



**BEFORE THE
COMPETITION COMMISSION OF PAKISTAN**

**IN THE MATTER OF
ACQUISITION OF WIND TELECOM S.p.A (FORMERLY WEATHER
INVESTMENTS Sarl) BY VIMPELCOM LTD.**

(File No.373/Merger/CCP/2011)

Date of hearing: 11th March 2011

Present: Dr. Joseph Wilson, Member

Present for
VimpleCom: Mr. AsimNasim, Advocate
Mr. Mir Nasar Ahmad, Advocate
Orr, Dignam & Co.

Present for PMCL : Mr. Khalid S. Ibrahim, Advocate, of Chima & Ibrahim
Mr. Agha M. Qasim, VP Corporate Affairs, PMCL
Mr. NiazBrohi, Director (Legal), PMCL

Present for Wind
Telecom: Mr. Romano Righetti, Deputy COO, Wind Telecom

ORDER

1. VimpelCom Ltd. (“VimpelCom”), through its legal advisors, Orr, Dignam & Company, submitted a pre-merger application pursuant to section 11 of the Competition Act 2010 (hereinafter the “Act”), dated 28 January 2011 regarding the proposed acquisition of Wind Telecom S.p.A. (formerly Weather Investments S.p.A.), an Italian private company (“Wind Telecom”). The target Wind Telecom indirectly holds approx. 51.7% shares in Orascom Telecom Holdings, S.A.E (OTH), an Egyptian company, which has a 100% owned subsidiary in Pakistan, Pakistan Mobile Communications Limited (PMCL) and various other subsidiaries operating in telecommunications and related sectors in Pakistan.
2. The transaction involves an amalgamation of two leading international telecommunication groups, Vimpelcom and Wind Telecom which shall create the world’s sixth largest mobile telecommunication carrier measured by the number of subscribers. The acquisition of Wind Telecom by Vimplecom will result in indirect change of control of OTH, and its subsidiaries in Pakistan; the fact that Telenor (Norway) will have 31.7% equity shares and 25% voting shares in Vimplecom after the transaction gets consummated, raise competition concerns for the Competition Commission of Pakistan, which opened the Phase-II review of the transactions and granted its approval subject to conditions documented below in this Order.

A. UNDERTAKINGS

i. VimpelCom Ltd.

3. VimpelCom Ltd. (“VimpelCom”), a Bermudan company listed on the New York Stock Exchange, was established in 2010 as a result of a merger between Vimpel-Communications (OJSC VimpelCom) and Kyivstar GSM JSC (Kyivstar). VimpelCom comprises telecommunication operators providing voice and data services through a range of wireless, fixed and broadband technologies. VimpelCom is headquartered in

Amsterdam and has operations in Russia, Ukraine, Kazakhstan, Uzbekistan, Tajikistan, Georgia, Armenia, Kyrgyzstan, Vietnam, and Cambodia.

ii. Wind Telecom S.p.A. (formerly Weather Investments Sarl)

4. Wind Telecom is an Italian private company, and is the holding company for OrascomTelecom Holding SAE, Egypt (“OTH”) and Wind Telecomunicazioni, Italy. Wind Telecom holds 51.7% shares of OTH, which has telecom operations in Africa and Asia including Pakistan and Wind Italy provides telecommunication services in Italy. In 2009 Wind Telecom’s total worldwide turnover was EUR 10.336 billion; whereas in Pakistan its turnover was PKR87.439 billion (EUR 723.41 million¹).

iii. Orascom Telecom Holdings

5. Orascom Telecom Holding SAE (OTH) is an Egyptian company listed on the Egyptian Stock Exchange which through subsidiaries owns 100% shares in Pakistan Mobile Communications Limited (PMCL) and controls other OTH Subsidiaries in Pakistan. It is a leading telecommunication company operating network in ten key markets in Middle East and Asia with a total subscriber base of almost 89 million. OTH has GSM operations in Pakistan, Algeria, Egypt, Bangladesh, Zimbabwe, Burundi, Namibia, North Korea and Canada and also has an internet portal.

iv. Pakistan Mobile Communications Ltd.

6. Pakistan Mobile Communications Limited (“PMCL”), a 100% owned subsidiary of OTH Egypt, is a public unlisted company incorporated in Pakistan under the Companies Ordinance, 1984 (while its shares are not listed, its TFCs are listed on the Islamabad and Karachi Stock Exchanges), and is engaged in the provision of mobile telecommunication services in Pakistan. PMCL provides mobile telecommunication services in Pakistan and Azad Jammu & Kashmir and Gilgit Baltistan and has a market share of 32.5% on the basis of subscriber-base and 36% market share on the basis of revenues. It is currently Pakistan’s largest mobile telecom operator.

¹ Converted on the exchange rate as of 31 December 2009.

v. Telenor Pakistan (Private) Ltd.

7. Telenor Pakistan (Private) Ltd. (“Telenor Pakistan”), is a private company incorporated in Pakistan in April 2004 under the Companies Ordinance, 1984. Telenor Pakistan is a wholly owned subsidiary of Telenor BV, Netherlands, which is a wholly owned subsidiary of Telenor ASA, Norway. It is engaged in providing cellular mobile services in Pakistan, and has a market share of 24% on the basis of subscriber-base and 25% market share on the basis of revenues. It is currently Pakistan’s second largest mobile telecom operator.

B. TRANSACTION

8. The transaction involves proposed acquisition of the entire share capital of Wind Telecom by VimpelCom. Once transaction is consummated, VimpelCom will have sole control of Wind Telecom, and will through Wind Telecom and its subsidiaries, have approximately 51.7% share in and control of OTH. The pre and post-transaction shareholding of VimpleCom is presented below:

a) Pre-acquisition shareholding of VimpleCom

	Economic Ownership	Voting Ownership
Altimo	39.2%	44.7%
Telenor	39.6%	36.0%
Free Float	20.4%	18.6%
Minority*	0.8%	0.7%

* Held by a subsidiary of VimpleCom pursuant to a share option plan.

b) Post-acquisition shareholding of VimpleCom will be:

	Economic Ownership	Voting Ownership
Telenor	31.70%	25.00%
Altimo	31.40%	31.00%
Weather II Shareholders	20.00%	30.60%
Free Float	16.90%	13.40%

- c) The Supervisory Board of VimpelCom post-transaction shall consists of nine board members, which will be designated in the following manner

Altimo	3
Telenor	3
Independent Directors	3
Total	9

C. COMPETITION ASSESSMENT

9. Section 11, sub-section 1 of the Act lays down the substantive test for reviewing a merger, that is, whether a merger “substantially lessens competition by creating or strengthening a dominant position in the relevant market.” Section 2(e) of the Act defines dominant position as:

“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.

A dominant position can be enjoyed by one undertaking or several undertakings. The words “several undertakings” refers to a situation where two or more undertakings jointly or collectively hold a dominant position. For “[t]here is nothing in principle to prevent independent economic entities from being, on a specific market, united by such economic links that by virtue of that fact together they hold a dominant position vis-à-vis the other operators on the same market.”²

10. The transaction has a potential to impact competition in the relevant product market comprising the provision of mobile telecommunication services in Pakistan. The acquisition of Wind Telecom by VimpelCom will result in indirect change of control of OTH, and therefore that of PMCL. Telenor (Norway), which is the indirect holding

² See *SIV and others v. Commission*, [1992] ECR II-1403 (para. 358).

company of Telenor Pakistan, will have 31.7% equity shares and 25% voting shares in VimpleCom once the transaction is closed, raise competition concerns, more specifically the possibility of having coordinated effects on the relevant market, since both Telenor Pakistan and PMCL are direct competitors. The number of competitors and their respective market share in the provision of mobile telecommunications services is given in the table below.

S.No.	Mobile Telecom Operators	Subscribers	Market Share
1	Mobilink	32,202,548	32.50
2	Ufone	19,549,100	19.70
3	Zong	6,704,288	06.80
4	Telenor	23,798,221	23.90
5	Warid	16,931,687	17.10
Total		99,185,844	100.00

11. The relevant market in the instant case is an oligopolistic market, wherein the potential for coordinated effects (also referred to as “joint dominance” or “collective dominance” or “tacit collusion”) are high, as the competitors are able to coordinate their commercial conduct (eg., prices, output, innovation etc.).³ The presence of Telenor (Norway) in the board of VimpelCom raises the potential for coordination (tacit collusion) between PMCL and Telenor Pakistan.
12. Regulation 6 of the Competition (Merger Control) Regulations, 2007 (the “CMCR”) lays down the factors which the Commission may consider when determining substantial lessening of competition. One such factor which the Commission should take into account is “the level and degree of concentration, and history of collusion, in the market.”⁴ While the market is perceived to exhibit dynamic characteristics including growth, innovation, and product differentiation, and there is no conclusive determination of collusion among market players in the relevant market, there is, however, a concluded

³ See, Nicolas Petit, Remedies for Coordinated Effects under the EU Merger Regulation, Competition Law International, Vol 6, at page 29, September (2010).

⁴ Reg. 6(2) C, the Competition (Merger Control) Regulations, 2007, S.R.O. 1188(I)/2007, The Gazette of Pakistan, December 8, 2007, at p. 1148(07).

inquiry report of the Commission suggesting *prima facie* understanding among market players “on important economic aspects of their businesses.”⁵

13. The Commission, thus, initiated Phase-II inquiry and held a hearing with the parties on 11th March 2011, wherein the Bench raised concerns regarding potential impact on competition in the relevant market through coordinated effects and/or strengthening or creating of a (joint) dominant position.

D. Remedies/Conditions

14. The legal counsel of parties, having understood the concerns of the Commission, proposed and committed to implement, and the Bench agreed to grant its No Objection based on the following commitments given by parties to alleviate competition concerns:

- i. PMCL would, as appropriate under Pakistani law, pass resolutions at the board and/or amend its constitutional documents (*i.e.*, Articles of Association) with respect to criteria for being nominated and serving as a director. Criteria would be framed for PMCL based on general conflict-avoidance principles, and would have the effect that employees, directors or other representatives of the Telenor group, would not be eligible to serve on the board of directors or equivalent governing body of PMCL or any of its subsidiaries currently operating in Pakistan, so long as Telenor operates a subsidiary that is in competition with Orascom Telecom and/or PMCL in Pakistan.
- ii. Management of VimpelCom, OTH and PMCL (and other relevant subsidiaries in Pakistan) are expressly prohibited by board resolutions, through proper procedures, or in any other manner from sharing commercially sensitive information relating to the businesses of VimpelCom and its subsidiaries in Pakistan with Telenor or representatives of the Telenor group and from entering into any arrangement with Telenor Pakistan to procure goods and services, other than arrangements of the kind presently in place, except (A) on an arms-length basis, or (B) to the extent generally or specifically permitted by the Pakistan

⁵ Para 8.6, page 40, Cartelization in Cellular Mobile Telecommunication Services Market, available at http://cc.gov.pk/images/Downloads/telecom-latest_enqreport-04_02_2010.pdf.

Telecommunication Authority (for example, infrastructure sharing) or the Competition Commission of Pakistan.

iii. Each of VimpelCom and OTH would put in place corporate resolutions prohibiting any person serving on its board of directors or equivalent body who is affiliated with Telenor (*i.e.*, an officer, director or other employee of the Telenor group) from participating in discussions or decisions that relate to PMCL or other operations of VimpelCom or OTH in Pakistan.

iv. VimpelCom Management would notify the Commission as and when they undertake any changes to the above policies in a way that would affect the operations of VimpelCom and its subsidiaries (or Telenor and its subsidiaries) in Pakistan.

15. Without prejudice to subsection 14 of Section 11, or any other provision under the Act or the CMCR thereunder, the Commission reserves the right to assess the effects of the transaction on the relevant market after one year from the date of the closing of the transaction under subsection 13 of section 11 of the Act. The applicant shall file a compliance report within three months from the date of closing of the transaction.

16. The Bench has also noted that the Pakistan Telecommunication Authority (PTA) has given its No Objection to the transaction, and also wishes to place on record its appreciation for the cooperation extended by PTA to the Commission in reviewing this transaction.

17. The No Objection to the transaction is hereby granted.

(DR. JOSEPH WILSON)
Member

ISLAMABAD, THE 17TH OF MARCH, 2011.