BEFORE THE
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

FIRST PHASE REVIEW

SUBSCRIPTION OF ORDINARY SHARES IN M/S EDOTCO PAKISTAN PRIVATE LIMITED BY M/S DAWOOD HERCULES CORPORATION LIMITED

CASE: 916/Merger-CCP/17

Commission	Ms. Vadiyya S. Khalil **Chairperson**	
	Mr. Ikram Ul Haque Qureshi **Member**	

ORDER

I Background

1. On 29th September 2017, M/s Dawood Hercules Corporation Limited ("**DH Corp**" or the "**Acquirer**") and M/s. edotco Pakistan (Pvt.) Ltd ("**EPPL**" or "**Target**") jointly submitted a pre-merger application (the "**Application**") to the Competition Commission of Pakistan (the "**Commission**") for the intended subscription of 45% shareholding in EPPL by DH Corp. The Application was submitted along with the necessary information and applicable processing fee in accordance with the provisions of the Competition Act, 2010 (the "**Act**") and the Competition (Merger Control) Regulations, 2016 (the "**Merger Regulations**"). The Commission's review of the proposed transaction is as under:

II Acquirer

2. DH Corp was incorporated in Pakistan on April 17, 1968 as a public limited company under the Companies Act 1913 (now Companies Ordinance, 1984) and its shares are quoted on Pakistan Stock Exchange Limited. The principal activity of DH Corp is to manage investments in its subsidiaries and associated companies. The registered office of the company is situated at Dawood Centre, M.T Khan road, Karachi, Pakistan.

3. It is an investment holding company with associated business interests, which range from fertilizer and energy to food, chemicals, manufacturing and storage, information technology and financial services. DH Corp is the holding company of Engro Corporation Limited. It owns shares of Engro Corporation Limited and stake in Hub Power Company Limited.

4. As per the audited consolidated financial statements for the financial year ended December 31st 2016, DH Corp generated revenue was PKR , whereas its assets stood at PKR for the same period.

III Target

5. EPPL, is a private limited company incorporated in Pakistan in October, 2013, under the Companies Ordinance, 1984. Its registered office is located in Islamabad, Pakistan. It is engaged in the business of constructing, acquiring, establishing, developing, maintaining and managing telecom infrastructure.

6. The Target is an operator in the Relevant Market providing integrated telecommunication infrastructure services, including providing end-to-end solutions in the tower services sector from tower leasing, co-locations, build-to-suit, energy, transmission and operations and maintenance.

7. EPPL's ultimate parent, i.e., Axiata Group Berhad, provides various telecommunications products and services in Asia. It is one of the leading telecommunications groups in Asia with approximately subscribers in ten countries.

SEAL OF THE COMPETITION COMMISSION OF PAKISTAN * ISLAMABAD *

8. EPPL's revenue generated for the Financial year ended June 30th 2016 was nil, whereas its assets stood at PKR , for the same period. On the other hand, Axiata Group Berhad achieved operating revenue of RM billion (approximately PKR as of 27th July 2017) in the financial year ended 31st December 2016, while its assets stood at RM (approximately PKR as of 27th July 2017) for the same period.

IV Transaction

9. In the proposed transaction, pursuant to the terms of the Share Subscription Agreement ("**SSA**"), DH Corp intends to subscribe to ordinary shares of PKR each in the issued share capital of EPPL at a subscription price of PKR /-. As a result of this proposed subscription, DH Corp will become the holder of ~~45%~~ shareholding of the total issued capital in EPPL.

10. DH Corp will fund the proposed transaction through own resources and partly through the issuance of Islamic Sukuks of up to PKR . The financing will be of long-term tenure of 5 years. It will be secured against the shares of Engro Corporation Limited and carry markup at a rate of KIBOR plus 100 BPS. The Acquirer, however has the option of prepayment and can pay the entire amount upfront by giving one month's notice to the lender.

11. The transaction meets the notification thresholds as prescribed in Regulation 4(2)(a), (b), (c) & (d) of the Merger Regulations, with the combined assets of the parties being more than PKR 1 Billion and combined turnover being more than PKR 1 Billion. The transaction value is above PKR 100 million combined with the percentage of shares to be acquired exceeding 10% of the total shareholding in the Target.

V Relevant Market:

12. The relevant product market in this case is defined as "**Construction and Management of Communication towers infrastructure and related services whether operated by tower sharing companies or mobile network service operators or other entities**".

13. The Relevant Geographic market is "**Pakistan**" since towers and telecom infrastructure may be installed across the country, where the conditions of competition are sufficiently homogenous.

VI Competition Assessment

14. The Phase I competition assessment of the intended acquisition have resulted in the following findings:

i. The proposed transaction would result in acquisition of ~~45%~~ shares in the Target by the Acquirer via subscription.

ii. In the relevant product market, defined as "**Construction and Management of Communication towers infrastructure and related services whether operated by tower sharing companies or mobile network service operators or other entities**", where only the Target is active in "**Pakistan**".

iii. In the relevant product market, EPPL only owns towers and via TTPL, being a subsidiary of the Target, owns a small share of the market comprising of up to share. These market figures are based on ownership of towers where TTPL owns towers/sites as compared to a total of around towers/sites in the geographic region.

iv. It is pertinent to mention here that prior to this proposed transaction, neither the Acquirer nor any of its subsidiaries or associated companies are involved in any activity in any market which is upstream or downstream of the relevant market in which the Target is engaged in.

v. TTPL has recently sought clearance from the Commission for the acquisition of M/s Deodar Private Limited ("**DPL**") through the merger clearance application filed on September 14th 2017. In that transaction, TPPL has acquired ordinary shares which have resulted in equity stake in DPL via subscription pursuant to a Share Subscription Agreement. DPL owns /sites share) in the relevant market. This transaction was approved by the Commission via its Order dated October 27th 2017.

vi. Post- transaction the consolidated market share of the merged entities will remain unchanged.

vii. The applicant has already applied to seek exemption for a Non-Compete restrictive clause as set out in the deed of covenant. This order is conditional to the approval of the said covenant.

viii. Potential entry barriers for players can be considered as obtaining license from PTA and other relevant government institutions in addition to extensive capital injection for setting up of communication tower infrastructure.

ix. The proposed transaction relates to an acquisition and is not likely to result in the creation or strengthening of a dominant position in the relevant market. The intended merger does not meet the presumption of dominance as determined under Section (2) (1) (e) read with Section 3 of the Act.

VII Conclusion

15. In conclusion, there is no evidence that suggests a substantial lessening of competition by the creation or strengthening of a dominant position in the relevant market. The proposed transaction is hereby authorized under Section 31(1) (d) (i) of the Act.

16. It is so ordered.

(Vadiyya S. Khalil) **Chairperson**	(Ikram Ul Haque Qureshi) **Member**

Islamabad the November 9th, **2017**