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**NATIONAL NEWS**

# CCP annuls ICH agreement

**RECORDER REPORT**

ISLAMABAD: The Competition Commission of Pakistan (CCP) on Tuesday annulled the International Clearing House (ICH) Agreement entered into among all (14) LDI operators and has imposed a huge penalty of 7.5 percent of annual turnover of each LDI for violation of Sec 4 of the Competition Act, 2010.

Sources told Business Recorder here on Tuesday that a Bench of the Competition Commission of Pakistan (CCP) comprising Chairperson Ms. Rahat Kaunain Hassan, Member Dr. Joseph Wilson and Member Shehzad Ansar in the order passed on April 30 has annulled the ICH Agreement entered into among all the LDI operators and imposed a penalty of 7.5 percent of annual turnover of each LDI for violation of Sec 4 of the Competition Act.

The penalty runs into billions of rupees as only the penalty of Rs 8.309 billion, Rs 534 million and Rs 189 million has been imposed on PTCL, WorldCall and Telecard respectively, as per CCP order.

The Bench referred to the data furnished by PTA which shows that the volume of incoming calls as on September 2012 before the ICH Agreement was 1.9 Billion minutes, which decreased to 579 million minutes in Feb-13 after the establishment of ICH.

It has been observed by the Bench, referring to PTA's data, that the estimated revenue of LDI Operators for the month of September 2012 before the ICH arrangement were US\$ 8.37 million, which post ICH, has increased to US\$ 59 million in the month of October 2012 and currently stands as US\$ 34 Million in the month of February 2013. Despite reduction in the incoming traffic by 70 per-

cent after the establishment of ICH, the revenue of LDI's increased by 308 percent in Post ICH period. The main reason behind increase in Revenue of LDI's is that ASR now has been taken as to 8.8 cents/minutes from rates around 2 cents/minute pre ICH. The order states that the monthly APC received/ receivable by the PTA, has decreased from \$ 24.33 million to \$ 16.78 million in the month of February 2013 (Decrease of 31 percent).

The Bench held that the facts and figures available highlight the pernicious nature of the ICH arrangement, its harmful effects on the telecom sector, consumers and the economy in general which must be condemned and cannot be condoned at any cost.

The order states that the ICH Arrangement reduces choice, forecloses the market, removes incentive for better quality of service, removes incentives for investments in improvement of infrastructure, reduces the size of the market and market players, confers anti-competitive advantages and becomes a clear threat to consumer welfare in total negation of spirit of Telecom De-regulation Policy, 2003 apart from the provisions of the Competition Act. In fact, ICH Agreement squanders any gains that we have made in the telecom sector till now - gains that have accrued precisely because of a focus on competition.

LDI Operators have been directed to cease and desist from carrying such prohibited practices and not to enter into any other agreement of similar nature having object or effect of restricting competition and PTA has been advised to ensure restoration of competition amongst the LDI Operators as it existed prior to implementation of the ICH Agreement.

For failure to comply with the earlier order

passed by the Commission requiring the LDI operators to seek clearance if at any point of time they intend to enter into ICH arrangement, a penalty of Rs 1,000,000 (one million) has been imposed on all the LDI Operators. The order also provide that for any loss resulting from illegal gains received by LDI Operations under the ICH Agreement, the aggrieved parties can claim compensation from the LDI Operators before the court of competent jurisdiction in pursuance of this Order.

According to the order of CCP, the LDI operators by entering into the ICH Agreement have colluded to fix prices of international incoming telephony, close down competing networks and divide revenues among themselves without any competition. This behaviour amounts to hard core cartelization which is strictly prohibited under Section 4 of the Act and is the most pernicious anti-competitive activity possible. Through this cartelization, the LDI operators have not only eliminated competition in the market for international incoming telephony but have also made it impossible for new entrants to enter the market and pose any competitive pressure.

During the proceedings the LDI operators pleaded before CCP that they entered into the ICH Agreement on the directives of the Ministry of Information Technology (MOIT) and PTA. However, in view of the settled principle of law that a policy directive cannot override or prevail expressed provisions of the statute passed by the legislature, the Bench held that no protection or immunity can be sought from the application of the Competition Act by the undertakings under the umbrella of such a policy directive, the CCP order added.

# Phone operators fined Rs8 billion

## ICH agreement voided by CCP bench

**Jawwad Rizvi**

LAHORE: Competition Commission of Pakistan (CCP) has annulled the International Clearing House (ICH) Agreement entered into among all the 14 LDI operators and has imposed a penalty of 7.5% of annual turnover of each LDI for violation of 4 of the Competition Act, 2010 (the 'Act').

The Commission has also imposed Rs8.309 billion, 534 million and 189 million penalties on LDI operators respectively.

A Bench of the CCP comprising Chairperson Ms. Rahat Kainain Hassan, Member Dr Joseph Wilson and Member Shehzad Ansar in the order passed on 30-04-13 has annulled the ICH Agreement entered into among all (14) the LDI operators and has imposed a penalty of 7.5% of annual turn over of each LDI for violation of 4 of the Competition Act, 2010 (the 'Act').

The Bench referred to the data furnished by PTA, which shows that the volume of incoming calls as on September 2012 before the ICH Agreement was 1.9 billion minutes, which decreased to 579 million minutes in Feb-13 after the establishment of ICH.

It has been observed by the Bench, referring to PTA's data, that the estimated revenue of LDI Operators for the month of September 2012 before the ICH arrangement were \$8.37 million, which post ICH, has increased to \$59 million in the month of October 2012 and currently stands as \$34 million in the month of February 2013. Despite reduction in the incoming traffic by 70% after the establishment of ICH, the revenue of LDI's increased by 308% in Post ICH period. The main reason behind increase in revenue of LDI's is that ASR now has been taken as to 8.8 cents/minutes from rates around 2 cents/minute pre ICH. The order states that the monthly APC received/receivable by the PTA, has decreased from \$24.33 million to \$16.78

million in the month of February 2013 (Decrease of 31%).

The Bench held that the facts and figures available highlight the pernicious nature of the ICH arrangement, its harmful effects on the telecom sector, consumers and the economy in general which must be condemned and cannot be condoned at any cost.

The order states that the ICH Arrangement reduces choice, forecloses the market, removes incentive for better quality of service, removes incentives for investments in improvement of infrastructure, reduces the size of the market and market players, confers anti-competitive advantages and becomes a clear threat to consumer welfare in total negation of spirit of Telecom De-regulation Policy, 2003 apart from the provisions of the Competition Act. In fact, ICH Agreement squanders any gains that we have made in the telecom sector till now — gains that have accrued precisely because of a focus on competition.

The LDI Operators have been directed to cease and desist from carrying such prohibited practices and not to enter into any other agreement of similar nature having object or effect of restricting competition and PTA has been advised to ensure restoration of competition amongst the LDI Operators as it existed prior to implementation of the ICH Agreement.

For failure to comply with the earlier order passed by the Commission requiring the LDI operators to seek clearance if at any point of time they intend to enter into ICH arrangement, a penalty of PKR 1,000,000 (one million) has been imposed on all the LDI Operators. The order also provides that for any loss resulting from illegal gains received by LDI Operations under the ICH Agreement, the aggrieved parties can claim compensation from the LDI Operators before the Court of competent jurisdiction in pursuance of this Order.

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فون آپریٹرز پر 9 ارب روپے سے زائد کا جرمانہ

لاہور (جوادر ضوی) مسابقتی کمیشن پاکستان نے 14  
اپریل ڈی ڈی آئی آپریٹرز کے ساتھ انٹرنیشنل کلیئرنگ ہاؤس  
معاہدہ منسوخ کر دیا اور کمپنیشن ایکٹ 2010ء کی سق 4  
باقی صفحہ 6 نمبر 8

8

فون آپریٹرز

بقیہ

کی خلاف ورزی پر تمام 14 آپریٹرز پر ان کے سالانہ ٹرن  
اور کا ساڑھے سات فیصد فی کس جرمانہ عائد کر دیا۔  
مسابقتی کمیشن کی چیئر پرسن راحت کونین حسن، ارکان ڈاکٹر  
جوزف ولسن اور شہزاد انصار پر مشتمل بنچ نے تین کمپنیوں پر  
بالترتیب 8.309 ارب روپے، 534 ملین اور 189  
ملین روپے پناہی بھی عائد کر دی۔ فیصلے میں کہا گیا ہے کہ  
اپریل ڈی ڈی آئی آپریٹرز نے آئی سی ایچ معاہدہ کے نتیجے میں  
ساز باز کر کے انٹرنیشنل ان کمنگ فون کی قیمت فکس کر لی  
اور مسابقتی نیٹ ورک بند کر کے حاصل ریونیو کو باہم تقسیم  
کر لیا، اس طرح کارٹل بنا کر ان آپریٹرز نے نہ صرف  
مقابلے کا ماحول ختم کر دیا بلکہ اس کاروبار میں نئے آنے  
والوں کا داخلہ بھی ناممکن بنا دیا۔ دوران سماعت اپریل ڈی  
آئی آپریٹرز کا موقف تھا کہ انہوں نے یہ معاہدہ وزارت  
انفارمیشن ٹیکنالوجی اور پی ٹی اے کی ہدایت پر کیا تھا، تاہم  
کمیشن نے ان کا موقف تسلیم نہیں کیا، بنچ نے پی ٹی اے  
کے جمع کردہ ڈیٹا کا حوالہ دیا جس سے ظاہر ہوتا ہے کہ آئی  
سی ایچ معاہدے سے قبل ستمبر 2012 تک ان کمنگ کارٹل  
کی مقدار 1.9 ارب منٹس تھی جو اس معاہدے کے بعد  
فروری 2013 تک کم ہو کر 579 ملین منٹس رہ گئے۔