of each is being reproduced hereunder:



PAKISTAN ELECTRONIC MEDIA  
REGULATORY AUTHORITY  
LAHORE REGION

80/80-A, Bridge Colony,  
Abid Majeed Road,  
Lahore Cantt.  
Ph: 042-99220531-33  
Fax: 042-99220534

No. 10(01)/Co.Ord./RO-LHR/28916

23 November, 2015

M/s. *Wateen Multimedia (Private) Ltd.*  
*4th Floor, New Ausiga Complex,*  
*Main Boulevard, Gulberg, Lahore.*

SUBJECT: IMPLEMENTATION OF THE ROADMAP FOR CONVERSION OF ANALOG CABLE TV DIGITAL

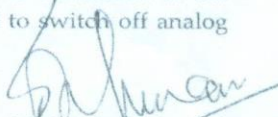
This is with reference to our earlier letter No. 3(2) RO-LHR/28791, dated 05.11.2015 regarding conversion of your cable network from analog to digital technology.

2. Whereas, 31<sup>st</sup> December, 2015 was approved by the Authority as the deadline for conversion of analog cable TV to digital in pursuance to the recommendations of the International Telecommunication Union (ITU) for conversion of broadcast media to digital, instructions have time & again been issued for strict compliance of the same. Moreover, in order to create awareness among the stake holders and to highlight the importance of digitalization & its advantages, workshop / seminar was held in Lahore on 10.03.2015. Similar workshops were also held in other regions. During these workshops, the need for complying with the roadmap for digitalization approved by the Authority was emphasized. The deadline is now impending.

3. Reference is also invited to Clause-2.8 of the terms & conditions of license of cable TV which is reproduced as under:

*In case of metropolitan / other cities, the licence shall be renewed / revalidated inter alia on the condition that the licensee shall convert its system from analogue to the digital technology as per road map specified by the Authority. In case of non compliance fine / penalty of 20% of the license fee per month up to 6 months shall be levied and thereafter licence shall be cancelled.*

4. Therefore, all cable TV licensees operating in **Lahore** are hereby directed to ensure conversion of their cable TV networks from analog to digital by 31<sup>st</sup> December, 2015. In case of non-compliance, proceedings under clause-2.8 of the terms & conditions of the licence will be initiated. All cable TV licensees will also be required to switch off analog services by 31<sup>st</sup> December, 2015.

  
(Dr. M. Safdar Rehman)  
Regional General Manager  
PEMRA - Lahore

**Copy for information:**

Director General (Operations), PEMRA, Headquarters, Islamabad  
Director General (Licensing), PEMRA, Headquarters, Islamabad





## Pakistan Electronic Media Regulatory Authority

# ATTENTION

## GENERAL PUBLIC / CABLE OPERATORS

### ROADMAP FOR CONVERSION OF ANALOGUE CABLE NETWORK TO DIGITAL

Pakistan Electronic Media Regulatory Authority (PEMRA) in line with the recommendations of International Telecommunication Union (ITU) has already given a roadmap for conversion of Analogue cable TV to Digital.

**31<sup>st</sup> December, 2015** has been set as the deadline for transition from **Analogue Cable TV** to **Digital** in Metropolitan / Designated Urban Areas.

#### Digitalization Benefits:

- Superior audio / video quality.
- Value added Services i.e. video on demand (VoD), Electronic Program Guide (EPG), Series Linking, Scheduled Recording, Emergency Alarm etc.
- Parental Control.
- Increased number of TV channels.

**CUT OFF DATE**  
is

**December 31,  
2015**

from Analogue to  
Digital Conversion

All the cable TV licensees operating in **Metropolitan / Major Cities** need to ensure strict compliance of the cutoff date for conversion of their analogue cable TV networks to **Digital**. After **December 31<sup>st</sup> 2015**, Section 2.8 of Terms and Conditions of the License shall be invoked.

General Public / viewers / cable TV subscribers in the Metropolitan / Major cities are requested to ask their cable operators to make arrangements to convert their cable connections from Analogue to Digital before **31<sup>st</sup> December, 2015**.

For further information & detail, please contact:

**DIRECTOR GENERAL (LICENSING)**

**PEMRA Headquarters, Mauve Area, G-8/1, Islamabad.**

**Ph: 051-9107114, Fax: 051-9107165. Toll Free No. 0800 - 73672**

4. It is pertinent to note here that as per PEMRA's notification or correspondence with the Respondent, it has required the latter and even other cable providers to follow a deadline of 31st December, 2015 to convert their analog television offering to a superior digital television service. What follows from the above is that PEMRA required the Respondent to completely disband its offering of the primary service in favor of a superior technology as against giving the Respondent an opportunity to make it available in the form of a package offering.
  
5. In subsequent correspondence and an in person meeting with a representative of the Respondent, it became clear that the Respondent had no problem offering the analog television service as long as the subscriber had a dual or triple play package already or wanted to subscribe to the primary service along with the digital service or with one or both of the additional services. The only option that was not on the cards was for a potential customer to subscribe to the primary service on a standalone basis. On asking the Respondent for the rationale to offer the primary service in a bundled form despite their claim of wanting to phase it out in favor of the digital technology, the Respondent provided a copy of their letter to the PEMRA wherein they had suggested to the latter that owing to long delivery times of set-top boxes (STBs) they shall only be able to introduce the new technology under a phased approach. To browse through complete details of the same, a copy of the said letter is being provided below:



# Wateen Multimedia (Pvt) Limited

December 10, 2015

**M. Safdar Rehman**

RGM

Pakistan Electronic Media Regulatory Authority

Lahore

**Subject: Cable TV Network Conversion from Analog to Digital**

Dear Sir,

We are writing to you with reference to PEMRA's recent notification *No. 10(01)/Co.Ord./RO-LHR/28916* with subject "*Implementation of the roadmap of conversion from Analog Cable TV Digital*" dated Nov 23<sup>rd</sup> 2015.

We would like to assure you that Wateen Multimedia Private Limited has taken all measures to convert its customers from analog to digital feed.

Please note that for us it is extremely difficult to convert all our customers to Digital within this specified time as international delivery of STBs take at least 8-10 weeks and given the deadline and we will not have any STBs to give customers.

Alternatively, we would like to suggest the following for effective and efficient conversion process:

1. In the phase I, operators to be given a deadline of December 31<sup>st</sup> 2015 for conversion of their existing analog set up to digital
2. In phase II, operators must convert their 25% existing direct customer to digital by March 31<sup>st</sup> 2016
  - a. In the same tenure, conditional access system to be integrated with digital headend
3. In phase III, operators to convert their 50% direct customers to digital by June 30<sup>th</sup> 2016
4. In phase IV, 100% of the customers to be converted by Dec 31<sup>st</sup> 2016.
5. We also request PEMRA should suggest to Government for providing reduced taxes and duties on the import of digital set to boxes (STB) up to at least 2 years

Looking forward for a positive response



For Wateen Multimedia Private Limited

Wateen Multimedia (Pvt) Limited

Main Walton Road, Opp. Bab-e-Pakistan, Walton Cantt., Lahore. UAN: 111-999-919

Fax: +92-42-38389999 Email: info@wateen.com Web: www.wateen.com

6. Going through the contents of the letter, what is clear is, that in asking the PEMRA to extend the deadline in converting all its customers to digital television technology, the Respondent had asked the former to give it an extension till December 31st, 2016 during which period it planned to convert its customers in phases until all of them would be switched. However when facts are observed, it clearly escapes logic as to how letting people subscribe to the primary service in the form of dual or triple play packages, or letting consumers carry on with bundled offerings involving the primary service, get them off of it. If anything, this action only seems to encourage this practice.
7. In order to probe whether the Respondent had prima facie violated Section 3 of the Act, the Commission initiated a formal enquiry on April 22, 2016 under Section 37(1) of the Act and appointed Mr. Qasim Khan, Deputy Director and Mr. Zulfiqar Ali, Management Executive as Enquiry Officers (hereinafter the 'Enquiry team') in the matter.

#### **Undertakings:**

8. According to Section 2(1)(q) of the Act, an undertaking is defined as:

*Undertaking "means any natural or legal person, governmental including a regulatory authority, body corporate, partnership, association; trust or other entity in any way engaged, directly or indirectly, in the production, supply, distribution of goods or provision of services and shall include an association of undertaking."*

9. The Respondent is a corporate body engaged in the provision of a variety of services including analog television, internet and voice and is therefore an undertaking in terms of Section 2(1)(q) of the Act.

#### **Relevant Market:**

10. Section 2(1)(k) of the Act defines 'Relevant Market' as follows:

Relevant Market " means the market which shall be determined by the Commission with reference to a product market and a geographic market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by the consumers by reason of the products' characteristics, prices and intended uses. A geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogenous and which can be distinguished from the neighboring geographic areas because, in particular, the conditions of the competition are appreciably different in those areas.



11. When it comes to analog and digital television services, there is a stark difference between the two in terms of characteristics, quality and even price if not entirely the intended use. Digital television service is superior to its analog counterpart in terms of picture quality, sound and a number of other finer details. In addition the digital technology is also able to offer a wider array of channels than the older analog service (150 as against 90).
  
12. Now while the Respondent has made use of the Hybrid fiber-coaxial (HFC) technology to offer its television service whether analog or digital, the other technologies deployed by other television service providers in the area of concern are Internet Protocol television(IPTV) and Fibre To The Home (FTTH) technologies. Characteristics in terms of quality, performance, number of channels along with upfront subscription charges again vary starkly when the IPTV and FTTH based television services are compared with HFC based analog television service.
  
13. Getting a superior service by means of any of the technologies discussed above namely HFC based digital service, IPTV and FTTH then also means that some sort of additional equipment is required on the part of consumer as against the simple analog service that only requires connecting the cable directly to the television. Not only do the customers not have to worry about high upfront costs but even the monthly cost of having an HFC based analog or cable television service runs lower than the television service acquired through any of the above mentioned technologies as described in the following table.

Charges (in Rs)	Wateen (HFC based)						PTCL (IPTV)	Optix (FTTH)	
	Analog Tv	Analog Tv + Digital	Dual Play (4Mbps)	Triple Play (4Mbps)	Dual play (8Mbps)	Triple play (8Mbps)	Smart Tv	Tv paired with 5Mbps Internet	Tv paired with 20Mbps Internet
<b>Upfront Charges</b>									
Subscription	1500/-	5000/-	2500/-	2500/-	2500/-	2500/-	6499/-	10,000/-	10000/-
refundable security Advance	N.A	1500/-							
<b>Total upfront Cost (if easy installation not opted)</b>	1500/-	6500/-	2500/-	2500/-	2500/-	2500/-	6499/-	10000/-	10000/-
<b>Monthly Charges</b>	522/-	1160/-	2743/- to 2843/-	2973/-	3750/- to 3850/-	3999/-	700/-	2800/- + 450/- = 3250/-	6900/- + 450/- = 7350/-
<b>Easy installations (if opted)</b>	N.A	300/- (12 Mos)	N.A	N.A	N.A	N.A	300/- (24 Mos)	2000/- (5 Mos)	2000/- (5 Mos)
<b>Total</b>	522/-	1460/-	2743/- to 2843/-	2973/-	3750/- to 3850/-	3999/-	1000/-	5250/-	9350/-

14. Reportedly the Respondent has stopped offering dual play and triple play services in combination with analog television since September, 2016, however the rates have been effective till some point as gathered from the Respondent's representatives. As for PTCL and Optix, the rates are given on their website and were also confirmed by their representatives on the phone. The case of Optix is unique since they have invested in FTTH technology and offer internet as their primary service. They offer their internet service on a standalone basis or in pairing with television or voice or both.

15. The charges for HFC based analog television when it was offered on a standalone basis involved upfront subscription charges of Rs 1500 and a monthly charge of Rs 522. When consumers were forced to bundle this with the newer digital service the cost went up considerably in terms of upfront costs when the monthly easy installments plan was not opted, or in terms of monthly charges when the said plan was opted. The IPTV service offered by PTCL resembles that of the Respondent's digital television service in terms of quality and additional requirements and hence also presents a similar scenario with regard to the overall charges. With Optix the scenario has been altogether different because its technology and infrastructure appears to be geared toward primarily offering internet and only pair other services including the television service with it where the consumers require it. Opting for this option could therefore never have been viable for consumers only interested in acquiring a television service. This service appears to be geared toward a niche market with charges too high for anyone requiring a simple cable television.
16. This differentiation in characteristics and price ostensibly makes the HFC based analog television service such that it cannot be seen as a substitute for the other types of television services being offered. For the purposes of this enquiry, the relevant product market is therefore the market for the provision of the analog television service based on the HFC technology.
17. The conditions of competition in the DHA Phase V are such that the Respondent has been the only provider of the primary service in the area as the other providers namely PTCL and Optix offer IPTV and FTTH based services respectively, neither of which could be treated as a substitute for the relevant product. In addition there was no way for the residents of area in question to acquire the primary service other than to relocate to another region, which is a completely impractical proposition. In view of the foregoing, the conditions of competition in DHA phase V region with respect to the provision of relevant product are distinct from other areas. For the purpose of this enquiry therefore the relevant geographic market is the Phase V area of the DHA region of Lahore.

## **Dominance**

18. Section 2(1)(e) of the Act defines a 'dominant position' as follows:

*'dominant position' of one undertaking or several undertakings in a relevant market shall be deemed to exist if such undertaking or undertakings have the ability to behave to an appreciable extent independently of*

*competitors, customers, consumers and suppliers and the position of an undertaking shall be presumed to be dominant if its share of the relevant market exceeds forty percent;*

19. As per the information obtained from the Respondent and DHA Lahore, there are a total of approximately 914 subscribers to the television related services offered by the Respondent. Of these a total of 398 are users of the relevant product which is being solely offered by the Respondent. Thus as far as relevant product is concerned the Respondent holds a 100% share in this market. Since a 40% market share suffices in presuming an undertaking to be dominant in a market as per the Act, with the entire market share belonging to the Respondent, it is presumed to be in a dominant position.

### **Abuse Of Dominant Position:**

20. An undertaking is deemed to have abused its dominant position in violation of Section 3 of the Act, if it carries out any practice(s) that prevent, restrict, reduce or distort competition in the relevant market. The relevant portion of Section 3 is being reproduced below:

*3. Abuse of dominant position. - (1) No person shall abuse dominant position.*

*(2) An abuse of dominant position shall be deemed to have been brought about, maintained or continued if it consists of practices which prevent, restrict, reduce or distort competition in the relevant market.*

*(3) The expression 'practices' referred to in sub section (2) shall include, but are not limited to*

*(c) tie-ins, where the sale of goods or service is made conditional on the purchase of other goods or services;*

21. The facts presented above leave no doubt that the Respondent tied the sale of the relevant product with the digital television service or one or both of the additional services under the titles of dual and triple play packages respectively. While the three types of services i.e. tv, voice and internet, may be offered on an optional basis to the consumers in any type of combination, it is abundantly clear that they are distinct in nature.

22. In its defense, the Respondent has held that its behavior is guided by PEMRA's direction. A perusal of the PEMRA's letter to the Respondent and its notice to cable providers presented in paragraph 3 of this report only shows that PEMRA asked the Respondent to convert its current technology i.e. the primary service to digital service by December 31, 2015. The Respondent asked for a gradual phase out of the service over a period of one year and apparently got it.



There are no qualms or apparent competition concerns about this extension or the eventual conversion of a service in this case the primary service, however a concern does arise with regard to the manner in which the Respondent decided to implement this phasing out.

23. It is not that during this phasing out period, the Respondent had stopped offering the primary service. In fact if there were any consumers, who had subscribed to the primary service along with any of the additional services, the Respondent had been more than keen to look the other way. Since the start of the so called phasing out period, it was never a problem to subscribe to the technology being phased out as long as it was being subscribed to with any one of the other services being offered by the Respondent. It was only customers who had the primary service on a standalone basis or any potential customers that wished to subscribe to it on a standalone basis who were barred from getting it.
24. This type of tying is a classic method for a dominant entity in one market to try and benefit from access to or control over another by coercion. Since the Respondent is in all the markets in question, it appears to be have been leveraging its strength in one market to reap benefits in other markets that it has access to by means of what appears to be nothing other than coercion. By doing so the Respondent has been clearly restricting the choice of consumers when it comes to who they want to choose as their service provider(s) with regard to the services mentioned. For example While some of the consumers may have wanted to obtain the primary service from the Respondent, they may very well have been interested in obtaining one or both of the additional services from other providers or not obtain them at all.

### **Conclusion and Recommendation:**

25. Based on paragraphs 8-9, the Respondent is an 'undertaking' engaged in the provision of services including television, internet and voice.
26. Based on paragraphs 10-17, the 'relevant market' appears to comprise the provision of HFC based analog television service in the phase V area of the D.H.A region of Lahore.
27. Based on paragraphs 18-19, the Respondent is presumed to be in a 'dominant position' in the relevant market.
28. Based on paragraphs 20-24, the Respondent appears to have introduced a tying arrangement in the relevant market, thereby restricting the choice of consumers and in doing so prima facie

abused its dominant position in violation of Section 3(1) read with Sections 3(2) and Section 3(3)(c) of the Act.

29. In view of the foregoing, it is recommended that proceedings may be initiated against the Respondent under Section 30 of the Act.

Zulfiqar Ali  
Management Executive

Qasim Khan  
Deputy Director