

Competition Commission of Pakistan

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## **ENQUIRY REPORT**

*In the matter of*

# **CARTELIZATION IN CELLULAR MOBILE TELECOMMUNICATION SERVICES MARKET**

Shaista Bano Gilani/Waqqas Ahmad Mir

**26<sup>th</sup> January 2010**

# **Enquiry Report**

*(Under Section 37 of the Competition Ordinance, 2009)*

## **In the matter of Cartelization in the Cellular Mobile Telecommunication Services Market**

### **1. BACKGROUND:-**

1.1 On 1<sup>st</sup> September, 2009 a news item titled “Cellular Operators Start Charging 10 Paisas on Balance Inquiry” appeared in “The Daily Times”. Based on this news item, the Competition Commission of Pakistan (hereinafter referred to as ‘the Commission’) took notice of an apparently simultaneous imposition of the same amount of charge for balance inquiry service by four major mobile telecom operators, i.e. Telenor Pakistan (Pvt) Ltd (hereinafter referred to as ‘Telenor’), Pakistan Mobile Communications Limited (hereinafter referred to as ‘Mobilink’), Pak Telecom Mobile Ltd (hereinafter referred to as ‘Ufone’), and CMPak Limited (hereinafter referred to as ‘Zong’). Such a move by the above named cellular mobile telecom operators (hereinafter to be referred as ‘CMTOs) raised concerns related to potentially anti-competitive conduct. In exercise of the powers available under Section 36 of the Competition Ordinance, 2009 (hereinafter referred to as the Ordinance’) letters seeking clarification and comments were sent to the four concerned companies. The companies in their replies denied any suspected violation of Section 4 of the Ordinance and provided detailed information/arguments in their support. Meetings were held by the undersigned with the representatives of all the four companies to gather further information.

1.2 In the meantime, an informant under the Commission’s “Reward Payment to the Informants Scheme” (hereinafter referred to as ‘the Scheme’) contacted the Commission’s offices and provided material/documents to Mr. Muhammad Hayat Jasra (Secretary to the Commission and) the designated officer of the Commission

to receive information/material under the Scheme. The material provided by the informant consisted of print outs and PST<sup>1</sup> files of e-mails exchanged between Chief Executive Officers (CEOs) and high level officials of all the five cellular mobile telephone operators namely Mobilink, Telenor, Warid Telecom (Pvt) Ltd (hereinafter to be referred as 'Warid'), Zong and Ufone (hereinafter collectively referred to as 'CMTOs'). Upon receiving the emails the Commission decided to initiate a formal enquiry under Section 37 of the Ordinance. Pursuant to the powers contained in sub-section (2) of Section 28 of the Ordinance, the Commission appointed Ms. Shaista Bano Gilani, Director (Cartels) and Mr. Waqqas Ahmad Mir, Joint Director (Legal) as Enquiry officers and delegated to this Enquiry Committee its powers to conduct enquiry under Section 37 read with the other enabling provisions of the Ordinance. Without prejudice to the generality of the powers of enquiry officers, in particular they were authorized: a) to first verify the authenticity of the documents received with the help of in house expertise available for forensic investigation in order to maintain confidentiality b) to examine the documents received from the informant in light of the facts available in relation to the preliminary probe on imposition of Rs. 10 paisas charge for balance enquiry by CMTOs being conducted by the Commission and c) Upon due examination of the facts and the information available, to give its findings with respect to any or all *prima facie* violations of Section 4 and any other provisions of the Ordinance by the Undertakings concerned.

1.3 The Enquiry Committee, *inter alia*, took steps regarding due verification and ensuring authenticity of the e-mails, which *prima facie* reveal possible violations of Section 4 of the Ordinance as detailed herein.

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<sup>1</sup> The program, Microsoft Outlook can store messages, calendar and other data items in a Personal Storage Table (.pst) or Off-line Storage Table (.ost) files that are located on the local computer. Most commonly, archived item are stored through the pst-files and the ost-files facilitate off-line availability of the items.

## **2 MARKET PLAYERS IN PAKISTAN'S MOBILE COMMUNICATION SERVICES MARKET<sup>2</sup>**

2.1 Pakistan's mobile communication services market comprises some of the world's largest and most experienced telecom companies including Orascom (Egypt), Telenor (Norway), Warid Telecom (Abu Dhabi Group), China Mobile and Etisalat (a UAE based company). In Pakistan all five CMTOs i.e. Telenor, Mobilink, Ufone, Warid and Zong are providing services using GSM technology, whereas Telenor and Mobilink are also offering EDGE services in most part of their networks. In the core network, some operators have deployed and some are in advanced stage of deployment of R4/NGN network. Cellular mobile facilities are now available to over 90 % population of the country as the total mobile subscribers have reached to 94.3 million. In Azad Jammu and Kashmir (AJ&K) and Northern Areas (NAs), there are six cellular mobile operators, five Pakistanis GSM operators and Special Communication Organization (SCO) providing services. SCO is the incumbent mobile operator since 2003.

### **2.2 Mobilink:**

Mobilink is Pakistan's largest telecom operator, and has been given the status of Significant Market Player (SMP) by the PTA. It is Pakistan's first GSM telecom operator. The company was founded in 1994 by Motorola and later sold to Orascom, the Egyptian conglomerate, who currently own it. Mobilink is Pakistan's oldest active telecommunications operator as per PTA's Annual Report 2008-09 and has 29.14 million subscribers.

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<sup>2</sup> Source : PTA Annual Report 2008-09 and [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=265&Itemid=135](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=265&Itemid=135)

### **2.3 Telenor:**

The Telenor Group of Norway founded Telenor Pakistan in 2005. The company is Pakistan's second largest telecom operator and has been bolstered by over \$2 billion invested in the country thus far. The Telenor Group is one of the world's leading telecommunications group, and is active in various parts of Asia and Europe. 20.9 million subscribers avail the services of Telenor as per PTA's Annual Report for 2008-09.

### **2.4 Ufone:**

Ufone is a telecom operator founded in 2001 by a subsidiary of PTCL. The ownership of Ufone was also included in the deal, where PTCL was partially bought out by Etisalat during its privatization. Ufone is Pakistan's third largest telecom operator and is just narrowly coming behind Telenor. Ufone has a subscriber base of 20 million subscribers.

### **2.5 Warid:**

Abu Dhabi Group, one of the largest business groups in the Gulf, established Warid Telecom's operations in Pakistan in 2004. After a partial equity buy-out in 2007, Singapore-based SingTel owns 30% of the Warid. The company is Pakistan's fourth largest telecom operator, although it is only 2-4% behind Telenor and Ufone in terms of market share. SingTel also has business interests in telecom companies throughout Asia. Warid has a subscriber base of 17.8 million customers.

### **2.6 Zong:**

China Mobile (CMCC) bought out Paktel in 2007, establishing China Mobile Pakistan (CMPAK). CMPAK subsequently founded ZONG, as CMCC's first venture outside of China. ZONG is Pakistan's fifth largest telecom operator, however the company has pursued an aggressive approach to growth, through

technology investment, marketing, and less expensive products. Zong's subscriber base stands at 6.4 million subscribers.

### **2.6A CMTOs covered by definition of an 'Undertaking' under the Ordinance:**

Mobilink, Telenor, Warid, Zong and Ufone are undertakings as defined under clause (p) of sub-section (1) of Section 2 of the Ordinance, in the following terms:

*“undertaking” means any natural or legal person, governmental body 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 or control of services and shall include an association or undertakings;*

### **3. Distinct Features of Network Markets and the cellular mobile telecom<sup>3</sup> operators:-**

3.1 Markets with network effects are the markets where the utility that a user derives from the consumption of a good increases with the number of other users consuming the same good. The mobile industry is a network with features which have a bearing on the analysis of competition due to high common network costs and low marginal costs which imply that price equal to marginal cost would not cover total cost.

3.2 Callers terminate their calls on the receiving party's mobile network. This network is chosen by the receiving party and his /on her handset cannot terminate calls on another operator's network etc. The higher the mark up on termination, the higher is the incentive for mobile operators to provide incentives for new subscribers to join or to retain existing subscribers.

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<sup>3</sup> Source: Network Effects and Multi- Sided Markets by Dr. Cento Veljanovski, Managing Partner, Case Associates

3.3 CMTOs can induce network effects by adjusting their pricing mechanism for their services. These induced network effects have been considered in the mobile sector when a network operator charges lower prices to subscribers making calls to other subscribers on the same network as compared to the subscribers on the other networks. This low on net cost can increase switching costs.

3.4 This practice if undertaken by large Mobile network operators (MNOs) can be used to maintain and enhance their market share and to foreclose the market or dampen competition between smaller MNOs. Large MNOs use low on-net tariffs to generate induce network effects by manipulating the overall balance between termination, access and on/off net tariffs. Moreover, while the practice benefits subscribers of networks, it has the effect of dampening competition in the call origination market.

#### **4. FACTS OF THE CASE:-**

4.1 In response to a news item published in “The Daily Times” titled Cellular Operators Start Charging 10 Paisas on Balance Inquiry” dated 1 September, 2009 letters titled ‘Charge for Balance Enquiry’ were sent out on September 30, 2009 to Mobilink, Telenor, Ufone and CMPak Limited (ZONG). **Copy of the letters is attached herewith as Annex ‘A’.** The purpose of the letters was to inquire why these four cellular companies had simultaneously announced to initiate a charge of ten paisas per balance enquiry. Each of the cellular companies was asked to submit detailed comments on their actions.

4.2 On October 13, 2009 Mobilink (through Mr. Niaz Brohi, Director CA-Regulatory Law) responded to the Commission asking for an extension to prepare comprehensive comments regarding the charge for balance enquiry. However, on October 15, 2009 Mobilink sent a letter to the Commission highlighting the apparent reasons behind the introduction of a charge for balance inquiry. A

summary of Mobilink's submissions is provided hereunder. Copy of the letter dated 15.10.2009 is annexed herewith as **Annex 'B'**.-

- a. Charging Jazz customers for balance enquiry had been under review for some time—due to 'excessive (almost abusive) by the customers'.
- b. **“Other operators” had also been reviewing their free balance inquiry.**
- c. The number of balance enquiries was four times the number of SMS's sent out on a certain day
- d. Excessive balance inquiries 'clog the system' and that this adversely affects the quality of service. A cost is also attached to providing the service in question. A nominal charge would help to recover the cost and dissuade the users to clear up the system leading to better quality and to provide a greater range of options of SMS services to customers.
- e. PTA was informed about imposition of charge vide letter dated August 5 2009 and actual charge was imposed on September 4, 2009.
- f. The charge was not excessively priced because it uses mostly the same system as SMS and is much cheaper—depending on the package.
- g. Cellular mobile industry is one of the most competitive industries in the country. Evidence includes price drops, easy shifting between companies, and rates are amongst the lowest in the world
- h. The competition has also been acknowledged by PTA.
- i. Claim that the competition is “counter productive” because it is stifling growth and revenues do not justify further investment.
- j. The revenue generated from balance inquiries has come to around 1% of overall revenue—but it is meant to go down because less people will now use the service
- k. The intent is not to cover the costs of the balance enquiry but to improve the quality and variety of services and as such this situation cannot be compared with price agreement/alignment among competitors where the intent is to make monopolistic profits. Indeed, had the intent been to make



any such profits, the matter would not have been reported to PTA prior to implementation of charge.

4.3 It can be seen from the contents of the above mentioned reply by Mobilink that the company denied the presence of any anti-competitive practices and cited the apparently high level of competition in the industry. Furthermore, the justification offered for the imposition of a charge for balance inquiry was to prevent clogging of the system, preventing near abusive use by customers and to improve the quality of service being provided to the customers.

4.4 On October 14, 2009 ZONG (through Mr. Aslam Minhas, Company Secretary and Head of Legal Affairs) responded to the Commission's letter concerning the balance inquiry charge. Copy of the said letter is annexed herewith as **Annex 'C'**. The letter stated that ZONG decided to price the balance inquiry service nominally well below the cost price with intimation to the PTA and by informing their customers in advance through SMS. ZONG further stated that the industry is so competitive that a price move by one operator is immediately followed by other operators. While denying allegations of any anti-competitive practices ZONG offered an assurance regarding its 'continued commitment to adhere to the fair practices and competition in the cellular market'.

4.5 On October 15, 2009 Telenor (through Mr. Ahmad Jawad, Director Legal Affairs) responded to the Commission's letter concerning the charge for balance inquiry. Copy of the said letter is annexed herewith as **Annex 'D'**. A summary of the important submissions made by Telenor is provided below:-

4.5.1 Telenor acted independently as a prudent commercial operator and after taking due clearance from PTA.

4.5.2 Telenor did not intend to directly or indirectly conduct itself in a manner violating any provision of the Competition Ordinance. Furthermore, 'Telenor

would like to record that it reposes due confidence and trust in the Commission and is confident that following due appreciation of facts and considerations ....the Commission will be convinced that no prima facie or otherwise violation of the Ordinance has been committed or was ever intended to be committed by Telenor’.

- 4.5.3 The balance inquiry charge was premised on the consideration to lessen the load on the system and made it available for more profit-generating services.
- 4.5.4 Telenor still provides Interactive Voice Response, IVR<sup>4</sup>, based service free of charge for balance enquiry and **Telenor was the first operator to impose this charge, the others followed suit** ‘perhaps due to the increasing downward trend on prices’.
- 4.5.5 ‘Telenor did not even wish to conduct itself in a manner prejudicial to its customers’.
- 4.5.6 Telenor further assured that it did not intend to be party to any facts and /or circumstances on the basis of which the Commission may reasonably infer that Telenor intended to conduct itself in a manner prohibited by the Ordinance.
- 4.5.7 Through letter dated October 15, 2009 Kundi and Kundi on behalf of Ufone responded to the Commission’s letter concerning the charge for balance inquiry. Submissions made in this letter are reproduced below and a copy of the said letter is annexed herewith as **Annex ‘E’**.

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<sup>4</sup> Interactive Voice Response (IVR) — A system that uses responses from a touch tone telephone to gather and store data. It uses a human voice to read back. When set up with voice recognition software, data can be gathered through voice instead of touch tone.

- 4.5.8 Ufone claimed that it ‘has focused on its consumers, empowering them with better communication modes and services that enable them to do a lot more than just talk, at much competitive prices’. Ufone submitted that it does not apply hidden charges. Ufone submitted that it has a subscriber base of 19,000,000 and coverage as a sign of their competitiveness in the market.
- 4.5.9 Ufone clarified that balance inquiry is a part of the USSD<sup>5</sup> system and the 10 paisa charge is in order to “facilitate freeing of network bandwidth (traffic) to make it available to be utilized by other valuable and essential services needed by its subscribers on a 24/7 basis.”
- 4.5.10 Ufone also claimed that its system has a maximum traffic limit—that is constantly pushed to limit by the balance inquiry SMS—and that reaching this limit effects their quality and quantity of service.
- 4.5.11 It was submitted that customers also have the option to use IVR but that is also paid. ‘In all fairness to the consumer, PTML decided to start with only a ten paisa charge in order to discourage the often unnecessary and excessive USSD inquiries that would result if it were to offered completely free of charge’.
- 4.5.12 Since all customers use the same network bandwidth, this was considered necessary for the better use and enhanced availability of services.

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<sup>5</sup> Unstructured Supplementary Service Data (USSD) — allows for the transmission of information via a GSM network. Contrasting with SMS, it offers real time connection during a session. A USSD message can be up to 182 alphanumeric characters in length. Unstructured Supplementary Service Data allows interactive services between a MS and applications hosted by the Mobile Operator. These messages are composed of digits and the #, \* keys, and allow users to easily and quickly get information/access services from the Operator.

4.5.13 Ufone wanted to start the surcharge on August 1<sup>st</sup>, and wrote to PTA on the 21<sup>st</sup> of July but was informed that it had to wait one month and inform all their customers. Ufone sent a bulk text informing customers that the surcharge would start on the 1<sup>st</sup> of September.

4.5.14 Ufone also cited the PTA Fixed Line Tariff Regulations, 2004 which allow Non-SMP<sup>6</sup> operators to “*set and revise their tariffs at any time and in any manner*”. ‘The telecom industry in Pakistan is extra competitive’. Ufone also made a reference to ‘cut-throat competition’ in the cellular industry as reasons for the surcharge, as well as the price-following that occurs in the industry.

4.6 On examining the replies submitted by the four telecom operators, it was observed that all the companies presented certain similar arguments related to increased load on the system to justify the imposition of charge for balance enquiry. However, certain concerns remained as none of them could explain as to why all the companies supposedly competing against each other imposed the same amount of charge for this particular service and that too within a span of one week from September 1 to September 7, 2009. The increased load of system was not a one day phenomenon that suddenly occurred for all the companies due to free balance enquiry service and all companies decided to impose this charge by the same amount to discourage the customers. Nonetheless as **Annexures ‘B’ to ‘E’** demonstrate that Mobilink, Ufone, ZONG and Telenor expressly denied any anti-competitive practices and gave unambiguous assurances that in imposing the charge for balance enquiry services there had been no violation of any provision of the Competition Ordinance, in particular section 4. In order to further clarify the issue and understand the pricing mechanism of the telecom operators, meetings were scheduled separately with each of the telecom companies.

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<sup>6</sup> Significant Market Player (SMP)—The Pakistan Telecommunication Authority assesses a telecom operator as a SMP based upon company size, customer base, revenue stream, amongst other determinants. As the SMP status precludes market power, those companies assigned as a SMP have restrictions on their pricing and marketing, amongst other factors. The SMP has historically been Mobilink in the Pakistani cellular operators market.

4.7 First meeting was scheduled with Telenor on November 10, 2009 as they themselves desired to come to the Commission and explain their position.

**Telenor claimed that since balance inquiry was a basket service<sup>7</sup>, price was**

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<sup>7</sup> **“Basket Service”** means a telecommunication service included in the basket of telecommunication services for price control purpose; **Appendix of Pakistan Telecom Rules 2000 THE SCHEDULE ‘A’ Basket Services** The following components of basic telephone service shall be comprised in the Basket Services, namely:-**1. Installation services**

The installation and bringing into service of connections to the public fixed switched network for residential customers.

(1) The installation and bringing into service of connections to the public fixed switched network for business customers.

**2. Line rental services**

(1) The provision and maintenance of connections to the public fixed switched network for residential customers.

(2) The provision and maintenance of connections to the public fixed switched network for business customers.

**3. Call services**

(1) Calls made over the public fixed switched network from Customer Premises Equipment or Public payphones to Customer Premises Equipment, Public Payphones or to equipment connected to a public mobile switched network within Pakistan.

(2) Outgoing international calls, being calls made over the public fixed switched network from Customer Premises Equipment or Public Payphones to the public switched network of an operator in another country.

(3) Incoming international calls, being calls made over the public fixed switched network from the public fixed switched network of an operator in another country to Customer Premises Equipment, Public Payphones or to equipment connected to a public mobile switched network.

(4) Directory information services.

**4. Other mandatory services**

Any other service that the Company requires its customers to acquire from it in order to receive or continue to receive any of the services described in paragraphs 1, 2 and 3 of this Schedule.

**5. Excluded services**

The following services are not included in the Basket Services, namely:-

(i) Interconnection Services;

(ii) Basic telephone service calls origination on a public mobile switched network;

(iii) The supply of Customer Premises Equipment;

(iv) The installation, bringing into service, provision and maintenance of Leased Circuits; and

(v) services that are eliminated from the Basket Services from time to time in accordance with the provisions of rule 22. i.e. (changes to basket services).

**Rule 22 of Pakistan Telecommunication Rules, 2000. Changes to the Basket Services.-** (1) Subject to sub-rules (2) and (3), the Company shall be entitled to add or replace a telecommunication service in respect of the Basket Services only if that telecommunication service is either:-

(a) wholly or substantially in substitution of an existing telecommunication service; or

(b) a packaged offering of existing telecommunication services or of elements of existing telecommunication services.

(2) The Company shall notify to the Authority in writing of its intention to add or replace a telecommunication service in respect of the Basket Services pursuant to sub-rule (1) together with the proposed basis on which the Price Control Formula shall apply to that telecommunication

**mostly set by the PTA.** Telenor denied collusion on the 10 paisa charge for balance inquiry, claiming that it approached PTA at the end of July and had no knowledge of the other telecom operators' price changes. The company justified the balance inquiry charge by claiming to improve quality control.

4.8 On November 18, 2009, a meeting was held with a team from Mobilink. The telecom operator denied any collusion, claiming that since it had been assigned the status of Significant Market Player ('SMP') by PTA it could not unilaterally implement a drop in prices. Mobilink also stated that it informed PTA of the imposition of the charge around the 5<sup>th</sup> of August, 2009. As per its submissions, Mobilink's main reason for implementing the service charge was that it had helped improve their service quality.

4.9 On November 19, 2009, a meeting was held with a team from Ufone. Ufone explained the technical specifics of the USSD service, which is the basis for messaging and balance inquiry check, and how it relates to service quality. Ufone representatives said that the company was attempting to improve its service quality and considered using 10, 15, or 20 paisa as a token service charge. Representative appearing on behalf of Ufone completely denied any collusion and said that PTA was informed of the company's decision on the 31<sup>st</sup> of July.

4.10 On December 2, 2009, a meeting was held with a team from Zong. Zong denied that the company was involved in any anti-competitive conduct and claimed that most telecom operators in the world had USSD charges. Zong claimed that it was interested in setting a service charge on balance inquiry when it entered the

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service not later than thirty days in advance of the Price Control Period in which it proposes to implement that change to the Basket Services.

(3) For the avoidance of doubt, it is clarified that the Company shall be free to introduce any number of different packages of prices for packages of existing telecommunications services that it wishes, provided that all such Prices comply with these rules.

(4) The Authority may, in its absolute discretion, accept or reject the proposed basis on which the Price Control Formula shall apply to that telecommunication service.

market, but seeing as it was a new entrant in the market; the company had waited for an appropriate time. Zong claimed that the quality of the service being provided had (in the past) been impaired by excessive use of free balance enquiries and the service charge helped the company raise its standard.

4.11 The companies generally submitted that any of their price moves is immediately copied by their competitors and sometimes the information on prices is leaked even prior to its implementation. They were then asked on the system of market intelligence in the mobile market, specifically the possibility of information exchange through regulator, but all the companies denied the existence of any forum where they can share or exchange information including meetings and interaction with regulator.

4.12 Subsequent to the meetings, telecom companies filed some additional information to further clarify their position. Brief of the submissions made by the companies is presented below:-

- Mobilink stated that due to the status of SMP (Significant Market Player) granted by PTA it could not have levied a lesser charge than what was being charged by the other operators.
- Mobilink informed PTA on 5<sup>th</sup> August 2009 and the surcharge was effective as of 4<sup>th</sup> September 2009.
- Mobilink reiterated that the primary reason for levying the charge was to discourage “excessive” use and allow for a more efficient use of its network system—therefore leading to better quality of service. Mobilink also stressed upon the ‘intensity of competition in the mobile cellular market’.
- Ufone submitted data to reiterate previous correspondence—including balance inquiry traffic trends and revenue.
- Also list their obligations to the PTA
- Zong’s stated goal was to have a volume reduction of 30% and that it had already achieved 28%.

- Zong claimed to have increased network capacity and improvement of access of USSD services by limiting zero-balance calls with the surcharge.
- Telenor submitted that there was very significant drop in the number of hits for balance enquiry per day after imposition of 10 paisas charge.

4.13 Warid was also contacted and was asked to assist the Commission as to why the company unlike other four cellular operators did not impose a charge for balance enquiry; however, no response from Warid was received.

4.14 An informant contacted the Commission under the Scheme to provide information/evidence on cartelization among the cellular mobile operators. The information consisted of print outs and PST files of e-mails exchanged between senior level employees and CEOs of the five cellular operators.

4.15 The Enquiry Committee took steps to ensure due diligence and made efforts to check the authenticity of the relevant e-mails through a forensic report in this regard which is attached herewith as **Annex 'F'**. The E-mail Forensic Report states that:-

*“The analysis of the above e-mails has been presented as an example to demonstrate the type of forensic analysis that has been performed to assess the authenticity of the e-mails provided to the undersigned.*

*In view of the analysis, it can be confirmed that the e-mails provided to the Commission along with PST files are genuine e-mails and are free from any alterations/amendments. Therefore, these e-mails can be relied upon as a genuine document.*

## **5. ISSUE:-**

5.1 The issue at hand is that “Whether the five cellular mobile telecom operators have entered into an agreement in respect of provision of mobile telecommunication



services, which has the object or effect of preventing, restricting or reducing competition within the relevant market, thereby, violating section 4 of the Ordinance?

## **6. Relevant Market:-**

For the purposes of defining relevant market under this enquiry we refer the relevant market as defined under clause (k) sub-section (1) of Section 2 of the Ordinance;

*“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’ characteristic, 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 neighboring geographic areas because, in particular, the conditions of the Competition are appreciably different in those areas;*

6.1 This definition, as is clear, has two components; a product market and a geographic market. These are examined in turn below. We look at the geographic market first.

6.2 Relevant geographic market in the present case consists of whole of Pakistan, AJK and Northern Areas where PTA has its jurisdiction as a regulator. The geographic market in the present case is limited by the boundaries of the regulator’s jurisdictional area. Beyond the boundaries of PTA’s jurisdiction the conditions of competition would be sufficiently different in the presence of other regulators and more market players. Therefore the geographic market extends to

the areas where PTA has its jurisdiction as a regulator of companies engaged in the provision of mobile communication services<sup>8</sup>.

6.3 The product market consists of all those products (either goods or services) that by reason of their prices, characteristics and intended uses are considered substitutable by the consumer. In the present case the product market is the market for the provision of mobile telecommunication services using GSM, GPRS and/or EDGE technologies. These services differ from fixed-line (also colloquially referred to as land-line) services offered by market players. In terms of this product's price the fixed lines cannot be considered a substitute even though call charges per minute may appear to be similar. However, tariff structure of mobile telecommunication services is very different from fixed-lines, e.g. there is no fixed line rent in pre-paid mobile telephone connections<sup>9</sup>. Furthermore, different tariff packages offered by companies providing mobile telecommunication services vary markedly from fixed line tariffs, e.g. these companies offer packages involving free minutes, charge per 30 seconds, per 20 seconds etc. This is not the case with fixed lines. Satellite phone services are also not a substitute in terms of price as they would be much more expensive than mobile telecommunication services. Hence in terms of prices the mobile telecommunication services have no substitute. Furthermore, the procurement of landline/ fixed line phone normally requires a fixed point location where connection could be installed and such installation requires certain documentation and is time consuming, whereas mobile phones and connections are readily available and the customer can purchase and start using mobile phone within no time.

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<sup>8</sup> Mobile Communication Services are defined under Access Promotion Rules, 2004, issued under PTA Act, as “**Mobile Communications Service**” means a wireless-based telecommunication service where the terminal equipment may be connected to the telecommunication system by wireless means and used while in motion;

<sup>9</sup> Pre-paid mobile connections constitute 98% of the mobile phones subscriber base in Pakistan.

6.4 Also important to note are the characteristics and intended uses of the mobile telecommunication services;

- They allow the customer to communicate while ‘on the go’.
- They also allow the consumer to use sms, mms, Mobile banking, Mobile Internet, Music Library, Utility Bills Payment, Stock Market Updates, Voice Messaging, GPRS services, etc.
- Unlike a fixed line or even a cordless phone a mobile phone service consumer is not limited to a fixed or base point; s/he can use the phone as long as it is within the range of a particular tower emitting signals.

6.5 These characteristics and intended uses cannot be substituted by fixed lines or cordless phones.<sup>10</sup>

6.6 In view of the above we can conclude that the relevant market for the purpose of this enquiry is the “market for cellular /mobile communication services in Pakistan, AJK and Northern Areas”.

## **7. ANALYSIS OF E-MAILS:-**

A perusal of the e-mail correspondence raises a number of competition related concerns. These issues have been listed and analyzed below and copies of all the e-mails quoted herein are attached as **Annex-G**:

### **7.1 Individuals involved:**

The e-mails between the senior level employees of all the Cellular Mobile Telecom Operators (CMTOs) involve the following individuals. Following names appeared repeatedly in the e-mails:-

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<sup>10</sup> PTA has distinguished between mobile communication services and limited mobility services in Access Promotion Rules, 2004, where limited mobility services have been defined as “a wireless based telecommunication service that satisfies all of the following conditions:(a) it follows the numbering plan established by the Authority for the public fixed switched network; (b) in which customers cannot authenticate or use their terminal equipment with a telecommunication system of another licensee; (c) in which a customer’s terminal equipment may obtain access to the Service using a single pre-defined cell, having maximum radius upto Local Call Charging Area, and (d) in which no inter-cell hand over and roaming With other networks is allowed.

1. Qian Li—CEO Zong Pakistan
2. Jon Eddy—CEO Telenor
3. Rashid Khan—CEO Mobilink
4. Asif Rumi—Deputy GM Warid
5. Zafar Usmani—COO Zong
6. Irfan Wahab Khan—EVP Corporate Affairs and CEO Telenor LDI (currently transferred to global office in Oslo)
7. Tariq Gulzar—CFO Warid
8. Abdul Aziz—President and CEO of Ufone
9. Naveed Khalid Butt (Ufone)
10. Qazi Muhammad Idrees ( Telenor)
11. Zahur Hussain (Mobilink)
12. Hamid Bashir Alvi (Ufone)
13. Aamir Ibrahim (Telenor)
14. Agha Qasim—VP Corporate Affairs-Mobilink
15. Omer Haider—GM of Government and Regulatory Affairs Warid
16. Javed Ghafoor—Director Corporate and Legal Affairs Zong
17. Usman Maftun(Warid)
18. Ahmed Faisal(Zong)
19. Hamid Hassan Butt(Ufone)
20. Sajid Mahmood ( Zong)
21. Salman Malik (Telenor)
22. Jawad Paul (Telenor)
23. Syed Muhammad Irfan(Ufone)
24. Moqeeem ul Haque (Ufone)

## **7.2 Existence & meetings of a CEOs Forum:**

The following emails exchanged among and between the employees and officers of CMTOs reveal the existence of a CEOs Forum. The emails cover a span of time starting from March 2009 to December 2009 and during this period the

CEO's Forum appears to have met on the dates indicated by the following e-mails:-

- a. e-mail dated 17-03-2009 from Mr. Zahur Hussain to Mr. Naveed Khalid Butt, Irfan Wahab Khan, Zafar Usmani, Omer Haider, Hamid Hassan Butt, Qazi Muhammad Idris, Javed Ghafoor, Osman Maftun, Agha Qasim and Ahmed Faisal, stating therein “ **As agreed in CEO's Meeting on March 13**, Ufone is coordinating CEO's meeting with Chairman PTA on Thursday, March 19. We suggest that a meeting of Regulatory Heads may be held at Mobilink Head Office at 1600 hours to finalize the agenda. We also propose following agenda points. You may like to suggest additional points.”
  
- b. Email received from Mr. Zahur Hussain on 15<sup>th</sup> April 2009 addressed to Hamid Hassan Butt, Naveed Khalid Butt, Agha Qasim, [omer.haider@waridtel.com](mailto:omer.haider@waridtel.com), Irfan Wahab Khan, Osman Maftun, Aamir Ibrahim, Ahmed Faisal, Zafar Usmani, Zahur Hussain, Rashid Khan, Abdul Aziz, Asif Rumi, Javed Ghafoor with the Subject: **FW: CEOs Meeting April 15, 2009** stating therein “*All CMTOs have agreed on the new date and confirmed availability of their CEOs. The meeting will now be held at 1500 hours on Wednesday, April 15 at Mobilink Head Office Islamabad.*”
  
- c. E-mail sent from Mr. Naveed Khalid Butt on **Thursday, April 16**, 2009 to Agha Qasim, Omer Haider, Zafar Usmani, Javed Ghafoor, Zahur Hussain, Asif Rumi, Qazi Muhammad Idrees, Irfan Wahab Khan, Hamid Bashir Alvi, Rashid Khan, Jon Eddy Abdullah, Qian Li, Syed Muhammad Irfan, Abdul Aziz, stating that “ *As discussed in the CEOs meeting held yesterday at Mobilink's office, it was agreed to convene a forum of our legal experts to debate the said issue and prepare a case for challenging it in the court of law. Please find enclosed an initial level working done by our legal team in this regard and we therefore, propose to convene a meeting of the respective legal teams at the Ufone office on next Tue (21<sup>st</sup>*

*April'09) to further deliberate the same. You are requested to please nominate the concerned personnel from your organization in this regard while Syed Irfan (cc in the email) will coordinate for the same from our side accordingly.”*

- d. Email from Mr. Naveed Khalid Butt, sent on Monday May 11, 2009 to Mr. Agha Qasim, Irfan Wahab khan, Omer Haider, Zafar Usmain, Moqem ul Haq, Zahur Hussain, Qazi Muhammad Idris, Slaman Malik, Javed Ghafoor, Asif Rumi, with the subject : Agenda Points for nex CEOs meeting at Ufone Office on **14<sup>th</sup> May'09(THU)** stating therein *“Please feedback with the agenda points to be included for discussion in the next CEOs meeting scheduled to be held at our office on 14<sup>th</sup> May '09 (THU) at 1500 hours please.”*
- e. Email received from Naveed Khalid Butt, on 16<sup>th</sup> July 2009 addressed to Mukhtar ul Haq, Abdul Aziz with the subject : Minutes of the CEOs meeting held on **15<sup>th</sup> June'09** stating therein *“5 print outs of the enclosed MoM (in sealed envelopes) required please for sending to the CEOs accordingly.”*
- f. Email received from Naveed Khalid Butt, on 13<sup>th</sup> July 2009 addressed to John Eddy Abdullah, Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider, Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim, Qian Li, Usman Maftun, Moqem Ul Haque with the Subject Change of venue and schedule for CEOs meeting on 15<sup>th</sup> July 2009, stating therein *“ Dear all ! Due to the meeting called in by the Chairman PTA at the same time on **15<sup>th</sup> July'09** (to be attended by the CEOs), we would hereby recommend holding the CEOs meeting right after the same. The CEOs can therefore come over together to the Ufone office after the PTA meeting is over and we would then hold our monthly session over a working lunch at the Ufone Corporate Office accordingly.”*

- g. E-mail from Qazi Muhammad Idris sent on Monday August 17, 2009 to Agha Qasim, Naveed Khalid Butt, Omer Haider, Zafar Usmani, Aamir Ibrahim, Javed Ghafoor, Zahur Hussain, Asif Rumi, Hamid Bashir Alvi with the Subject; Agenda Points – CEO Meeting 19<sup>th</sup> August, stating therein “ *CEO’s meeting is scheduled to be half in Telenor Pakistan office on 19<sup>th</sup> August, 2009. Kindly forward agenda*”.
- h. Email received from Javed Ghafoor 11<sup>th</sup> September 2009 addressed to Naveed Khalid Butt, Agha Qasim, [omer.haider@waridtel.com](mailto:omer.haider@waridtel.com), Zafar Usmani, [Rashid.khan@mobilink.net](mailto:Rashid.khan@mobilink.net), , abdul aziz, Qian Li, John Eddy Abdullah, Hamid Bashir Alvi, Asif Rumi, Javed Ghafoor, Moqem Ul Haque, Ahmad Faisal, Qazi Muhammad Idris and Aamir Ibrahim with the Subject: CEOs Meeting on 14<sup>th</sup> September Draft Agenda stating therein “*As agreed in the last CEOs meeting we are pleased to invite you for this month’s CEOs meeting at our head office. As agreed, meeting will convene on Monday, 14 September 2009 at 1300 hours at ZONG’s head office TF Complex, 7 Mauve Area, G-9/4, Islamabad...*”

7.3 The above emails therefore clearly indicate the existence of a CEOs Forum prima facie comprising of CEOs and senior level employees of the CMTOs. There remains no doubt that CEOs and senior level employees of the five CMTOs met regularly to discuss various issues related to this sector. The Enquiry Committee accepts that existence of such a forum, by and of itself, may not be always be anti-competitive *per se*. However, as the succeeding Paragraphs of this Report will reveal, the CEOs Forum appears to have served as a platform to perpetrate grave violations of the law and has not restricted itself to innocuous meetings.

#### **7.4 Agenda Items of Meetings;-**

The agenda items of CEO’s meeting consisted of issues relating to PTA, Ministry of Information and Telecommunication, issues involving common interest of the industry and most importantly measures to enhance revenues of the CMTOs. Following e-mails contain agenda items for CEO’s Forum meetings.

- a. Email received from Zahur Hussain on 15<sup>th</sup> April 2009 addressed to Hamid Hassan Butt, Naveed Khalid Butt, Agha Qasim, [omer.haider@waridtel.com](mailto:omer.haider@waridtel.com), Irfan Wahab Khan, Osman Maftun, Aamir Ibrahim, Ahmed Faisal, Zafar Usmani, Zahur Hussain, Rashid Khan, Abdul Aziz, Asif Rumi, Javed Ghafoor with the Subject: **FW: CEOs Meeting April 15, 2009** stating therein “Dear all Final agenda for today’s meeting of CEOs on April 15 is given below: -

1- PTA issues

- a. Issues w.r.t. cleaning of data / ownership of SIMs / multiple connections under single CNIC and forwarding cases of SOP violations to police & FIA.
- b. Changes in AJ&K numbering plan

2- COAP Status, Secretary General for COAP<sup>11</sup>

3- SIM Selling price Revision

4- USSD Based Balance Enquiry Charging

5- Call Set Up Charges, Implementation Based on Ring Back Tone.

6- Dinner with Chairman PTA – Date and Industry’s Recommendations

7- AOB

- b. Email received from Naveed Khalid Butt on 13<sup>th</sup> May 2009 addressed to Irfan Wahab Khan, Naveed Khalid Butt, Agha Qasim, [omer.haider@waridtel.com](mailto:omer.haider@waridtel.com), Irfan Khan, Zafar Usmani, Zahur Hussain, Rashid Khan, Abdul Aziz, Asif Rumi, Javed Ghafoor, John Eddy Abdullah, Qian Li, Mukhtar Ul Haq with the Subject: **Re: agenda points for next CEOs meeting at Ufone Office on 14<sup>th</sup> May’09 (THU), stating therein** “ Dear All ! Please find enclosed the agenda items for discussion in the CEOs meeting to be held tomorrow (14<sup>th</sup>

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<sup>11</sup> COAP :Cellular Operators Association of Pakistan



May'09/THU/) at 1500 hours in the Ufone Corporate Office (F-7) accordingly

- 1) PTA issues
  - a. SMS Anti Spam filters implementation
  - b. MVNO<sup>12</sup> framework
  - c. Consumer Protection Regulations
  - d. iDEN based digital PTT<sup>13</sup>/Consultation Paper
  - e. QoS<sup>14</sup> notices to the CMTOs<sup>15</sup>
  - f. Compensation for closed sites (National Security)
  - g. SMS interconnect/MTR<sup>16</sup> upward revision
  - h. Industry letter on revised SOP for activation of SIMs after verification
  - i. Final FAB<sup>17</sup> clearance issue
- 2) Min of IT & Telecom
  - a. 3G licensing
  - b. APC<sup>18</sup> for mobile
- 3) Points from Telenor
  - a. Update on diplomats Briefing on 3G and Taxation
  - b. Proposed Industry CEO meeting with Investment Minister
  - c. **Call Set Up charges/ Implementation based on RBT<sup>19</sup>**
- 4) **SIM selling price revision**
- 5) **USSD based balance enquiry charging implementation**
- 6) COAP status/Secretary General
  - a. Way forward plan / Industry legal forum on levy of exorbitant fees by TMAs/ Cantt Boards

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<sup>12</sup> MVNO: Mobile Virtual Network Operators

<sup>13</sup> PTT : Push –to-Talk

<sup>14</sup> QoS : Quality of Service

<sup>15</sup> CMTO: Cellular Mobile Telecom Operators

<sup>16</sup> MTR: Mobile Termination Rate

<sup>17</sup> FAB : Frequency Allocation Board

<sup>18</sup> APC : Access Promotion Contribution

<sup>19</sup> RBT : Ring Back Tone

- b. Industry letters to the Secretary Defense and COAs followed up b CEOs meeting
  - c. Legal case preparation
- 7) FBR / way forward plan w.r.t. budget proposals
- a. Proposed meeting with Secretary Finance & Advisor on Finance.”
- c. Email received from Naveed Khalid Butt, on 14<sup>th</sup> July 2009 addressed to Rashid Khan, Jon Eddy Abdullah, Irfan Wahab Khan, Omer Haider, Asif Rumi, Zahur Hussain, Qazi Muhammad Idris, Agha Qasim, Zafar Usmani, Qianli, Mukhtar ul Haq, Abdul Aziz, with the Subject: Agenda for CEOs meeting on 15<sup>th</sup> July 2009 stating therein “Dear All ! the agenda items for the CEOs meeting scheduled for tomorrow (15<sup>th</sup> July’09) at Ufone office would be as follows;
- 1) PTA / Min of IT
    - a. Enforcement Order to be challenged / SCN issue
    - b. Media awareness about Consumer Protection / Industry letters
    - c. Per activated SIMs from the market / response to PTA
    - d. Int’l roaming QoS / Joint response to PTA
    - e. Anti spam filters
    - f. Subscribers antecedents related SOP / Revision through min of IT
    - g. ACP for mobile/ Committee proceeding update
    - h. 3G
  - 2. CAP
    - a. Current status / Paperwork
    - b. Warid documentation
    - c. Secretary General Nomination
  - 3. Charging / Revenue enhancement
    - a. USSD based balance check
    - b. Missed call charges

4. Resource sharing

- a. Site sharing update / Telenor
- b. Bandwidth sharing proposal / Ufone

5. Miscellaneous

- a. Government's campaign against indecent / provocative SMSs under Cyber Crime Act and possible implication for CMTOs
  - b. SIM selling price
  - c. CDA policy (Draft)
  - d. GHQ meeting / levy of fees by Military authorities (Industry letters to COAS & Secretary Defense)
  - e. EPAs
  - f. Industry legal forum proceedings
  - g. Any other issues
- d. Email from Naveed Khalid Butt dated 17 August, 2009 addressed to Qazi Muhammad Idris, Agha Qasim, Omer Haider, Zafar Usmani, Aamir Ibrahim, Javed Ghafoor, Zahur Hussain, Asif Rumi, Hamid Bashir Alvi, Moqem ul Haq, with the subject : Agenda Points- CEOs Meeting 19<sup>th</sup> August '09, stating therein:-

*“Dear Qazi Sb.*

*Our submission in this regard is as follows:-*

- 1. One month advance notice issue raise by PTA for tariff changes/consumer protection regulations.*
- 2. Implementation of SMS Anti Spam Filters/Regulations have already been finalized by PTA!*
- 3. Update on the appeal filed in the High Court against PTA enforcement order w.r.t. SCN regarding verification*
- 4. Issue related to the finalization of CDA policy for BTS towers in ISB.*

5. *CEOs meeting with the Secretary Defence regarding changing of fees by Cantt Boards/ Military*
  6. *APC for mobile/ updates w.r.t. the committee formed by the Min of IT*
  7. *Industry letter on subscriber information required by FIA under PECO*
  8. *CAP related paperwork/finalization of Secretary General.”*
- e. Email received from Javed Ghafoor 11<sup>th</sup> September 2009 stating therein “I am floating a tentative agenda. I would appreciate if you could skim through the following and guide me with any suggestions for modification:
- CEO’s meeting with Secretary, Defence on charging for fees by Cantt boards/Military authorities*
  - *Update on reduction/sharing of sites by operators in CDA Islamabad.*
  - Implementation of 668/cleaning of data*
  - Implementation of Anti spam filters*
  - APC for mobiles. Updates on committee formed by Ministry of IT*
  - Update on Appeal filed in High Court against PTA’s enforcement order on alleged violations of SOP on subscribers activations/verification of antecedents*
  - CAP<sup>20</sup> related paer work/Warid’s Part pending. Finalization of its Secretary General.”*
- f. An e-mail from Qazi Muhammad Idris dated 14 September, 2009 addressed to Javed Ghafoor, Zafar Usmani, Abdul Aziz, Rashid Khan, Qian Li, Jon Eddy Abdullah, Agha Qasim, Naveed Khalid Butt, Aamir Ibrahim, Omer Haider, Ahmed Faisal with the subject: RE: CEOs’ meeting on 14 September- Final Agenda, stating therein “ *We propose a*

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<sup>20</sup> CAP & COAP : Cellular Operators Association of Pakistan

*discussion on the “Agenda items” itself by the CEOs. Agenda items for the CEOs meeting are recommended to be limited to 4-5 items promoting the business or effecting the same. Most of the other items can be discussed in the regulatory heads forum. These can be brought to the CEO forum if an explicit decision or guidance is required from the CEOs’ forum.”*

- g. Email from Naveed Khalid Butt, dated December 2,2009 addressed to Qazi Muhammad Idris, Agha Qasim, Omer Haider, Zafar Usmani, Zahur Hussain, Hamid Bashir Alvi, Asif Rumi, Javed Ghafoor, Aamir Ibrahim stating therein “ *As discussed yesterday, the CEOs meeting is long overdue now and couldn’t be held the last time due to security situation; however things have improved on that front now as well as a few issues need to be deliberated at the level for finagling the way forward w.r.t. industry stance on the same and therefore we perhaps need to convene a session f this forum at the earliest possible. Thing coming to my mind up for a discussion at he CEOs meeting are as follows;*

- 1- APC for mobile/ lobbying required at MoIT and PM Sectt/  
Cabinet Division level*
- 2- Freezing of MTR at current level*
- 3- SIM selling price revisions*
- 4- Annual microwave backhaul spectrum charges rationalizing  
/consultation by PTA!*

7.5 The agenda items listed in the above emails reveal that the CEOs and senior level employees of the five CMTOs regularly discussed sensitive issues that, as per established norms of competition law, are not to be discussed by competitors. These issues, as per the available evidence, include:

1. SIM Selling price Revision
2. USSD Based Balance Enquiry Charging
3. Call Set Up Charges, Implementation Based on Ring Back Tone.
4. SMS interconnect/MTR<sup>21</sup> upward revision
5. APC<sup>22</sup> for mobile
6. Missed call charges
7. Site sharing update / Telenor
8. Bandwidth sharing proposal / Ufone
9. *Implementation of 668/cleaning of data*
10. *Implementation of Anti spam filters*

7.6 Discussion on agenda items like SIM selling price revision, USSD based balance enquiry charging & Missed call charges clearly indicates that the CMTOs have been discussing their pricing strategies with their competitors. The question is whether this amounts to price-fixing or imposition of restrictive trading conditions with regard to provision of services? As per established norms of competition law, price-fixing does not always require a price to be *actually or precisely* fixed. Price fixing occurs even if competitors that are party to an agreement (as defined in section 2 (1) (b) of the Ordinance) can rely on each other to pursue a **collaborative strategy on pricing** in an atmosphere of mutual certainty. The emails referring to revision in SIM selling price point to an understanding and/or arrangement based on **collaborative strategy on pricing**. The emails above dated 13<sup>th</sup> May, 2009 and 14<sup>th</sup> July 2009 exchanged between the competitors create the necessary atmosphere of mutual certainty on economic aspects and show the existence of an understanding and/or arrangement to revise the prices of SIM and missed call alert charges. As per established norms of competition law even inchoate understandings and partial agreement also amount to an agreement to fix prices. Hence on the basis of emails reproduced above we conclude that CMTOs prima facie have engaged in and entered into an agreement to revise the selling

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<sup>21</sup> MTR: Mobile Termination Rate

<sup>22</sup> APC : Access Promotion Contribution

price of SIM cards and missed call charges. This amounts to a prime facie violation of section 4 (1) in terms of section 4 (2) (a) of the Ordinance.

7.7 There is subsequent evidence to show that the discussions on the agenda items were also implemented by the respective CMTOs like charge for USSD balance enquiry @ 10 paisas per balance enquiry. Furthermore, it has also been confirmed that mobile pre –paid SIM card of all the CMTOs is available in the market at a minimum price of Rs.150/-. Premium on this base price is charged for golden numbers and also for new or old codes like different price exists for 0300 & 0303 codes for Mobilink Jazz SIM.

7.8 MTR (Mobile Termination Rates) or interconnect charge is the fee that mobile network operators charge to connect (terminate) calls made from other fixed or mobile networks to its own network. Similarly Access Promotion Contributions (APC) is the payment made by LDI Licensees to LL Licensees or to the Universal Service Fund under the Access Promotion Rules, 2004.<sup>23</sup> APC also covers the incoming international calls terminating at local networks. Both MTR and APC are determined by PTA in consultation with the undertakings involved and other stakeholders. APC and upward revision/freezing of MTR are common issues for all members of the telecom industry and in the past PTA has discussed these issues with the industry members, however, both MTR and APC are direct components of cost, so discussion on these issues at the CEO’s Forum (meetings and proceedings of which are not publicly known or even known to the regulator, unlike the meetings of an association of undertakings) could lead to conspiring and agreeing on fixing the prices of services in a way favorable to the undertakings and against the interests of consumers.

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<sup>23</sup> **“Long Distance and International (LDI) Licensee”** means a person licensed under the PTA Act to establish, maintain and operate a public fixed switched network for the provision of nation-wide long distance and international telephony service ;

**“Local Loop (LL) Licensee”** means a person licensed under the Act to establish, maintain and operate a public fixed switched network for the provision of local exchange telecommunication service, and includes PTCL, National Telecommunication Corporation and any person licensed under the Act to provide Limited Mobility Communication Service.

## Charge for Balance Enquiry:-

7.9 The following e-mails specifically indicate that the CMTOs have discussed and entered into an agreement regarding the imposition of a charge for USSD balance enquiry services. Such an agreement *prima facie* amounts to fixing the purchase or selling price or imposition of restrictive trading conditions with regard to the provision of services, a violation of section 4 (1) in terms of section 4(2) (a) of the Ordinance.

7.10 A perusal of these emails (listed below) leads us to the conclusion that it appears that the agreement to fix a charge for balance enquiry services was entered into in a meeting of the CEOs Forum held on 15<sup>th</sup> June, 2009. Furthermore, subsequent to sharing of the Minutes of CEOs Forum meeting dated 15.06.2009, other emails reproduced below provide clarifications regarding the exact charge that was fixed on 15.06.2009. These emails while providing clarifications to the charge fixed on 15.06.2009 provide prima facie evidence of CMTOs having entered into an agreement to fix prices. It is important to appreciate that an ‘agreement’ was reached in terms of section 2 (1) (b) of the Ordinance and this includes any arrangement, understanding or practice whether or not it is in writing or intended to be legally enforceable. The CEOs of the CMTOs in their meeting dated 15.06.2009 entered into an agreement (by way of an arrangement and/or understanding) to fix a charge for balance enquiry services. There was a meeting of the minds to fix this charge as evidenced by emails subsequent to 15.06.2009 and this is a prima facie violation of section 4 (1) in terms of section 4 (2) (a) of the Ordinance. Evidence of this is reproduced below.

- a. Email received from Naveed Khalid Butt, on 16<sup>th</sup> July 2009 addressed to Mukhtar ul Haq, Abdul Aziz with the subject : Minutes of the CEOs meeting held on 15<sup>th</sup> June’09 stating therein “5 print outs of the enclosed MoM (in sealed envelopes) required please for sending to the CEOs accordingly.”



- b. Email received from Naveed Khalid Butt, on 17<sup>th</sup> July 2009 addressed to Qian Li, Jon Eddy, Rashid Khan, Tariq Gulzar, Abdul Aziz, Agha Qasim, Asif Rumi, Zafar Usmani, Irfan Khan with the Subject: Minutes of the CEOs meeting held on 15<sup>th</sup> June 2009/ is, Javed Ghafoor, Zahur Hussain stating “ *Dear All, a minor clarification w.r.t. the minutes of the said meeting issued yesterday : As per discussion held earlier in the CMO forum; the charges decided for USSD based balance charging was @ Rs. 0.10 and not Rs. 0.50 as quoted in the mins of the CEO meeting please.*”
- c. Email received from Naveed Khalid Butt, on 17<sup>th</sup> July 2009 addressed to Qazi Muhammad Idris, Javed Ghafoor, Zahur Hussain with Subject: Mins of the CEOs meeting held on 15<sup>th</sup> June 2009 stating “*Fyi pls*”
- d. Email received from Qazi Muhammad Idris on 23<sup>rd</sup> July 2009 addressed to Naveed Khalid Butt, Agha Qasim, [omer.haider@waridtel.com](mailto:omer.haider@waridtel.com), Irfan Wahab Khan, Zahur Hussain, Hamid Bashir Alvi, Rashid Khan, Qian Li, Asif Rumi/ Govt. Relations & Reg. Affairs/ Islamabad, Javed Ghafoor and Aamir Ibrahim with Subject: Minutes of the CEOs meeting held on 15<sup>th</sup> June 2009 stating “*In light with the agreement all the operators to charge for the balance Inquiry Service (Via USSD) for prepaid subscribers- it would be appropriate if all the operators can share the respective USSD strings on which the charges of Rs. 0.11 (including Tax) would be levied. For Telenor Pakistan this is \*444#, we would appreciate if this is done by all other operators as well do that there is transparent implementation across the industry.*”
- e. Email received from Naveed Khalid Butt, on 23<sup>rd</sup> July 2009 addressed to Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed

Ghafoor, Asif Rumi, Omer Haider, Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim with the Subject: Mins of the CEOs meeting held on 15<sup>th</sup> June 2009, stating *“In this case, it should be 12 paise (inclusive of tax) translating into 10 paise plus 19.5 % tax i.e. 11.95 paise to be precise please.”*

- f. Email received from Naveed Khalid Butt, on 23<sup>rd</sup> July 2009 addressed to Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider, Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim with Subject: Mins of the CEOs meeting held on 15<sup>th</sup> June 2009 , stating *“Having discussed this internally, we recommend 10 paise plus tax for the same please.”*
- g. Email received from Qazi Muhammad Idris, on 29<sup>th</sup> July 2009 addressed to, Naveed Khalid Butt, Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider , Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim with the Subject: Minutes of the CEOs meeting held on 15<sup>th</sup> June 2009/ USSD bal string charging stating that *“ We all need to agree on this figure and also share the strings for USSD implementation”*.
- h. Email received from Naveed Khalid Butt, on 29<sup>th</sup> July 2009 addressed to Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider , Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim with the Subject: Minutes of the CEOs meeting held on 15<sup>th</sup> June 2009/ USSD bal string charging stating that *“It was discussed in the last CEOs meeting that Ufone, Zong & Telenor would start the same w.e.f. 1<sup>st</sup> August 2009; while Mobilink will follow the suit by end Aug 2009 after getting over*

*with their technical issues w.r.t. charging the same and Warid will be also feedback with their date of implementation in this regard soon.”*

*“The price tag attached with the same has earlier been agreed in the CMOs forum and has further been deliberated to be finalized as 10 paisas plus tax (meaning by  $10+1.95=11.95$  or 12 paisa to be precise in total); please confirm about same today, so that the implementation plan be finalized according.”*

- i. Email received from Sajid Mahmood on 30<sup>th</sup> July 2009 addressed to Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider , Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain, Naveed Khalid Butt and Aamir Ibrahim with the Subject: Mins of the CEOs meeting held on 15<sup>th</sup> June 2009/ USSD bal string charging, stating that *“Confirmed”*.
  
- j. Email received from Naveed Khalid Butt, on 30<sup>th</sup> July 2009 addressed to Sajid Mehmood, Qazi Muhammad Idris, Agha Qasim, Javed Ghafoor, Asif Rumi, Omer Haider , Salman Malik, Irfan Wahab Khan, Zafar Usmani, Zahur Hussain and Aamir Ibrahim with the Subject: Mins of the CEOs meeting held on 15<sup>th</sup> June 2009/ USSD bal string charging, stating that *“The following three USSD codes are currently in place at Ufone which will be charged at 12 paisa w.e.f. 1<sup>st</sup> August, 2009”*

<i>USSD</i>
<i>*124# - main account balance inquiry</i>
<i>*706# - voice bucket balance inquiry</i>
<i>* 707# - BFFD bonus bucket balance inquiry</i>

- k. Email received from Naveed Khalid Butt, on 11<sup>th</sup> August 2009 addressed to Qazi Muhammad Idris, Jawad Paul, Zafar Usmani and Aamir Ibrahim, with the subject ;Meeting request with Chairman PTA after 3pm today Stating therein *“Ufone, Zong and Telenor to be represented by the undersigned, Zafar Usmani sb and Brig Idrees Qazi respectively would like to have a 10-15 minutes appointment any time after 3pm today (11<sup>th</sup> Aug’09/TUE) with the Chairman PTA to further discuss the issue of USSD balance string charging (detail enclosed) pleas. As directed by PTA, all three of us haven’t yet implemented the proposed charging of the USSD balance inquiry service w.e.f. 1<sup>st</sup> August 2009; however we would yet again like to reiterate that the said service had been offered by all of us on trial basis. This had neither been commercially launched nor was it ever advertised to our subscribers; moreover there were no charge associated with the same as well. This decision of implementing the charges of 10 paisa plus tax on our respective USSD based prepaid balance inquiry may therefore be viewed as the launch of a new commercial service by these operators and the issue related to 30 days advance in this regard may not be applied on the same.”*

7.11 It has to be kept in mind that the representatives of CMTOs denied the existence of such a forum, at least implicitly, or any collective decision making when they were invited to furnish comments in response to concerns raised by the Commission in relation to the same charge being levied for balance-enquiry services. All CMTOs implicitly maintained that the decision to charge 10 paisa for balance enquiry was an independent decision. Nothing on the record even remotely suggests that the CMTOs acknowledged the existence of CEOs Forum before the officers of the Commission. This lack of disclosure begs the question as to why this information was concealed from the Commission at the initial stage. However since the CEOs Forum also provided a platform for price-fixing, the CMTOs had a clear interest in concealing such decision. This does not

change the fact that when comments were initially sought from the CMTOs they deliberately furnished false and inaccurate information to the Commission. Even a cursory examination of the evidence reveals that the CMTOs and their CEOs knew or had to reason to believe that the information furnished to the Commission after receiving the initial letters of the Commission regarding fixing of a charge for balance inquiry was false and/or misleading. Such a practice prima facie violates the provisions of section 38 (1) (d) and (e) reproduced below:

38. **Penalty** – (1) *The Commission may by order direct any undertaking or any director, officer or employee of an undertaking to pay by way of penalty such sum as may be specified in the order, if after giving the undertaking concerned an opportunity of being heard, it determines that such undertaking- (d) has furnished any information or made any statement to the commission which such undertaking knows or has reason to believe to be false or found by the Commission to be inaccurate: or*

*(e) Knowingly abuses, interferes with, impedes, imperils, or obstructs the process of the Commission in any manner:*

*Provided that fair comments made in good faith and in the public interest on the working of the Commission or on any order of the Commission issued after the completion of any proceedings, shall not be subject to the imposition of a penalty.*

7.12 The above agreement of CMTOs for fixing the price of USSD balance enquiry @ 10 paisa per balance enquiry (exclusive of tax) is confirmed by its subsequent implementation.

7.13 Warid cannot absolve itself from such price fixing, as is evident from the contents of e-mail referred to in Para 6.10 (h) above, wherein it has been stated that **“Warid will also feedback with their date of implementation in this regard soon”**. Furthermore, when Commission’s Officer specifically requested Warid to furnish their comments on the issue, they failed to provide any comments.

7.14 Minutes of meeting held on August 19, 2009, stating therein “*Advertisement campaign to be launched by the operators for implementation of 668 regime to be kept restricted*”. Similarly in another e-mail dated 12-11-2009 from Mr. Amir Ibrahim, addressed to Mr. Naveed Khalid Butt, Qazi Muhammad Idris, Zahur Hussain, Omer Haider, Zafar Usmani, Hamid Bashir Alvi, Agha Qasim and Javed Ghafoor, stating therein “*we should also continue to push PTA not to advertise on main stream. Given what the country is going through (law and Order/terrorism); we don’t want to further upset our fellow countrymen about identity theft. Nor do we want a bigger scale back-lash against the industry. Perhaps we should discuss this on the meeting with the Chairman on the 16<sup>th</sup>*”. Although 668 was a service that was launched on the instructions of the regulator i.e. PTA and the terms and conditions thereof were also specified by PTA, however the e-mail correspondence reveals that the members of the industry never wanted to implement this service, primarily perhaps in fear of “a bigger scale back-lash against the industry”. This service was however, launched by PTA in the interest of general public. The CMTOs stood to make revenue from this, however it appears that the fear of a purported backlash (regarding identity theft) against the industry dictated their actions rather than respect for the free choice of the subscriber. Such collective decision/agreement amongst CMTOs amounts to limiting investment with regard to provision of services and appears to be a prima facie violation of Section 4(2) (d) of the Ordinance.

## **8. CONCLUSION & RECOMMENDATIONS:-**

8.1 Interestingly all the CMTOs gave rather similar reasons for imposition of a charge for balance enquiries; due to excessive use of this free service there was increased load on system which was impairing the quality of service, so in order to discourage customers, they introduced this charge. It however, appears very odd that while all these CMTOs have different system capacities, different number of subscribers, different market shares and tariff structures and USSD balance enquiry service charge was offered to the customers by each of these CMTOs simultaneously or around the same time. Load on the system is built up gradually

and is not a one day phenomenon. Logically the decision to introduce charge on balance enquiry, if the companies were operating competitively, should have been arrived at independently.

8.2 While the price setting pattern of CMTOs in respect of call rates and SMS rates may *prima facie* indicate competition so much so that a price move of one paisa appears significant and CMTOs appear to compete on it. The imposition of identical charge of 10 paisas per balance enquiry by these CMTOs remained unexplained, as companies otherwise behaving competitively decided not to compete on this service. All the concerned CMTOs in their replies and during their meetings with the officers of the Commission failed to provide any sound reason for choosing a 10 paisa charge for providing balance enquiry services. The figures provided by concerned CMTOs indicate that a huge number of subscribers were using USSD balance enquiry service. Introduction of a charge of 10 paisas per balance enquiry drastically reduced the number of balance enquires. Furthermore, since the charge for providing balance enquiry services was fixed by agreement among the CMTOs, importantly it foreclosed the options for users to switch over to another network or operator. In terms of the effect on the consumer, this act of the CMTOs extinguished even the possibility that the service could be offered to the subscribers by their own service provider at a price lower than the others.

8.3 The CMTOs argued that this charge of ten paisas has a very nominal impact on the revenues of the company. However, they failed to report the cost savings attached with this service and the resultant benefit of using the free space available on the system for other profit generating services. In our view the real benefit is not only the revenue generated by income of 10 paisas per balance inquiry, but it should also incorporate the savings in cost and the resultant benefit stemming from the utilization of the system for other profit generating services like SMS, MMS and IVR. CMTOs have mentioned that huge number of hits for the balance enquiry services were clogging the system so much so that on few occasions the number of balance enquiries was four times the number of SMSs. Hence *Prima facie* it

appears that the intention behind unanimously agreeing to the imposition of this charge was not to earn revenue from the service of USSD based balance enquiry, but more importantly was to make the free space available for revenue generating services.

8.4 It may be relevant to add that Mobilink in its reply said that **“other operators” have also been reviewing their free balance inquiry.** The fact that Mobilink alluded to its knowledge regarding future conduct of its competitors is not any conclusive proof of a violation of the Ordinance although it raises concerns about the market information mechanism and the nature of the information that has ostensibly been shared. Furthermore, it also stated that the intense competition is becoming counter productive and revenues are not justifying further investment for the up gradation of the services.

8.5 CMTOs in their replies also mentioned the role of PTA and stated that the charge for balance enquiry was a basket service charge and they took due clearance from PTA, however, it is pertinent to note that PTA has no role in deciding the amount of such charge especially for Non SMP operators, they only have to inform PTA while changing tariffs for basket services, as per Pakistan Telecom Rules, 2000.

8.6 On the basis of above analysis it appears that the CMTOs have prima facie reached an understanding on important economic aspects of their businesses pertaining *inter alia* to: costs of providing services, pricing for services, revenues enhancement, resources sharing, limitations on investment with respect to advertisements, APC and MTR for CMTOs etc and appear to have colluded and conspired on these aspects of business. In almost all the meetings of CEOs Forum, the agenda of discussion has gone beyond the mandate that could be granted to a trade/industry association or an industry representative forum to discuss common industry specific issues.

8.7 The typical features of network markets require the operators in the network industries to cooperate in certain areas, as discussed above, especially the area of interconnection and call terminations. PTA has issued Interconnection Guidelines and Access Promotion Rules to regulate MTR and APC. However, nothing in the



- telecom sector related Acts, Rules and Regulations requires, allows or justifies the collusion amongst the companies in violation of the competition laws.
- 8.8 As per established norms of competition law inchoate understandings and partial agreement also amount to an agreement to fix prices. Hence on the basis of emails reproduced above the CMTOs entered into an agreement to revise the selling price of SIM cards and missed call charges which prima facie amounts to violation of section 4 (1) in terms of section 4 (2) (a) of the Ordinance.
- 8.9 The CEOs of the CMTOs in their meeting dated 15.06.2009 entered into an agreement (by way of an arrangement and/or understanding) to fix a charge for balance enquiry services. There was a meeting of the minds of wills to fix this charge and this is a prima facie violation of section 4 (1) in terms of section 4 (2) (a) of the Ordinance.
- 8.10 Even a cursory examination of the evidence reveals that the CMTOs knew or had the reason to believe that the information furnished to the Commission after receiving the initial letters of the Commission regarding fixing of a charge for balance inquiry was false and/or misleading. In light of the collusive conduct detailed in this Report, the CMTOs had ample knowledge about their anti-competitive conduct at the time of their communications with the Commission. Such a practice *prima facie* violates the provisions of section 38 (1) (d) and (e).
- 8.11 The 668 service was launched by PTA in the interest of general public and collective decision/ agreement of CMTOs to restrict advertisement of this service deprived a large number of consumers/customers from availing this service. Such collective decision/agreement amongst CMTOs amounts to limiting investment with regard to provision of services and appears to be a prima facie violation of Section 4 (1) in terms of section 4(2) (d) of the Ordinance.
- 8.12 Currently there are about 94.3 Million subscribers of mobile telecommunication services and a small price movement by these CMTOs has a direct impact on the customers of their services. CMTOs although prima facie appear to compete on

core services like call rates and SMS rates etc, but they have colluded to fix prices of services like balance enquiry, missed call charges, selling price of SIM etc. These services have huge demand, as indicated by the replies of CMTOs, where it has been disclosed that the number of SMSs for balance enquiry was nearly four times the number of other SMSs by pre paid customers. It appears that by fixing the prices of these services telecom operators not only have adversely affected the interest of customers, but have also prevented, reduced and restricted competition in the relevant market. In view of the above, the undersigned conclude and recommend to the Commission that it would be in the public interest to initiate proceedings in this matter.

8.13 It is, therefore, recommended that Show-Cause Notices may be issued to undertakings i.e. Telenor, Warid, Mobilink, Zong and Ufone for *prima facie* violations of Section 4(1) in terms of section 4(2) (a) and Section 4(2) (d) of the Ordinance.

8.14 Keeping in view that the understanding regarding, inter alia, price fixing seems to have emerged from the CEOs Forum and that CEOs can be deemed to have knowledge of the statements made before the officers of the Commission in the preliminary probe, it is therefore recommended that Show-Cause Notices may also be issued to the CEOs of the undertakings in their individual capacity for *prima facie* violation of Section 38(1) (d) & (e) and also for *prima facie* violations of section 4 (1) (a) in terms of section 4(2) (a) and Section 4(2) (d) of the Ordinance.

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