Public Version

# BEFORE THE
# COMPETITION COMMISSION OF PAKISTAN

## IN THE MATTER OF PHASE II REVIEW OF AMALGAMATION OF PAKISTAN MOBILE COMMUNICATIONS LIMITED AND WARID TELECOM (PRIVATE) LIMITED

## CASE: 773 /MERGER-CCP/15

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| **Dates of Hearing:** | 12 February 2016<br>09 March 2016 |
| **Commission:** | Ms.Vadiyya Khalil<br>**Chairperson** |
| | Mr. Shahzad Ansar<br>**Member** |
| | Mr. Ikram Ul Haque Qureshi<br>**Member** |

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**On behalf of**

| | |
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| **Warid Telecom (Private) Limited** | Ms. Rahat Kaunain Hassan, Legal Counsel<br>Mr. Munir Farooqi, CEO<br>Mr. Adeel Bajwa, Chairman Board, Executive Committee |
| **Warid Telecom Pakistan LLC** | Mr. Muhammad Irshad, Head of Legal & Company Secretary<br>Mr. Hussain Tahir Zaidi, Legal Counsel |
| **Pakistan Mobile Communications Limited** | Mr. Khalid Ibrahim, Legal Counsel<br>Mr. Jeffery Hedberg, CEO<br>Mr. Aamir Ibrahim, Deputy CEO<br>Mr. A Hussain Suliman, CSO<br>Mr. Atif Raza, Director Strategy<br>Mr. Niaz Brohi, Chief Legal Officer & Company Secretary |
| **Telenor Pakistan (Private) Limited** | Mr. Aslam Hayat, Manager Regulatory Affairs<br>Mr. Yusuf Zaman, Company Secretary<br>Mr. Abdul Mobeen, Director (Regulatory) |
| **Telenor ASA** | Mr. Ali Sibtain Fazli, Legal Counsel |
| **VimpelCom Limited** | Mr. Hugo Lindsay, Group Director (Policy)<br>Ms. Sheryl Yuan, Deputy General Counsel (M&A)<br>Mr. David Dobbie, Deputy General Manager<br>Mr. Sam Szlezinger Partner, DLA PIPER |
| **Pakistan Telecommunication Authority** | Dr. Muhammad Saleem, Director General (CA)<br>Mr. Rizwan Ahmed, Director General (Licensing)<br>Mr. Khurram Siddqui, Director (Law)<br>Mr. Amjad Mustafa Malik, Director (W)<br>Dr. Shahbaz Nasir, Deputy Director |

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# ORDER

1. The Competition Commission of Pakistan (the "**Commission**") is mandated under the Competition Act 2010[1] (the "**Act**") and the Rules and Regulations made thereunder, to ensure free competition in all spheres of commercial and economic activity to enhance economic efficiency and protect consumers from, *inter alia,* anti-competitive behaviour, abuse of dominance, deceptive marketing practices and mergers which substantially lessen competition by creating or strengthening a dominant position in the relevant market.

2. An order concluding the phase I review was passed by the Commission on 22 January 2016 ("**Phase I Order**"), thereby initiating phase II review in the instant matter ("**Phase II Review**").

3. This order concludes the Phase II Review of the merger application in the matter of the proposed acquisition of Warid Telecom Private Limited by, and amalgamation into, Pakistan Mobile Communications Limited (the "**Order**"). The Order has been passed after giving opportunities of hearing to the undertakings concerned, and hearing other relevant stakeholders, including the sector regulator i.e. Pakistan Telecommunication Authority (the "**PTA**").

4. The Commission appreciates the team representing the matter on behalf of Warid, led by the senior counsel Ms. Rahat Kaunain Hassan and on behalf of Mobilink, by the senior counsel Mr. Khalid Ibrahim, and Mr. A Hussain Suliman, CSO, who explained and argued the Transaction ably and provided thorough assistance to the Commission in the matter.

## I. BACKGROUND

5. On 17 December 2015, the Commission received a pre-merger application (the "**Application**") jointly submitted by (i) International Wireless Communications Pakistan ("**IWPCL**"), (ii) Pakistan Mobile Communications Limited ("**Mobilink**"), (iii) Warid Telecom Pakistan LLC ("**WTPL**"), and (iv) Bank Alfalah Limited ("**Bank Alfalah**") (collectively referred to as the "**Notifying Parties**"), notifying and seeking approval of the Commission to acquire [100]% shares of Warid Telecom (Private) Limited ("**Warid**") by Mobilink, (collectively, "**MergeCo**") by way of share swap agreement. The Application has been submitted in accordance with Section 11 of the Act, and the Competition (Merger Control) Regulations, 2007 (the "**Merger Regulations**").

6. The Notifying Parties were invited to give a presentation explaining the transaction to the Commission on 31 December, 2015. On the basis of the information before it, the Commission carried out a preliminary assessment, and issued the Phase I Order, wherein it

[1] Act No. XIX of 2010

was determined that the proposed transaction is likely to raised significant competition concerns which required a more detailed assessment during the Phase II Review.

7. In light of their connection to the matter, Telenor Pakistan Private Limited ("**Telenor Pakistan**") and Telenor ASA, Norway ("**Telenor ASA**") were made necessary parties to the proceedings. An application requesting their participation in the review proceedings was also received from these parties on 22 January, 2016.

8. The Commission convened two hearings in the matter on 12 February, 2016 and 09 March, 2016. The hearings were attended by the representatives of the Notifying Parties, MergeCo, Telenor Pakistan and the sector regulator, PTA.

## II. MERGING PARTIES

### *The Acquirer*

9. Mobilink is a public (unquoted) limited company incorporated under the laws of Pakistan. It is a Mobile Network Operator (MNO), principally engaged in providing cellular telecommunication services in Pakistan, Azad Jammu and Kashmir (AJK) and Gilgit Baltistan (GB). It is licensed by the PTA to provide both Global System for Mobile communications (GSM) and Next Generation Mobile Services (NGMS) in Pakistan, GSM and Voice Class Value Added Services (CVAS) in AJK and Northern Areas.

10. [99.22]% of the shares of Mobilink are held by IWCPL, a company incorporated in Malta. The remaining [0.58]% of Mobilink's shares are held by Telecom Group Mobile Limited ("**TGML**"), a wholly owned subsidiary of IWCPL. IWCPL is a direct wholly-owned subsidiary of Global Telecom Holding S.A.E ("**GTH**"), which is a company incorporated in Egypt. GTH is in turn a subsidiary of VimpelCom Limited ("**VimpelCom**"), a company incorporated in Bermuda and headquartered in Amsterdam, the Netherlands.

11. Mobilink's direct and indirect subsidiaries include: (i) Business & Communication Systems Private Limited ("**BCSPL**" direct); (ii) LinkDotNet Pakistan (Private) Limited ("**LinkDotNet**", indirect); and (iii) LinkDotNet Telecom Limited ("**LinkDotNet Telecom**", direct) (collectively, Mobilink's subsidiaries).

12. Other associated undertakings are (i) Mobilink Foundation, a not-for-profit entity incorporated as a company limited by guarantee under section 42 of the Companies Ordinance 1984; (ii) Pakistan MNP Database (Guarantee) Limited, a company limited by guarantee; and (iii) Waseela Microfinance Bank Limited ("**Waseela**"), a company owned and controlled by GTH. The company is licensed to provide microfinance banking services in Pakistan.

13. The value of Mobilink's total assets as on 31 December, 2014 was PKR [ ] billion, while its turnover was PRK [ ] billion for the same period.

### *The Target*

14. Warid is a private limited company incorporated under the laws of Pakistan. Warid is also an MNO, principally engaged in providing GSM and Long-Term Evolution (LTE) based cellular telecommunication services in Pakistan. It was originally licenced by the PTA to provide GSM services in Pakistan, AJK and GB, before an amendment in its license was approved to allow it to provide LTE services.

15. Warid does not have any subsidiaries in the relevant or related markets. WTPL however has associated companies in related markets, which are discussed in Section VI of this order.

16. [91.24]% of Warid's shares are held by WTPL, while [8] % are held by Bank Alfalah. Collectively, Warid's shareholders form part of the Abu Dhabi Group ("**ADG**"), which is a private equity company headquartered in Abu Dhabi, United Arab Emirates.

17. The value of Warid's total assets as on 30th June, 2014 was PKR [ ] billion, while its turnover was PKR [ ] billion for the same period.

### *The Acquisition*

18. In terms of the Acquisition Agreement signed on 26 November, 2015, VimpelCom and ADG agreed to merge Mobilink and Warid into a single entity. The transaction is envisaged to be implemented in two steps (the "**Transaction**"), which are:

**Step 1:** the acquisition of 100% of the shares of Warid by Mobilink, whereupon Warid shall become a wholly-owned subsidiary of Mobilink. In consideration, the present shareholders of Warid i.e. WTPL and Bank Alfalah shall be entitled to up to [15]% of the shares of Mobilink.

**Step 2**: the legal merger of Warid with Mobilink in terms of Sections 284 and 287 of the Companies Ordinance 1984, to be effected through the High Court.

## III. PHASE-II REVIEW PROCEDURE

19. During the Phase II Review, the Commission took the following main steps:

   i. reviewing the submissions of the Notifying Parties, sending several requests for information to them, reviewing responses, conducting meetings, among other things;

   ii. sending several requests for information to other market participants such as Telenor Pakistan, Pak Telecom Mobile Limited (Ufone), China Mobile Pakistan Limited (Zong) and sector regulator, i.e. the PTA and Frequency Allocation Board (FAB);

iii. reviewing submissions from other market participants and regulatory bodies and conducting meetings and telephone questionnaires;

iv. reviewing internal documents of the merging parties and market participants; and

v. conducting a comparison of the merging parties' financial statements, subscriber-bases, revenues, technological leads, to evaluate the effects of the proposed merger.

## IV. MOBILE TELECOMMUNICATION INDUSTRY OF PAKISTAN

20. The telecommunications sector in Pakistan is regulated by PTA. PTA regularly publishes key data reports on the telecommunications market, including mobile telecommunications. Such reports include data for that quarter, which is compared to the previous year's corresponding quarter. Upon the Commission's request, the PTA has provided the latest mobile telecommunications data reports available with it ("**PTA Data**").

21. PTA Data has been reproduced in various sections of this Order, which reflects the evolution of the Pakistan mobile telecommunications industry and market shares of the Mobile Network Operators (the "**MNOs**"), calculated on an annual basis from 2010 onwards and on monthly basis for the year 2014-15. In addition, during the Commission's meetings with the PTA's technical body, the PTA has shared its observations on the proposed merger, which are set out in the proceeding paragraphs as deemed relevant.

### MNOs in Pakistan

22. There are currently five (5) MNOs i.e. Mobilink, Telenor, Ufone, Zong and Warid, providing services using GSM, UMTS and LTE technologies in Pakistan.[3]

23. Pakcom Limited ("Instaphone") was founded in 1991 and was the pioneer in the cellular mobile industry in Pakistan. However, the company's license was cancelled by PTA in January 2008 for unpaid license fees and it is no longer in operation.

24. As the first GSM-cellular operator in Pakistan, Mobilink began providing services in 1994. It has a subscriber-base of more than [36.97] million, as of January 2016. Subsequently, Ufone began providing GSM-cellular services in 2001. It has a subscriber-base of more than [20.26] million, as of January 2016. Telenor Pakistan and Warid began providing GSM services in 2004. They have subscriber-bases of [35.39] million and [10.79] million respectively, as of January 2016. After rebranding, Zong began operating as a GSM-cellular operator in 2008. It has a subscriber-base of more than [24.61] million, as of January 2016 in Pakistan.[4]

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[3] Source: PTA Website, http://www.pta.gov.pk/index.php?option=com_content&view=article&id=265:cellular-mobile&catid=125:licensing&Itemid=135

[4] Source: PTA Website, http://www.pta.gov.pk/index.php?option=com_content&task=view&id=269&Itemid=658

25. The merging parties, i.e. Mobilink and Warid are, respectively, the first and fifth largest MNOs in Pakistan.

**Structure of a Mobile Network**

26. Two essential inputs are required to operate as an MNO: a mobile network and authorization to use spectrum band(s) for mobile telecommunications.

27. Spectrum is the property of the Government of Pakistan. PTA is the repository to allocate spectrum to use specific frequency bands for wireless, fixed and mobile telecommunication services in Pakistan. Such licenses are primarily awarded by means of spectrum auctions and licences for a certain period of time.

28. A mobile network is composed of a number of mobile sites, essentially a mast with an antenna and a radio-frequency system, linked to a core network by backhaul connections ("**Sites**"). Each Site covers a limited area and has a maximum capacity. Accordingly, the capacity of a mobile network depends on the number of antennas on such Sites and the range of frequencies that an MNO has the right to use in accordance with its license. Depending on the frequency band and its propagation properties, several thousand Sites are required in order to cover a certain area and provide coverage to the population.

## V. RELEVANT MARKET

**Relevant Product Market**

***The Notifying Parties' Submission***

29. According to the Notifying Parties, the relevant product market affected by the proposed merger is that of "retail mobile telecommunication services". This market corresponds to the product market definition used by various competition agencies, *inter alia*, the Directorate General for Competition of the European Commission ("**EC**").

***The Commission's Assessment***

30. According to Section 2(1)(k) of the Act, "relevant market" means the market which shall be determined by the Commission with reference to a product market and a geographic market. In the context of the assessment of a merger, the basic purpose of market definition is to identify in a systematic way the immediate and prospective competitive constraints that would be faced by the merging parties and others in the relevant market.

31. In the Phase I Order, the Commission had defined the relevant market to be that of 'retail mobile telecommunication services' in Pakistan. While giving this definition, the Commission had also indicated that it would examine the effect of this transaction on the various segments of this relevant market.

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32. In mobile telecommunication, it is useful for the purposes of competition analysis to distinguish between retail/downstream markets where MNOs sell services/products to end-customers, and wholesale/upstream markets where MNOs sell inputs to other MNOs or Mobile Virtual Network Operators (**MVNOs**) and associated industry players, which then use such inputs to deliver services/products to end-customers.

33. This distinction is important to analyse horizontal and vertical effects involving a proposed merger.[6] The following sections explain that the product market for mobile telecommunications services comprises of various segments.

*Pre-paid v. Post-paid*

34. The market analysis of the mobile telecommunications industry in Pakistan suggests that MNOs and end-consumers differentiate between pre-paid and post-paid services. Selection between the two is generally based on consumers' needs, financial viability and MNOs' offerings, among other things.

i. **Pre-paid:** Also known as the "pay-as-you-go" plans, these offer end-customers the possibility of having control over cost. That is, to purchase credit in advance without any contract. Pre-paid offers generally integrate three sub-products: mobile phone (whether or not offered by MNOs), the SIM cards and initial credit for minutes. Pre-paid plans are also offered separately as voice, SMS and internet/data or in bundled packages of voice, SMS and internet/data. As a matter of fact, all MNOs offer both unbundled and bundled packages of voice (both on-net and off-net), SMS and internet/data packages. Hence, pre-paid plans are more attractive to the majority of end-customers in Pakistan.

ii. **Post-paid:** In contrast, customers of post-paid plans (also known as "bill-pay services") generally subscribe to them because they offer several distinct tariffs/subsidies and advantages over pre-paid plans. The fee that MNOs charge for post-paid plans is generally billed on a monthly basis and at a relatively lower price rate per minutes than for pre-paid plans.

35. While pre-paid plans offered in unbundled and bundled packages may also constitute separate segments for end-users, the Commission does not deem it necessary to further segment the relevant market for the purposes of this assessment.

*Dynamics of Voice (including Voice/Data) & Mobile Broadband (Data-only) services*

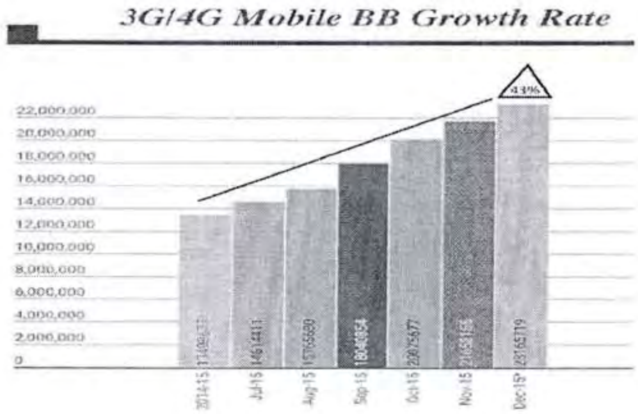
36. End-consumers use mobile services for multiple reasons and on a variety of devices. These include feature phones, smartphones, tablets and laptops, among other things. Even with the evolution and exponential growth of mobile broadband (whether provided via 3G or 4G/LTE or LTE), some customers use their mobile phones exclusively for voice, while an increasing majority is using them to send and receive SMS and MMS, and to stream and

[6] OECD, Defining the Relevant Market in Telecommunications, 2014

upload/download data. Thus majority of smartphone users purchase both voice and data in bundled and unbundled forms. By contrast, customers with tablets and notepads or laptops purchase data-only services to access the internet.

37. The industry dynamics of Pakistan suggest that data services (both data used by mobile phone users and mobile broadband subscribers) are growing exponentially. An increasing number of people are starting to use mobile data for work, entertainment, and social networking. Some MNOs, including Warid and Zong, have already introduced mobile broadband (data-only SIM cards) services for mobile devices.

38. Data volumes consumed over the past year in Pakistan are reflected below:




*Source: PTA Website*

39. The PTA's Annual Report for **2015 ("PTA Annual Report")** also expressed the same view, stating that the

*'Broadband sector is experiencing a true revolution since the introduction of mobile broadband. Broadband penetration rose to 8.97% at the end of FY 2014-15 as compared to just 2.07% in the previous year. Subscriber base took a huge jump of 345% to reach 16.89 million at the end of FY2015[...]Mobile broadband has complete dominance on the broadband technology share as almost 80% subscribers are using 3G and 4G LTE services to access the internet. Mobile broadband will be clearly the main driving force behind broadband statistics as the data consumed over mobile broadband networks in June, 2015 (9,860 TBs1) was six times more than the data usage over cellular networks in June, 2014.*[7]

40. Industry trends in global mobile telecommunications markets clearly point towards consolidation and a growing reliance on data-based services. Most MNOs have rolled out or are planning to roll-out LTE networks. A majority of MNOs are beginning to shift to

[7] http://www.pta.gov.pk/annual-reports/ptaannrep2014-15.pdf

Voice over LTE (VoLTE) to carry voice services over LTE and Voice over IP (VoIP), an IP based core. In emerging markets, leapfrogging legacy technologies has also been encouraged to increase mobile broadband penetration more quickly to be able to bridge the digital divide.

41. As with the pre-paid *v.* post-paid segments, the Commission notes that while MNOs can easily switch their offerings from voice to data/internet for providing mobile telecommunication services and vice-versa, consumers distinguish greatly between voice and data/internet services. The two segments are clearly distinguishable by virtue of their pricing, characteristics and intended use.

42. Although, the relevant market in question is that of the retail mobile telecommunication services in Pakistan, an analysis of competition in different segments is important to assess the competitive dynamics in the relevant market. The competitive dynamics differ between and among retail mobile telecommunication services/products segments.

43. This is also evidenced by the fact that MNOs themselves analyse the relevant market at segment-levels and adopt different marketing strategies for each segment. The Commission's analysis therefore adopts the same approach while analysing the impact of the proposed merger. As a matter of fact, competition concerns in specific segment are indicative of existence of competitive constraints on the overall market.

**Relevant Geographic Market**

44. According to the Notifying Parties, all MNOs and the relevant product markets are national in scope. The PTA grants licenses for the territory of Pakistan (including AJK and GB). MNOs offer their products and services on a national level. As indicated in the Phase I Order, the Commission agrees with this position to conclude that the relevant geographic market corresponds to the territory of Pakistan.

## VI. RELATED MARKETS

**Wholesale market for Mobile Call Termination ("MCT")**

***The Notifying Party's Submission***

45. According to the Notifying Parties, "*call termination is the service provided by one network operator to another network operator (i.e. a whole sale service), whereby a call originating in the former operator's network is made to a user in the latter operator's network*". It allows users of different networks to communicate with one another and is a wholesale service provided by all networks operators to other operators on the basis of interconnection agreement and are regulated by the PTA.

46. It is widely acknowledged that there is no substitute for call termination for local, long distance and/or international calls on each individual network since the operator

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transmitting the outgoing call can reach the intended recipient only through operator of the network to which the recipient is connected. Therefore, it is submitted that each individual mobile network constitutes a separate market for call termination service. Consistent with international best practices, each operator has 100% market share in respect of its individual network for call termination".

47. The Notifying Parties further submit that "*the PTA has also noted in its Determination on Relevant Market and SMP that each operator has 100% market share in respect of its individual network for call termination. That the market for interconnect is not mentioned in its consultation paper for determining relevant markets issues in March 2014 suggests that the PTA does not consider this would have an appreciable impact on competition*".

48. In regard to relevant geographic market, the Notifying Parties submit that "*the mobile telecommunication call termination market consists of the whole of Pakistan as the licenses held by operators are limited by geographical (i.e. national) regulatory barriers and mobile telecommunication operators in Pakistan are licensed to provide termination services across the whole territory. Since each of [Mobilink] and Warid provide call termination services in its respective network there is no overlap and the Wholesale Market for mobile call termination is not a reportable market*".

***The Commission's Assessment***

49. The Commission agrees with the Notifying Parties' view that MCT is a wholesale service market on a single mobile network which constitutes a separate relevant product market, with each operator holding 100% market share. From supply-side perspective, MNOs face virtually no competitive constraints in the wholesale MCT market, whether it is fixed-to-mobile or mobile-to-mobile call. From demand-side perspective, end-consumers are impassive as to call termination charges when they choose a network.[8]

50. The Commission therefore notes that MCT services on national networks are provided on the basis of interconnection agreements both on fixed and mobile networks. The interconnect charges on the national level are regulated by PTA. There are no significant horizontal overlaps between the activities of MNOs on this market.[9] The Commission concludes that the market definition proposed by the Parties is appropriate in this case. In addition, the Commission concludes that relevant geographic market is national in scope.

**Markets with Concurrent Presence**

51. Apart from operations in the relevant market, both the merging parties have subsidiaries and associated companies which are present in various other sectors including the telecommunications industry. The Notifying Parties have submitted that since the subsidiaries and associated companies do not form part of the merger, they will continue to operate independently and competitively.

[8] OECD, Defining the Relevant Market in Telecommunications, 2014

[9] Case No COMP/M.4947-Vodafone/Tele2 Italy/Tele2 Spain, paragraph 13

52. To assess the validity of this statement, a brief review of the markets in which Mobilink and Warid are both currently present through subsidiaries and associated companies has been undertaken and is summarized below.

53. Mobilink's Subsidiaries and Associated Companies: These are discussed briefly as follows:

i. BCSPL is a wholly owned subsidiary of Mobilink. It is a private limited company engaged in the provision of human resource services to Mobilink.

ii. LinkDotNet is an indirect wholly owned subsidiary of Mobilink. It is registered as a private limited company, and is engaged in the provision of broadband and value added services in Pakistan. Its license to provide telecommunication services is in the process of renewal.

iii. LinkDotNet Telecom is a direct subsidiary of Mobilink. It is registered as a public unlisted company, and is engaged in the provision of long distance and international telephony, local loop, broadband and value added services.

iv. Waseela is direct subsidiary of GTH, Mobilink's parent concern and is thus its sister company. It is engaged in the provision of microfinance banking services. Mobilink's Mobicash provides mobile banking in partnership with Waseela.

54. **Warid's Associated Companies**: Warid itself does not have any subsidiaries. The sister concern of its parent, WTLP is Warid Telecom International LLC which is present in the telecom sector in Pakistan through its subsidiary Wateen Telecom Limited ("Wateen"). Wateen is registered as a private limited company and is engaged in the provision of various telecommunication and data services including long distance and international fixed line telecommunication and the provision of telecom infrastructure services. Wateen's subsidiaries and associated companies ("**Wateen Group**") are also engaged in the provision of services in the field of information and technology. These are as follows:

i. Wateen Solutions Private Limited is a direct and wholly owned subsidiary of Wateen and is registered as a private limited company. It is a systems integrator and is engaged in technical solutions in carrier and enterprise landscapes.

ii. Wateen Satellite Services Limited is a direct and wholly owned subsidiary of Wateen and is registered as a private limited company. It is currently dormant.

55. ADG is also present in Pakistan through a total of twenty other associated companies. These are discussed below as relevant.

The table below provides an overview of the markets in which all of MergeCo's associated concerns operate concurrently:

**Table 1**: *Related Markets*

| | **Markets** | **Mobilink** *through* | **Warid** *through* |
|---|---|---|---|
| 1. | LDI Fixed Line Telecommunication | LinkDotNet Telecom | Wateen |
| 2. | Retail Broadband | LinkDotNet Telecom | Wateen |
| 3. | Wireless Local Loop | LinkDotNet Telecom | Wateen |
| 4. | Wholesale Domestic Leased Lines | LinkDotNet Telecom | Wateen |
| 5. | Mobile Financial Services | Waseela | -Bank Alfalah<br>-INOV8 Limited<br>-Monet Private Limited |

56. In light of the proposed transaction, the presence of the ADG shareholding in Mobilink creates competition concerns with respect to all the markets in which LinkDotNet and Wateen and its associated companies operate concurrently. The shareholding association created from the proposed merger creates risks of coordinated behaviour.

57. The Commission remains cognizant of the fact that the markets shares of both parties (to the extent that they are ascertainable and available) in the markets delineated above indicate that the two are not strong market forces, and the competition risks associated therewith and therefore correspondingly small. It must be remembered however that a structural link between these companies has now been created for as long as ADG holds shares in Mobilink.

58. A brief overview of the related markets in question is provided below:

**i. <u>Long Distance And International (LDI) Fixed Line Telecommunication Market</u>**

59. According to PTA, LDI service consists of the provision of end to end communication between points that are located in different regions, not in the same Local Calling Area, or located more than 25 km apart and located in Pakistan with other end located outside Pakistan. A total of 14 LDI licensees are operational in Pakistan.

60. As per the last the PTA determination on Relevant Markets and Significant Market Power (SMP) Operators in Pakistan, Azad Jammu and Kashmir (AJK) and Gilgit Baltistan (GB), given *vide* Determination No.15-46/10(CA)/PTA dated 15 July 2010 ("**PTA Markets and SMP Determination**"), only outgoing domestic and international traffic is included, whereas international incoming traffic excluded from the definition of the product market for this segment. The geographic market consists of the whole of Pakistan, including AJK and GB.

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61. While international incoming minutes have registered a significant annual increase of 18.6%, with a total volume of 7,359 million minutes during FY 2014-15 following the re-introduction of competition in LDI segment, international outgoing traffic minutes have dropped by 3.7% to 2,155 million minutes during the FY 2014-15[10]. This decrease is attributable largely to the rising trend in using Over-the-top (OTT) services for international calls.

62. At the same time, foreign direct investment in this market has increased to US$ 12.2 million in FY 2014-15 as compared to US$ 1.8 million in the previous year, clearly illustrating the growth potential in the segment.

63. Mobilink and Warid are both present in this segment through their subsidiary and associated companies i.e. LinkDotNet and Wateen respectively. The declared SMP as per the PTA Markets and SMP Determination remains Pakistan Telecommunication Company Limited (PTCL) in Pakistan and Special Communications Organization (SCO) in AJK. It is pertinent to mention that while market shares for this segment are not readily available at this point in time, the sector's promising growth potential requires that the competition remain vibrant.

### ii. Retail Broadband

64. Under the current PTA definition available, a distinction has not been made between fixed and mobile broadband. The services are however clearly not substitutable, on both the demand and supply side. Mobile broadband forms part of the relevant product market and has been discussed above.

65. Fixed broadband subscriptions refers to provision of high-speed access to Internet through various fixed-line technologies such as cable modem, DSL, fiber-to-the-home/building, , satellite broadband and terrestrial fixed wireless broadband.[11]

66. According to the PTA's Annual Report, PTCL still holds 80% of the market. LinkDotNet holds a negligible share while Wateen holds 7.2% of the market.

67. In spite of the competition facing this segment through the emergence of mobile broadband in Pakistan, the international trend towards convergences , as also foreseen in the Telecom Policy, 2015 (the "**Telecom Policy**") suggests that the segment may experience rapid growth through synergistic projects with the mobile sector. The Telecom Policy also envisages incentives for growth in the broadband segment.

68. [Mobilink itself has submitted
].

[10] PTA Annual Report 2015

[11] http://data.worldbank.org/indicator/IT.NET.BBND.P2

69. Robust competition in this segment should therefore be ensured, and dealings between Wateen Group and Mobilink must be fair and non-discriminatory and on arm's length basis.

### iii. Wireless Local Loop

70. Local Loop services can be either fixed or wireless and its scope includes construction of local network facilities in the licensed region and to provide basic public telephone access and other telecommunications services to end users in that particular region. This includes both fixed line local loop (FLL) and wireless local loop (WLL). Since the Merging Parties are not present in the FLL segment, only WLL figures are cited.

71. LinkDotNet is licensed to provide WLL services in 12 regions in Pakistan, but has a negligible presence in terms of market share. Wateen however holds 12% of the market, and is thus fifth largest market player out of a total of ten.

72. According to PTA, during the FY2014-2015, the segment witnessed a substitution effect and WLL teledensity fell from 1.4% to 0.4%. Investment in this market has also been decreasing over the last five years.

### iv. Wholesale Domestic Leased Lines

73. Leased lines connect telecommunication network elements between geographically distant locations on a semi-permanent basis and are used as a private resource for transmission capacity for cellular and fixed line telephony, data communication or Internet service applications. Uses include provision of leased line services to other service providers & corporate customers include interconnecting offices, mobile switches and all telecom switching & distribution equipment all over Pakistan.

74. The PTA has segmented this market into domestic and international leased lines, but does not sub-divide further on the basis of types of networks. While market shares for this segment are not available, LinkDotNet and Wateen Group are both present in this segment. PTCL remains the largest provider in this segment.

75. As a wholesale upstream market and a necessary input for certain telecommunication services, domestic leased lines remain an important segment, competition in which should be fostered to create a more competitive regime.

### v. Mobile Financial Services

*The Notifying Parties' Submission*

76. The Notifying Parties have submitted that Pakistan has a bank led model for Mobile Banking Services ("**MFS**") and as such the State Bank of Pakistan ("**SBP**") regulates this

sector. Mobilink through "mobicash" offers MFS under an agent/master relationship with Waseela. Thus the proposed merger does not create any competition concerns in the MFS market.

***The Commission's Assessment***

77. The Commission notes that in accordance with SBP Regulations[12] "*branchless banking can also be done using agents other than telecom operators (like Fuel distribution companies, Pakistan Post, chain stores etc.) and using technologies not limited to mobile phones (like GPRS, POS terminals etc.)*". However, SBP does not grant mobile network operators or any other non-banking entity the privilege of account management and funds' safekeeping, among other things. Licensed commercial banks or microfinance institutions can alone provide "branchless banking" services to customers.

78. Waseela is the subsidiary of Global Telecom Holding S.A.E (GTH), which is parent company of Mobilink. Through Waseela, Mobilink is active in providing MFS specifically through its retail mobile telecommunication services on smartphone devices and application. The Notifying Parties provide examples of its services such as bank deposits, money transfer, bill payment, internet bill payments, mobile accounts, mobile top-ups, e-commerce and corporate solutions and donations.

79. In this regard, the Notifying Parties have put on record an "*Approval of Home Remittance*" issued to Waseela by SPB

80. Currently, there are a number of players engaged in MFS, namely, easypaisa through Telenor Pakistan and Tameer Bank ("**easypaisa**"), Omni through UBL ("**Omni**"), Timepey through Zong ("**Timepey**"), mobilepaisa through Warid and Bank Alfalah (**mobilepaisa**), Upaisa through Ufone and Ubank (**Upaisa**), HBL express through HBL ("**HBL Express**") and MCB mobile through Muslim Commercial Bank ("**MCB Mobile**").

81. As MFS constitutes a separate relevant product market segment for the provision of mobile banking ("**M-banking**"), the services offered are further sub-segmented into: (i) Over-the-Counter (OTC) Services involving fund transfers through CNIC, bulk payments, utility bill payments; and (ii) M-Wallet transactions involving fund transfers, bulk payments, cash deposit & withdrawals, utility bank payments. According to SBP's Branchless Banking Newsletter Issue 15,[13] MFS are growing exponentially both by value and volume. As of December 2014, market share percentage of MFS providers remained at: easypaisa: 54%; Omni: 20%; mobicash: 14%; Timepey: 3%; mobilepaisa 5%, Upaisa: 4%, HBL Express: 1%.

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12 State Bank of Pakistan, Branchless Banking Regulations for Financial Institution Desirous to undertake Branchless Banking, 31 March 2008 <http://www.sbp.org.pk/bprd/2008/Annex_C2.pdf>

13 http://www.sbp.org.pk/publications/acd/BranchlessBanking-Jan-Mar-2015.pdf

82. In conclusion, the MFS market creates a vertical relationship between banks and MNOs. However, MergeCo's mobicash and Waird's mobliepaisa services creates horizontal and vertical overlaps.[14] The Commission considers that MFS constitutes a separate product market segment as the mobile payments are likely to continue to coexist in the foreseeable future with non-mobile means of payment. However, the precise market definition and the scope of the relevant product market and its segmentation into online (m-banking) and offline (conventional banking) can be left open for consideration for the purposes of proposed merger and future determinations.

## VII. COMPETITION ASSESSMENT

83. The substantive test provided under Section 11(8) of the Act provides as follows:

> *"On initiation of the second phase review the Commission shall, within ninety days of receipt of the requested information under sub-section (6), review the merger to assess whether it substantially lessens competition by creating or strengthening a dominant position in the relevant market, and shall give its decision on the proposed transaction [...]"*

84. The Commission's substantive merger review is necessarily prospective in nature. This to say that its assessment is based on the existing as well as possible future effects of the proposed merger with reference to possible price increases, reduction in output, choice or quality of products or services, diminished innovation and investment, and/or other influencing parameters of competition.

85. While conducting its market analysis and competitive assessment, the Commission has taken into account the apprehensions of MergeCo's competitors in the relevant market, in addition to its own concerns identified after independent analysis in terms of horizontal and vertical effects arising out the proposed merger.

86. The creation or strengthening of a dominant position by a single undertaking or undertakings as a result of mergers has been the most common basis for finding that a merger may result in Substantial Lessening of Competition (**SLC**) or Significant Impediment of Effective Competition (**SIEC**).

87. The concept of dominance has also been applied in oligopolistic settings to cases of collective dominance. It is expected that most cases of incompatibility of a merger with Section 11(1) of the Act will continue to be based upon a finding of dominance. The concept therefore provides an important indication as to the standard of competitive harm

14 It is noted that by virtue of its cross-holding in VimpelCom, MergeCo including Telenor, their collective market shares in MFS amount to 68%.

that is applicable when determining a merger is likely to substantially lessen competition, and hence, as to the likelihood of intervention.

88. In furtherance of the dominant position established in the Phase I Order, the detailed assessment of the Commission in relation to concentration and joint control/collective dominance is provided in sections A and B *seriatim*.

## A. CONCENTRATION

89. Through control of mergers, the Commission prevents mergers that would be likely to deprive customers of benefits by significantly increasing the market power of the merging parties. In this regard the Commission takes into account the measures of market share and concentration levels as a part of its evaluation of competitive effects arising out of a proposed merger.

90. The Commission evaluates market shares and concentration in conjunction with other reasonably available and reliable evidence for the ultimate purposes of determining dominance and whether a merger may substantially lessen competition. As a rule, the Commission uses current market shares in its competitive analysis. Post-merger market shares are calculated on the assumption that the combined market share of the merging parties is the sum of their pre-merger market shares.

91. To assess MergeCo's[16] incentives and ability to behave independently of its competitors, customers, consumers and suppliers, the Commission finds it necessary to consider various indicators of market power in the retail mobile telecommunications market. These include MergeCo's pre and post-merger market shares, the size and strength of its infrastructure, economies of scale and scope, barriers to further expansion such as access to financial resources, services/product portfolios, among others. Such factors are mutually inclusive.

***The Notifying Parties' Submission***

92. The Notifying Parties have submitted that post-merger, MergeCo will hold 38% of the relevant market on the basis of subscribers. With respect to MergeCo's network and infrastructure,[17] it will own and operate Sites, out of which it will operate a total of after decommissioning. Regarding spectrum holding, MergeCo has submitted that it will have 34.4% of the total spectrum allocated for mobile telecommunication services in Pakistan so far. MergeCo has iterated that there is no over-allocation of spectrum either overall or in specific frequency bands as a result of the proposed merger.



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16 For the purposes of concentration, the Commission has relied on the proposed transaction. With respect to the Commission's concern regarding Telenor ASA's joint control over VimpelCom and the risk of collective dominance between MergeCo and Telenor Pakistan, the concentration by proxy is shown in footnotes.

17 As submitted by the Notifying Parties in Annex "J" of the Application.

*The Commission's Assessment*

a. *MergeCo's Market Shares*

93. According to data made available by PTA, the combined market share of MergeCo, by revenue, roughly stands at 40% which also corresponds to MergeCo's submission in Annex "M" of the Application. The table below reflects market share of the MergeCo and other MNOs' total retail market by revenue (by voice, data, MFS and both pre-paid and post-paid).

**Table 2**: *Revenue-based market share*

| Total Revenue Based Market Share in PKR Millions (rounded to the nearest whole number) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| MNOs | Revenue | % MS | Revenue | % MS | Revenue | % MS | Revenue | % MS | Revenue | % MS |
| | 2010-11 | | 2011-12 | | 2012-13 | | 2013-14 | | 2014- 15 | |
| Mobilink | | | | | | | | | | |
| Warid | | | | | | | | | | |
| MergeCo[18] | - | - | - | - | - | - | - | - | | 40 |
| Telenor | | | | | | | | | | |
| Ufone | | | | | | | | | | |
| Zong | | | | | | | | | | |

*Source: PTA and pre-merger Application, Annex "M"*

94. On the basis of revenue, the market shares of Mobilink is roughly PKR and it has market share of %. While Warid's market share is roughly PKR and it has market share of %. Post-merger, the combined revenue-based share of MergeCo is roughly 40% of the total market share.

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18 The revenue-based market share of the MergeCo and Telenor Pakistan by cross-holding amounts up to % of the total market share

**Table 3**: *Subscriber (Subs.) based market share*

| Subscriber (Subs.) Based Market Share in Millions (rounded to the nearest whole number) | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Subs. | %MS | Subs. | %MS | Subs. | %MS | Subs. | %MS | Subs. | %MS |
| | 2010-11 | | 2011-12 | | 2012-13 | | 2014-14 | | 2014-15 | |
| Mobilink | 33 | 31 | 36 | 30 | 37 | 29 | 39 | 28 | 33 | 29 |
| Warid | 17 | 16 | 14 | 11 | 13 | 10 | 13.08 | 9.3 | 10 | 10 |
| MergeCo[19] | - | - | - | - | - | - | - | - | 43 | 39 |
| Telenor | 27 | 25 | 30 | 25 | 34 | 26 | 37 | 26 | 32 | 28 |
| Ufone | 21 | 19 | 24 | 20 | 25 | 19 | 24 | 17 | 18 | 16 |
| Zong | 11 | 10 | 17 | 14 | 21 | 16 | 27 | 19 | 22 | 19 |

*Source: PTA Website*

95. On subscriber-basis, Mobilink, with over 33 million subscribers has a market share of 29%. While Warid, with over 10 million subscribers has roughly 10% of the total market share. Post-merger, the combined subscriber-based of MergeCo will amount up to 39% of the total market share.

96. As such, MergeCo's market share will be eleven percent (11%) more than its next closest competitor, which holds twenty-eight percent (28%) of the relevant market share. Pertinent to note here is also the Notifying Parties' submission[20] regarding the "*above–average*" Net Promoter Scores achieved by Warid, as an indication of the quantitative strength and increased market power of MergeCo, creating the largest MNO in Pakistan.

*b. Infrastructure market*

97. Post-merger, MergeCo will own and control Sites out of which it intends to decommission Sites. Many of these Sites are shared with other MNOs as guest operators. By sheer number of Sites and subscriber/site, and without any assessment as to its quality, MergeCo will have the largest network of Sites in Pakistan. This is without taking into account any efficiency that Warid may have benefitted from by virtue of having a sister-concern, which also provides infrastructure capabilities and solutions. Thus MergeCo will have increased market power in infrastructure identified above.

c. *Spectrum allocation*

98. Spectrum is a scarce resource and a key input for operating in the retail mobile telecommunications market. Post-merger spectrum concentration forms one of the most

19 The subscriber-based market share of the MergeCo and Telenor Pakistan by cross-holding amounts up to 67% of the total market share

20 As provided in Annex I-1 to the Application.

important factors for any competition assessment and determination of dominance in the relevant market. To be able to fairly and accurately assess the ramifications of spectrum concentration envisaged through the proposed transaction, the Commission carried out extensive consultations with the sector regulator.

**Table 4**: *Spectrum Allocation*

| **Total Spectrum Allocated for MNO in Pakistan is 108** | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| **MNO** | **900 MHz** | **% MS** | **1800 MHz** | **% MS** | **2100 MHz** | **% MS** | **Total MHz** | **% MS** |
| Mobilink | 7.6 | 23.4 | 6 | 13.15 | 10 | 33.3 | 23.6 | 21.8 |
| Warid | 4.8 | 14.8 | 8.8 | 19.29 | - | - | 13.6 | 12.6 |
| MergeCo | 12.4 | 38.27 | 14.8 | 21.49 | 10 | 33.33 | 37.2 | 34.44 |
| Telenor | 4.8 | 14.8 | 8.8 | 19.29 | 5 | 16.6 | 18.6 | 17.22 |
| Ufone | 7.6 | 23.4 | 6 | 13.15 | 5 | 16.6 | 18.6 | 17.22 |
| Zong | 7.6 | 23.4 | 16 | 35.08 | 10 | 33.3 | 33.6 | 31.11 |

*Source: PTA*

99. At present, the total spectrum allocated to MNOs in the relevant market is 108 MHz. The Commission is of the considered view that the spectrum share of an MNO serves as a key indicator of the market power of an MNO in the mobile telecommunications market. Subject to allocation of specific frequencies and their spectral efficiency, the larger the spectrum allocated to an MNO, the fewer Sites are required to increase and maintain network capacity, thus reducing the infrastructure costs, among other things.

100. Apart from the overall size of the spectrum allocated to a party, each frequency band carries unique properties in terms of its spectral efficiency and propagation properties on wireless mediums, making certain frequencies more attractive than others. The value of a particular frequency band is also reflected in its price.

101. Post-merger, MergeCo will hold a total of 37.2 MHz (34.44% of the market share) out of a total of 108 MHz allocated for cellular operators. MergeCo will hold the largest portion of the 900MHz frequency band i.e. 12.4 MHz (38.27%)[22]. Both GSM and LTE are deployable on it. The Commission notes that further allocation is not available in this frequency. 1800MHz also allows for LTE deployment, and MergeCo will hold 14.8 MHz (21.49%)[23] of the total spectrum allocated in this band. Moreover, in 2100 MHz, MergeCo will hold 10 MHz (33.33%)[24], of the total spectrum auctioned in this band so far. It is pertinent to note that the efficacy of frequencies allocated in each band is also affected by the whether or not the bandwidths allocated are contiguous and free of interference.

22 The allocation by virtue of cross-holding will be 17.2 MHz (53.07%)

23 The allocation by virtue of cross-holding will amount to 18.6 MHz (40.78%)

24 The allocation by virtue of cross-holding will be up to 50%

102. As noted above, MergeCo will have the largest shares of spectrum in all three frequency bandwidths. Coupled with flexibility of spectrum management and its vast infrastructure, MergeCo is likely to be able to use its allocation to maximum beneficial effect, including refarming of certain bandwidths to accommodate more profitable segments of the relevant market (such as Mobile Broadband). Pertinent to note is the fact that there are currently no barriers to further expansion by means of spectrum capping or divestment by the sector regulator and the Government of Pakistan, notwithstanding the fact each license has its own economic value and foreclosure value.

*d. Parent Groups*

103. The Notifying Parties have submitted[25] that all MNOs in the relevant market are backed by strong parent groups.

104. The Commission's view in this regard is that while the other MNOs have one backing conglomerate each, MergeCo will have three strong parents with strong financial portfolios.

105. To illustrate: Mobilink's ultimate parent, VimpelCom is one of the world's largest international communications and technology companies, which offers services to customers in 14 markets worldwide[26]. A key shareholder in VimpelCom is the Telenor Group (with 33% equity shares and 43% voting rights), which is also an international provider of telecom, data and media communication services present in 13 markets worldwide[27]. VimpelCom boasts a subscriber base of 200 million customers, while Telenor Group has more than 203 million subscribers across the globe. Their financial strength is evidenced by reported revenues in 2015 of USD 9.6 billion and USD 15 billion respectively.

106. Similarly, Warid is ultimately backed by the ADG Group, which is a large business conglomerate in the Middle East led by senior members of the Abu Dhabi ruling family. The ADG Group invests in a number of emerging markets including East- & South Africa, the Middle East, South Asia and the Caucasus/Black Sea region.[28]

107. In view of the above information, it is evident that MergeCo is likely to have incentives and ability to exploit the financial and operational expertise of three strong conglomerates.



25 Annex "J" of the Application.
26 http://www.vimpelcom.com/Profile/Understanding-VimpelCom/
27 http://www.telenor.com/
28 http://www.waridtel.com/about/abu-dhabi-group

## B. JOINT CONTROL AND COLLECTIVE DOMINANCE

108. The Phase I Review Order provided that until such time as the Commission is entirely satisfied that Telenor ASA does not exercise joint control over VimpelCom, Telenor Pakistan's market share would be considered alongside that of the merging parties. The collective market share of the parties post-transaction was thus held to be up to 65% of the relevant market. The Order specified that the presence of potentially significant structural and economic links with of Telenor ASA (through its subsidiary Telenor Pakistan) and VimpelCom also raises the possibility of collective dominance by the merging parties and Telenor Pakistan. The Commission's assessment of this concern is provided below.

***Background***

109. The acquisition of Wind Telecom S.P.A by VimpelCom Limited in 2011 resulted in Telenor ASA holding voting shares of approximately 33%[29] in VimpelCom. The market shares of Mobilink and Telenor Pakistan stood at 32.5% and 23.9% respectively, which collectively amounted to a market share of 56.4% at the time.

110. A Phase II Review of the Transaction was therefore carried out, wherein the Commission found it to raise the possibility of increased concentration and the likelihood of unilateral and coordinated effects on the mobile telecommunications market In Pakistan. The Commission found that structural and economic links between Telenor ASA and VimpelCom raised the potential for coordination between Mobilink and Telenor Pakistan. An order in the matter was then issued on 17 March 2011 ("**2011 Order**"). Through its 2011 Order, the Commission prescribed certain behavioural remedies, including the creation of a firewall to restrict the sharing of commercially sensitive information between Telenor ASA and VimpelCom, thus limiting the possibility of collusion between the two competitors.

***The Commission's Assessment***

111. At the time of passing of the 2011 order, Telenor ASA had held a shareholding in VimpelCom corresponding to 23%[31] voting rights. In the time since, it has been increased to 43%[32]. The overall shareholding structure of VimpelCom has changed since the time of the Commission's initial assessment.[33] To address the presumption of joint control, VimpelCom placed material on record in support of its continued compliance with the behavioural remedies prescribed by the Commission in 2011[34]. An undertaking to the same effect was submitted by Telenor ASA.

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29 As per Paragraph 3.1 (3) (ii) of Part 2 of the Application submitted by VimpelCom on 28 January 2011
31 As per VimpelCom's submissions in the Pre-Merger Application described above
32 As per information provided by VimpelCom during the Phase II review of the proposed transaction
33 The corporate governance structure of VimpelCom is therefore understood to have changed correspondingly
34 Paragraph 14 of the 2011 Order

112. The *prima facia* compliance put on record, however, does not exclude joint control of Mobilink and Telenor Pakistan by Telenor ASA and VimpelCom, or any structural and economic links allowing for joint control and collective dominance between the parties. The Commission is of the considered opinion that such concerns will remain for as long as the structural and economic links continue to exist between VimpelCom and Telenor ASA.

## C. SUBSTANTIAL LESSENING OF COMPETITION

### *Market Structure: Characteristics and Concentration*

113. **Network Effects:** To assess the likelihood of lessening of competition in a market, it is important to consider the properties embodied by it. The telecom industry in particular is characterized by a phenomenon known as '*network effects*'. A direct network arises where the value of particular product or service increases with the number of other customers subscribing the products or services. Every new customer subscribing to the network can make contact with every other subscriber and vice-versa without incurring additional cost.

114. In competition economics, the benefit of existing and additional customers is described as *network externality*. With the increase of number of subscribers joining a telecom network, the value of network increases because of the number of consumers joining it. Hence, the telecom market is often referred to as "two-sided" market, where two or more groups of subscribers are catered for, and where a network effect arises as more subscribers join one or the other side of the market.

115. **Oligopoly and Concentration:** From a competition perspective, the retail mobile telecommunications market in Pakistan is characterized by an oligopolistic structure and a high degree of concentration. The overall concentration level in a market provides useful information about its competitive situation. In order to measure concentration levels, the Commission applies the Herfindahl-Hirschman Index (HHI[36]). The HHI for the relevant market on the basis of both subscriber and revenue shares, is as shown in the table below:

Table 5

| Revenue-based HHI and Delta Values | | |
|---|---|---|
| **Pre-Merger** | ($Mobilink^2+Warid^2+Telenor^2+UFone^2+CMPak^2$) | 2257 |
| **Post-Merger** | ($MergeCo^2+Telenor^2+UFone^2+CMPak^2/Zong^2$) | 2895 |
| **Delta** | 2895-2257= **638** | |

36 HHI is calculated by summing the squares of the individual market shares of all the undertakings in the market.. It can range from 0 to 10,000 moving from a large amount of small undertakings to a single monopolistic producer. Decrease in HHI indicate a loss of market power and an increase in competition, whereas increase implies the opposite.

Table 6

| Subscriber-based HHI and Delta Values | | |
|---|---|---|
| **Pre-Merger** | ($Mobilink^2$+$Warid^2$+$Telenor^2$+$UFone^2$+Zong) | 2296 |
| | ($29.2^2+8.6^2+27.5^2+15.5^2+19.3^2$) | |
| **Post-Merger** | ($MergeCo^2$+$Telenor^2$+$UFone^2$+Zong) | 2798 |
| | ($37.8^2+27.5^2+15.5^2+19.3^2$) | |
| **Delta** | 2798 – 2296 = **502** | |

116. Tables 5 and 6 above indicate that the relevant market pre-merger is already concentrated. Post-merger, the market appears to be highly concentrated. HHI of more than 200 points is presumed to be likely to enhance market power.[37]The delta values in both the revenue and subscribers based HHI show much more significant increases. The Commission therefore finds that the proposed merger increases concentration in the relevant market to an appreciable extent which raises competition concerns.

117. In oligopolistic markets, mergers can lead to a substantial lessening of competition whether or not they lead to dominance or coordinated effects. The two main ways in which mergers between actual or potential competitors on the same relevant market may significantly impede effective competition are through unilateral and coordinated effects.

*Unilateral effects*

118. At present, Mobilink and Warid are two (2) of the five (5) MNOs competing on the relevant market and the wholesale markets for access, call origination and call termination for both the existing market participants. As a result of the proposed merger the number of MNOs in Pakistan will decrease from five (5) to four (4).

119. Unilateral effects, also known as *non-coordinated effects* resulting from mergers may alone constitute a substantial lessening of competition, in particular, in dynamic industries such as mobile telecommunication. Such effects are heightened in horizontal mergers because of the elimination of important competitive constraints and direct competition between market participants, which consequently would have increased market power, even without resorting to coordinated or collusive behaviour. In that regard, the Commission considers not only the direct loss of competition between the merging parties, but also reduction in competitive pressure on non-merging firms in the same market that could be brought about by the merger. The following sections explain in detail the

[37] According to the Horizontal Merger Guidelines provided by the Department of Justice, USA:
Un-concentrated Markets: HHI below 1500
Moderately Concentrated Markets: HHI between 1500 and 2500
Highly Concentrated Markets: HHI above 2500
Available at: https://www.justice.gov/atr/horizontal-merger-guidelines-08192010#5c

unilateral/non-coordinated effects, which are likely to arise out of the proposed merger and dominant position of the MergeCo.

*Elimination of Warid as MNO*

120. The Notifying Parties have submitted that Warid does not constitute a viable competitive force in the relevant market for a variety of reasons. They have further submitted that as the smallest player in the relevant market it exerts little competitive pressure, based on its smaller share of spectrum allocation, subscribers and network size.

121. The Commission finds that with a strong and loyal consumer base in the post-paid segment, and due to its quality, Warid is able to benefit from one of the most value-intensive niches in the market. In the LTE segment, it is one of only two market participants along with Zong.

122. The Commission has noted that Warid has been consistently losing its market share in the preceding years, and given its current financial position, may not offer as robust a competition that it could have otherwise offered given its technological lead especially in LTE based broadband services.

*Increased Market Power*

123. During its market analysis and exhaustive consultative process, the following concerns were raised by competitors vis-à-vis MergeCo's dominance and possibility of substantial lessening of competition in the relevant market, which are as follows:

i. That MergeCo is likely to have a "*price leadership*" position for on-net/off-net voice call charges, including SMS, internet/data pricing and associated bundles;

ii. Post-merger, MergeCo would hold the largest spectrum and network capacity i.e. the Cell-sites and associated backhaul spectrum capacity owned by Mobilink and Warid combined. Most of the Cell-site either owned by Mobilink or Warid is shared by other operators through Network Sharing Agreements. Decommissioning of such Cell-sites by MergeCo without a first right to acquire by the guest operator(s), will lead in services disruption across the country;

iii. Mobilink has historically been ambivalent about providing adequate interconnection to other MNOs, and a fresh Reference Interconnect (ROI) for both access and interconnect is required if the proposed merger is approved;

iv. Mobilink will have access to two series of National Destination Codes (NDCs), which will prejudicially affect rights of other competitors, at a time when demand for numbering is increasing;

v. That MergeCo will become the largest spectrum holder with 34.4% of total allocated spectrum for retail mobile telecommunication services[38], and 38% of the allocated spectrum in the 900 MHz band; and

vi. The use of "*4G*" branding by MergeCo upon deployment of an LTE network will amount to a deceptive marketing practice.

***The Commission's Assessment***

124. The Commission's assessment concludes that MergeCo will hold increased market power by virtue of a variety of factors, including the share of the subscriber base it will have (with reference to network effects), its frequency allocations, the size and quality of its infrastructure network and the financial and operational resources available to it from three giant telecom operators and investment companies (i.e. VimpelCom, Telenor ASA and ADG Group). The concerns submitted were shared with the Notifying Parties to allow them to rebut the claims and/or clarify their position. Each of the concerns is now dealt with individually, along with other concerns the Commission has identified with respect to MergeCo's increased market power.

125. **Infrastructure Network:** The infrastructure of a telecom operator forms a core element of its service. It also comprises the largest proportion of an MNO's CAPEX apart from spectrum. As such, sharing of infrastructure between MNOs has been allowed and encouraged by the PTA through its law and policy frameworks[39].

126. According to submissions made by the Notifying Parties, Mobilink and Warid currently hosts guest operators on % and % of Sites respectively. Following MergeCo's plan to decommission a substantial number of Sites, a concern as to disruption of services is raised by virtue of MergeCo exercising its increased market power.

127. The Commission found this to be an important concern as if guest operators are required by MergeCo to vacate existing shared sites, there exists a risk of gap in coverage provided by competitors of MergeCo, which in turn may lead to prejudicially affecting their position in the relevant market. The gap that may arise out of the proposed merger is not adequately addressed by the existing infrastructure agreements. This is further exacerbated by the difficulty of setting up new Sites in relation to procedural complexities.

128. **Interconnection:** The concern raised by competitors relates to the provision of interconnection by MNOS to each other on non-discriminate terms. The Commission's observation in this regard is that terms of interconnection are already regulated under the PTA's regulatory framework, which provides that operators shall not unfairly discriminate

38 By its cross-holding holding in VimpelCom, both MergeCo and Telenor Pakistan will have spectrum influence of up to 55.8 MHz (out of a total of 180 MHz) with market share of 51.66% in 900 MHz, 53.07 in 1800 MHz and 48.93% in 2100 MHz, depicting a high level of concentration and collective dominance of incumbents and reduced likelihood of new entrant as an MNO in Pakistan.

39 Mandatory infrastructure sharing obligations have been envisaged in clause 7.5.1 of the Telecom Policy 2015

terms among different operators. This is further reflected in the terms of the licence issued to MNOs. Furthermore, following the declaration of a Significant Market Player (**SMP**) by the PTA, the SMP is required to publish a reference interconnection offer (**RIO**) detailing the services and tariff it provides to operators.

129. In the absence of a fresh SMP determination by the PTA however, and corresponding RIO, the risk of MergeCo refusing interconnection is likely to persist.

130. **NDCs:** The Commission has considered this concern and notes that telecom numbering plans are national resources. Standards for geographical numbering allocations are provided by the ITU, in accordance with which the PTA develops national numbering plans for use by the relevant players. Current allocations of numbering series are regulated under the Number Allocation & Administration Regulations, 2011[40] ('**Numbering Regulations**') of the PTA.

131. Currently each MNO has been issued one NDC. Through the transaction, MergeCo is likely to obtain access to two separate series.

132. With respect to the concern raised, the PTA clarified that NDCs remain available for further allocation to any MNO upon application. In light of the regulator's view, the Commission finds that competitors will not be prejudicially affected by the Transaction.

133. **Spectrum Concentration:** MergeCo will become the largest spectrum holder with 34.4% of total allocated spectrum for retail mobile telecommunication services[41], and 38.27% of the total allocated spectrum in the 900 MHz bandwidth; 21.49% to the total allocated spectrum in the 1800 MHz bandwidth and; 33.33% MHz to the total allocated spectrum in the 2100 MHz bandwidth.

134. With respect to MergeCo's spectrum shares, the Commission considers it necessary to remedy the disproportionate allocation, subject to determination by PTA.

***Coordinated effects: Horizontal and Vertical***

135. Coordinated effects are more likely to arise in markets where it is relatively simple to reach a common understanding on the terms of coordination. The prevailing oligopolistic characteristics of the relevant market make it conducive to collusion.

***Relevant Market***

136. The Notifying Parties' have argued that coordination on prices is impossible because the competition in the relevant market takes place on quality. The Commission acknowledges

40 Available at http://www.pta.gov.pk/media/naar_2011_reg.pdf

41 By its cross-holding holding in VimpelCom, both MergeCo and Telenor Pakistan will have spectrum influence of up to 55.8 MHz (out of a total of 180 MHz) with market share of 51.66% in 900 MHz, 53.07 in 1800 MHz and 48.93% in 2100 MHz, depicting a high level of concentration and collective dominance of incumbents and reduced likelihood of new entrant as an MNO in Pakistan.

this fact, but deems it necessary to qualify. All prices given by MNOS are publically available, either on their websites or through their franchises. All tariff plans and subsidies offered by MNOs are quantifiable and, hence, could be coordinated. This makes it easier for MNOs to compare each other's prices and packages without any hassle. Any deviation from the terms of coordination could be immediately detected, which could deter free competition in the relevant market. The fact that MNOs still compete on other aspects (such as quality) does not remove that anticompetitive effects of such price coordination".[42]

137. However in the presence of viable competitors in the relevant market in the form of Ufone, Telenor and Zong, the Commission does not consider that the merger will exacerbate the potential for coordinated effects in the relevant market.

***Related Markets***

138. With regards to the related markets, and the presence of both Mobilink and the Wateen Group in various different markets as provided in Section VI above, the structural link created has been noted by the Commission.

139. At present, in view of the negligible presence of Mobilink in almost all of the related markets discussed, the Commission does not find that the concern is such as to warrant intervention.

140. With respect to the structural link to be created between ADG Group[43] and Mobilink, there is a likelihood of coordinated effects materialising between MergeCo and its subsidiaries and other ADG concerns present in various different markets, in particular Warid Telecom International LLC which is present in Pakistan through various subsidiaries i.e. Wateen Group.

141. As long as an ADG director remains present on the board of directors of MergeCo, there is a risk of commercial and technical information sensitive to the business of MergeCo being shared with Wateen Group and/or vice versa.

## D. COUNTERVAILING FACTORS

142. While conducting its merger assessment, the Commission considers the countervailing factors that could be exercised by the buyers, suppliers, existing competitors, potential entrant, and commercial viability of the target as well as the regulatory regimes to off-set the adverse effects of an proposed merger leading to dominance/concentration.

[42] This view is in line with the judgement of the EC in the Hutchison 3G UK/ Telefonica merger assessment: Case No COMP/M.6992 Hutchison 3G UK/ Telefonica Ireland, dated: 28.05.2014.

[43] As defined in the Shareholders' Agreement signed between International Wireless Communication Pakistan Telecom Management Group Limited, Warid Telecom Pakistan LLC, Bank Alfalah Limited, Pakistan Mobile Communications Limited and Warid Telecom (Private) Limited.

143. The following sections elaborate on how countervailing factors could disrupt the potential coordination or parallel behaviours of dominant firms, by one or more market players against the others.

*Countervailing Buyer Power*

144. In principle, the analysis of buyer's countervailing power is fundamentally the same in single or collective dominance in many respects. The powerful buyers may forestall the ability of dominant undertakings to raise prices, and hence mitigate the adverse effects of a concentration. On the market for retail mobile telecommunication services to end-customers, countervailing buyer power is to be understood as the bargaining strength of the buyer vis-à-vis the availability of substitutes and/or their incentives and willingness to switch to the alternative suppliers.

145. The Commission notes that there is no appreciable countervailing buyer power to exercise competitive pressure on the MNOs to off-set the expected adverse effects of the concentration in retail mobile telecommunication market.[44] This is because the individual customers of MNOs are fragmented and in the absence of consumer protection organizations, the conditions and levels of prices cannot be affected from the buyer's side. A few customers who might be able to collaborate to resist price increases by the MNOs to some degree would not shelter the remaining buyers from dominant players to exercise their market power.

146. The Notifying Parties have argued that the Mobile Number Portability ("**MNP**") regime introduced by PTA in 2007 enable customers to easily switch from one MNO to the other, without losing their mobile number and the prefix. Moreover, the industry churn rate is high, which in itself is a key performance indicator to gauge the incidence of switching of subscriber from one MNO to the other. The recent trend reflects that the industry churn rate is between 25% and 30% per year. This translates to approximately 30 to 35 million customers switching their MNO on an annual basis.

147. The Commission agrees with the Notifying Parties' argument in terms of subscribers' ability to switch from one MNO to another. The MNP regime in place provides a comprehensive porting process. However, the Commission notes that the subscriber's ability to switch from one MNO to other is also dependent on the subscriber's incentives or willingness on the extent of substitutability of services in terms of pricing, quality, product characteristics and the intended use.

148. Currently, 4G/LTE or LTE-based data services are offered either by Warid or Zong. Post-merger, Mobilink will be able to offer LTE services to its existing subscribers as well as the customers acquired from Warid, which would represent the first choice of nearly half of the market.



44 Case No COMP/M.6497 Hutchison 3G Austria/Orange, dated: 12.12.2012

149. Depending on the pricing, quality of services and coverage, Mobilink and Zong will be the closest competitors in data segment. Zong is often characterized as a '*maverick*' firm, playing a disruptive role in the market to the benefit of customer, by often resisting otherwise prevailing industry norms to cooperate on pricing or other terms of coordination. This is evident from the fact that since its entry around 2008, it has gained over 24.61 million subscribers out of a total 128 million subscribers through investment and organic growth,[45] which is likely to prevail in the foreseeable future. The Commission concludes that in the presence of Zong and other competitors plus the MNP regime, MergeCo will have little incentive or ability to increase its prices above the competitive level.

*New Entrants*

150. When entering a market is sufficiently easy, a merger is less likely to pose significant anti-competitive risks by the merging parties. Therefore, entry analysis constitutes an important element of overall competitive assessment and countervailing forces. For entry to be considered a sufficient competitive constraint in an oligopolistic market, it must be shown that entry is expected, timely, and sufficient to deter or defeat any potential anti-competitive effects of the merger. In oligopolistic markets, certain behavioural aspects might be relevant to the analysis, such as practices that increase the market transparency and defensive behaviours against new entrants. On the market for mobile telecommunications several kinds of barriers to entry exist. They are highlighted below:

*a. Legal and Regulatory Barriers*

151. Legal advantages encompass situations where regulatory barriers limit the number of market participants by, for example, restricting the number of licenses. They also cover tariff and non-tariff trade barriers, among other things.

*b. Technological Leads*

152. The incumbents may enjoy technical advantages, such as preferential access to essential facilities, natural resources, innovation and R&D, or intellectual property rights and licensing regimes, which make it difficult for any undertaking to enter and compete successfully. For example, in certain industries, it might be difficult to obtain essential inputs, or intellectual or licensing regimes might protect the incumbents. Other factors such as economies of scale and scope, distribution and sales networks, access to important technology (such as spectrum and frequency band and associated infrastructure costs), may also constitute barriers to entry.

*c. Incumbents Market Power*

153. Barriers to entry may also exist because of the established position of incumbent undertakings on the relevant market. In particular, it may be difficult to enter an industry

45 http://www.pta.gov.pk/index.php?option=com_content&task=view&id=269&Itemid=658

because experience or reputation is necessary to compete effectively, both of which may be difficult to obtain as new entrants. Factors such as consumer loyalty to a particular brand, the closeness of relationship between suppliers and customers, the importance of promotion or advertising, or other advantages relating to reputation will be taken into account in this context. Moreover, the prospective evolution of a particular industry must be taken into account when assessing whether or not entry would be profitable. Entry is more profitable in a market that is expected to experience high growth in the future than in a market that is mature or expected to decline. Economies of scale and network effects may make entry unprofitable unless the entrant can obtain a sufficiently large market share.

*d. Prerequisite for Market Entry in MNOs Market*

154. The Commission examines whether entry would be sufficiently swift and sustained to deter or defeat the exercise of market power, in particular, post-merger. Such timeliness depends on the characteristics and dynamics of the market, as well as on the specific capabilities of potential entrants. Nevertheless, entry is normally only considered timely if it occurs within a period of two (2) years. Moreover, entry must be of sufficient scope and magnitude to deter the anti-competitive effects of the merger. Small scale entry, for instance into some markets' 'niche', may not be considered sufficient.

155. In view of the foregoing, the Commission considers whether entry is likely to or whether potential entry is likely to constrain the behaviour of incumbents post-merger. In this case, entry of a viable MNO could drive out the competition concerns arising from lessening of competition in relation to both the retail market and wholesale market, while entry of MVNOs could have a countervailing effect on the retail market. In the following section, the Commission assess the viability of entry by a new MNO and MVNOs and whether such entry would be sufficient to deter the potential anti-competitive effects of the merger.

*MNO entry*

156. Because telecommunications is a capital intensive industry, there are high barriers to entry in Pakistan. Therefore, to commence its operations, MNO are required to:

a. obtaining spectrum and frequency bandwidth rights and complying with all regulatory requirements in order to establish a mobile network on commercially viable basis;

b. building an initial greenfield network of national or near-to national coverage to reach a viable number of customers. A greenfield can be achieved through an own build or in combination with network infrastructure sharing agreements and national roaming (which the current regulatory regime does not provide for). It also includes building a backbone, core network and IT based environment of network.

c. establishing marketing, sales, customer service and support structure and the investment to acquire customers;

d. negotiating and entering into national interconnection agreements with all Pakistani operators, national SMS and MMS interworking agreement, an agreement with at least one IP (internet protocol) upstream, GPRS (General Packet Radio Service) and Roaming Exchange, LDI operators, international roaming agreements, for calls, SMS, MMS and other related services to international destinations; and

e. implementing interfaces for MNP, data retention, and information services, among other things.

*Spectrum Scarcity*

157. As noted above, spectrum is a scarce resource and is unlikely to become available in certain bands (such as GSM 900, which commercially most viable in terms of its spectral efficiency and coverage) in time to ensure entry, which takes years. Most of the spectrum in bands that are most attractive for retail mobile telecommunication services and mobile broadband services has been assigned (900MHz, 1800MHz, and 2100MHz).

158. Spectrum remains available, for instance, in 850MHz and 1800MHz. However, with the available spectrum, more creative and efficient spectrum management of spectrum that has already been allocated is required as envisioned in the Telecom Policy

*Infrastructure Sharing and National Roaming*

159. The Mobile Cellular Policy 2004 provides that "*licensees are encouraged to offer national roaming with other licensees offering reciprocal services in accordance with the guidelines issued by the PTA*". In its Information Memorandum (IM) for the Next Generation Mobile Services Award (NGSMA)[46] the PTA has provided that "*it is a condition of the NGMSA that any existing Operator that obtains a NGMSA License must enter into an agreement based on good faith negotiations to provide GSM and GPRS national roaming if so requested by any New Entrant(s) in the Cellular Mobile Market. If no such agreement can be reached after negotiation in good faith between them, the matter shall be resolved through arbitration. All Operators are permitted to negotiate national roaming agreements with one or more other Operators*".[47]

160. However, the Commission has noted that the incumbent MNOs are not at ease with such policy regarding new entrants in terms of spectrum and infrastructure sharing and national roaming, among other things. In the absence of mandatory spectrum/infrastructure sharing

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46 PTA Information Memorandum: The Award of 2100 MHz, 1800MHz and 850 MHz Spectrum, the Next Generation Mobile Services Award (NGSMA), dated 17 March 2014.
47 Ibid, 1.6.3, National Roaming

and national roaming regime, a new entrant needs to incur significant upfront costs to set up a new network, which in turn could recuperate such investments only more slowly.

161. The Commission's analysis suggests that the cost of new MNO entrants are significant in terms of acquiring spectrum and efficient frequency bands, building an entirely new infrastructure, including backbone, a core network, and the IT environment and customer acquisition from scratch. Both Notifying Parties' and majority of the respondents to Commission's market analysis suggest that the entry of a new MNO would be challenging which could be mitigated through the adoption of efficient and mandatory infrastructure sharing (both passive and active), and a robust regulatory regime.

*MVNO entry*

162. In contrast to MNO, MVNOentry is relatively easier. As of June 2014, 943 MVNOs and 255 MNO sub-brands were active world-wide. This represents a total of almost 1,200 mobile services providers hosted by MNOs, up from 1,036 in 2012, according to GSMA intelligence report.[48] MVNOs target both the consumers and enterprise market. As new entrants MVNOs do not need to build up their own network but they rely on other MNOs for access.

a. *Existing Regulatory Framework*

163. In spite of the present framework developed by PTA earlier in 2004 and recently in 2009 and envisaged in the Telecom Policy, there are currently no MVNOs operating in Pakistan. The Telecom Policy indicates the introduction of a robust framework for MVNOs in Pakistan, which is currently in process. The Commission notes that MVNOs are market forces that could potentially disrupt the possibility of potential coordination. Introduction of MVNOs in Pakistan will not only change the competitive dynamics of the retail mobile telecommunication market, but will also provide mobile phone subscribers with more choices both on pricing and quaintly, including reduced likelihood of coordinated and non-coordinated effects in the market.

164. In the absence of appropriate regulatory regime for MVNOs, the Commission has concerns that the proposed merger will not lead only to concentration both in spectrum and associated frequency bands and network sharing. Post-merger, MVNOs will rather find it more difficult to enter the market, given the reduction in the number of MNO hosts from five (5) to four (4) and decreased incentives of the MergeCo to grant wholesale access. For any MVNO, the Commission finds that negotiating an agreement on competitive terms and conditions is the key obstacle for acquiring license and launching its operations. In conclusion, the Commission views that an MVNO entry, even it were to occur, would not itself be sufficient to negate the adverse effects of eliminating one (1) of the five (5) MNOs from the market, unless there is a mandatory and robust regulatory regime. Around

[48] GSMA Intelligence, The Global MVNO Landscape, 2014.

the world, distinct MVNO business models are emerging including retail, brand, value, and niche. Nevertheless, all MVNOs need the right commercial and technical platform on which to succeed which the PTA needs to develop.

*Conclusion*

165. The Commission concludes that it is unlikely but not impossible that MNO or MVNO market entry would occur in Pakistan today. An MNO or MVNO deciding to enter would need suitable spectrum allocation, which would take a considerable time. In the absence of proportionate remedies, market entry would be challenging.

166. For the above reasons, it is the Commission's view that PTA may review its framework to address such barriers and facilitate the entry of new MNOs and MVNOs by appropriating spectrum management held by various MNOs, as is mandated under the Telecom Policy 2015. Moreover, the PTA should facilitate innovative service providers, in particular, in the data segment because there is significant business potential in the communication industry of Pakistan. New technologies provide highly cost-effective ways for new players to leapfrog established operators and for existing companies to quickly diversify their services.

167. Since 2010, PTA has not determined any MNO as an SMP. Accordingly, none of the MNO is subject to legal obligations to provide a cost-oriented, fresh carrier grade interconnection reference, which is mandatory to address both competitors' and subscribers' concerns on the mobile telecommunications market. In the absence of sufficient countervailing buyer power on the part of end users, a declaration of SMP would act as a countervailing influence on pricing and quality of services.

168. In this context, the Commission reiterates that PTA's new determination ought to be based on national competition law and international standards. A declaration of SMP based on these grounds would serve as a substantive countervailing factor against oligopolistic dominance and abuse of dominant position.

## E. EFFICIENCIES

169. The Commission now looks at efficiencies that will be generated by this merger. Efficiencies can prove to be an important consideration in allowing a merger that may otherwise lesson competition.

*The Notifying Parties' Submissions*

170. **Improved Network Coverage and Access**: According to the Notifying Parties, the proposed merger will generate synergies through enhanced voice coverage as well as an improved voice and mobile broadband experience. Following the merger, the combined subscribers of MergeCo will gain access to a better network by integration of Mobilink and Warid's assets.

a. The increased number of sites available nationally will enhance coverage and improve network stability. Mobilink's subscribers will benefit from Warid's above industry average Net Promoter Scores;
b. A greater number of customer care and call centres covering larger number of cities will become available to the combine subscribers. Mobilink currently has customer care centres while Warid currently has customer care centres;
c. Greater number of franchises;
d. Customers will gain access to a greater number of international roaming destinations ( combined). These will include countries where either Mobilink or Warid customers cannot roam currently;

171. **Cost Savings**: The Notifying Parties have submitted that cost efficiencies will enable run-rate savings of USD per year. The proposed transaction will eliminate superfluous management, administrative, marketing and distribution expenses. It will further rationalise obsolete or duplicative infrastructure and reduce fixed and variable costs. Efficiencies will lead to a greater capacity to invest and serve urban, rural and remote areas of Pakistan. According to the submissions made, *"The transaction is expected to create CAPEX and OPEX synergies with a net present value of approximately USD* ".

172. **Improved Mobile Broadband**: The combined subscribers of MergeCo will gain access to the entire network portfolio i.e. 2G, 3G and LTE services, which will result in a greater level of data penetration.

a. 10 million Warid customers will get 3G access to Mobilink's existing and planned cell Sites in cities;
b. Mobilink subscribers will be able to get LTE services on Warid's existing and planned Sites in cities;
c. The proposed merger will place more spectrum in the hands of MergeCo, which is likely to expand Warid's LTE network at a lower cost, which in turn may enhance competition and more investments in the data segment;

173. **Product and service innovation**: Following the merger, Warid customers will be able to experience the wider portfolio of products and services offered by Mobilink. MergeCo will be able to offer MFS, VAS, Mobile TV Apps and a wide range of exclusive handsets, at higher levels of quality and affordability.

a. The MFS offered by Mobilink already has a bigger retailer reach for domestic remittance, and includes more services than were available to Warid subscribers;
b. MergeCo will be able to offer a wide array of handset offerings for all income groups with increased financial flexibility such as instalment options and higher subsidies to consumers. Increased handset penetration will attract more investments from manufacturers.

174. **Increased investment:** The Notifying Parties' submitted that the proposed transaction will also lead to higher investments in LTE networks by way of a competitive response from other MNOs. MergeCo's fiber rollout will likely add USD in CAPEX per year until 2020: PKR per year for the next five years and PKR in maintenance CAPEX per year thereafter. The consolidation in mobile networks leads to higher investments per operator.

***The Commission's Assessment***

175. Keeping in view the regulatory regime currently in place in Pakistan, there are certain efficiencies claimed by the parties which may reasonably result from the proposed transaction. However network efficiencies to begin with cannot be achieved otherwise as long as only passive infrastructure sharing is allowed in Pakistan, since there is no regime in place for active sharing.With respect to mobile broadband, it must be kept in mind that Mobilink could hypothetically acquire spectrum in the next auction to provide LTE services to its consumers. In view of the 2014 spectrum auctions conducted by the PTA, it is unlikely that Warid would be able to provide its consumers with 3G services through any other means. With respect to the product and service innovations to be expected from the proposed transaction, it is the Commission's observation that Mobilink's ability to offer services in the MFS or VAS segments is not increased through the merger itself. The access of Warid's customers to Mobilink-specific services however is gained through this transaction. With regards to investment, the CAPEX investments are expected.

176. With regards to investment, the merger may provide an opportunity to allow Warid's customers to retain access to services being provided by Warid, while additionally availing the services provided by Mobilink which may not otherwise have been possible given Warid's current financial situation. Warid has been facing reducing revenues and increasing debt costs.

177. The increase in areas covered altogether (including an improved proportion over urban and rural areas), along with franchises, customer care centres, and call centres may be expected to improve the quality of service available to the combined subscribers of MergeCo. With regards to mobile broadband and product and service innovation, a larger choice portfolio will necessarily account for benefit to consumers.

178. The merger is likely to generate some efficiency in the market including allowing for increased investment, better network coverage and customer services, and a reduction in costs.

## F. NON-COMPETE OBLIGATION

***Background***

179. The Application notified the Commission as to restrictions on the shareholders' ability to do business ("**Non-Compete Obligation**" or "**NCO**")

180. The NCO provided that

181. The NCO, in its original form, extended

182. The Commission has examined the matter as part of the Phase II Review.

***Legal Test***

183. Section 4(1) of the Act provides that

> ***Prohibited Agreements:*** *(1) No undertaking or association of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object or effect of preventing, restricting or reducing competition within the relevant market unless exempted under section 5.*

184. Section 4(1) is here to be read in conjunction with Sections 5 and 9 of the Act, which allow the Commission to exempt a prohibited agreement if the undertaking seeking exemption can satisfy the Commission that it substantially contributes to (a) improving production or distribution; (b) promoting technical or economic progress, while allowing consumers fair share of the resulting benefit; or (c) the benefits of that clearly outweigh the adverse effect of absence or lessening of competition.

185. The Commission has also found guidance in the general principles articulated in the Commission Notice on restrictions directly related and necessary to concentrations[51]("**Ancillary Restraints Notice**"), issued by the EC.

***The Commission's Assessment***

186.

[50] As defined in the Shareholder's Agreement

[51] http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52005XC0305(02)

187.

### G. CONCLUSION

188. Based on the detailed assessment of the proposed merger, after considering the competitors' concerns, the countervailing factors and the efficiencies, the Commission hereby allows the proposed merger, subject to the conditions and obligations laid out ahead to remedy the serious competition concerns arising out of the proposed merger.

## VIII. CONDITIONS/COMMITTMENTS

189. Each of the conditions below corresponds to a concern raised during the Phase II Review.

### 1. Spectrum Concentration

**The Notifying Parties' Commitment**

190. "*Subject to the spectrum sharing framework being developed by the PTA in accordance with law and its application to all mobile network operators on a non-discriminatory basis, in the event:*

*i. there is a new mobile network operator (New Entrant) that wishes to provide cellular mobile telecommunication services in Pakistan after acquiring a license and spectrum from the Pakistan Telecommunication Authority (PTA); and*

*ii. no spectrum is available; and*

*iii. there is a determination on efficiency of utilization of spectrum for all operators:*

*MergeCo commits to share, if so determined, its inefficiently and under-utilized spectrum between MergeCo and the New Entrant on technically viable and commercially reasonable terms, provided that any other mobile network operator determined to be inefficiently using or underutilizing spectrum is also equally treated as such".*

***The Commission's Assessment***

191. The Commission accepted the commitment above, subject to the following obligations:

i. Pakistan Telecommunication Authority is strongly recommended to carry out a quantitative and qualitative assessment (based on international benchmarks) of the spectrum allocation of all mobile network operators in Pakistan, within six (06) months of the date conditions set out in Paragraph 190 above become applicable and to submit its comprehensive report to the Commission.

ii. In the event that it is finally determined by the PTA in terms of (i) above, that the spectrum volumes held by MergeCo in each frequency band are (i) underutilized and (ii) used inefficiently, the PTA shall direct sharing of spectrum to the New Entrant in terms set out in Paragraph 190 above in a non-discriminatory manner .

iii. MergeCo is restricted from entering into any spectrum sharing or trading arrangements with Telenor Pakistan for as long as a structural link remains between Telenor ASA and VimpelCom unless approved by the PTA and the Competition Commission of Pakistan.

**2. Wholesale access to MVNOs**

192. The Commission imposes a remedy as follows:

i. The PTA is strongly recommended to carry out a reassessment of its current MVNO framework in consultation with all stakeholders including MNOs and to take reasonable steps to encourage and facilitate MVNO entry in Pakistan. To this end, it is the Commission's recommendation that the PTA may consider imposing a wholesale access obligation on all MNOs currently operating in the relevant market on a non-discriminatory basis.

ii. Subject to the PTA's framework, and if so determined by the PTA, MergeCo shall provide wholesale access rights to MVNOs, including but not limited to network access, call origination, call termination, international roaming for voice/SMS and data services, and access to portability database . Such access to wholesale call origination shall be granted on fair and reasonable commercial terms and conditions

**3. Interconnection**

**The Notifying Parties' Commitment**

193. *"MergeCo commits to provide interconnection on the same terms to all other mobile network operators in accordance with the Reference Interconnection Offer (RIO) approved by PTA until such time as it is applicable to MergeCo."*

194. The Commission accepted the commitment offered by the Notifying Parties.

195. In case of any anti-competitive behaviour regarding interconnection, MNOs may approach the Commission under the Act.

### 4. Joint control/Cross-holding

196. In view of the Commission's concerns regarding cross-holding and joint control based on the evidence on record and the intended merger situation, the Commission considers that the conditions imposed *vide* 2011 Order require further strengthening.

197. To address the Commission's concern, the Notifying Parties have proposed the following commitment which is as under:

*1.1 Mobilink shall appoint a third-party reviewer ("**TPR**") in accordance with this paragraph to carry out the functions set out below.*

***Appointment***

*1.2 The appointment of the TPR is subject to approval by the CCP including with respect to the identity of the TPR and the terms and conditions of its appointment.*

*1.3 The TPR must possess appropriate qualifications and experience to carry out TPR functions.*

*1.4 The Merger Parties shall remunerate the TPR and reimburse the TPR for all reasonable expenses properly incurred in accordance with the terms and conditions of the appointment.*

*1.5 The TPR must certify to the CCP that it has no conflict of interest in being appointed as TPR.*

*1.6 Mobilink will inform the CCP as soon as is reasonably practicable of the identity of the TPR that Mobilink proposes to appoint and provide the CCP with terms and conditions of appointment for its approval. The CCP will notify the Merging Parties as to whether it approves the identity and terms and conditions of appointment of the TPR within 14 days of receiving such information.*

*1.7 The TPR will maintain the confidentiality of any information which TPR receives in the course of performing functions under this provision and shall not disclose any such information to any third party.*

***Functions***

*The functions of the TPR will be to:*

*1.8.1 Ascertain and report on the current level of compliance by VimpelCom with the Order of 17 March 2011 issued by the CCP (2011 Order) so far as TPR is* *aware, based on TPR's review of the minutes of board meetings and relevant committees of the board and reasonable enquiries of the directors.*

*1.8.2 Make an annual report to the CCP verifying whether the matter set out in paragraph 1.8.1 continues to be the case, including that any Tower Deal entered into by VimpelCom in accordance with Clause 5.4 of the Acquisition Agreement dated 26 November 2015 complies in full with the terms of the 2011 Order.*

*1.8.3 The TPR must comply with any requests made by the CCP for the purpose of verifying the full and effective compliance by VimpelCom with the 2011 Order.*

***This provision shall cease to have effect on the sale by Telenor of its interest in VimpelCom.***

***The Commission's Assessment***

198. The Commission accepted the commitment subject to the following obligations:

i. With respect to clause 1.6, MergeCo will identify possible options for persons to be appointed as TPR and inform the Registrar of the Commission within a period of one and half (1.5) months from the date of Completion;

ii. Furthermore, the time period specified for approval of TPR from the Commission will be fourteen (14) working days.

iii. With respect to clause 1.8.2, the report to be submitted to the Commission will be bi-annual.

**5. Infrastructure sharing**

199. The Infrastructure Sharing Agreements between Warid/Mobilink and other MNOs already address this issue. Accordingly, the Agreements with MNOs make provision for what happens in the event of any decommissioning and provide specific rights for the guest operator and specific obligations on the host operator.

200. **Explanation:** The Infrastructure Sharing Agreements entered into by Warid with each of Zong and Ufone (Pakistan Telecom Mobile Limited) and Telenor and the Infrastructure Sharing Agreements between Mobilink and each of Zong, Ufone, and Telenor each contain the following features:-

a) The Hosting Party has the right to terminate the Lease Agreement with the Lessor (land/property owner) by giving 90 days' notice to the Sharing Party, which shall have the prior right to take over the lease with the lessor.

b) In the event the Sharing Party opts to take over the site it may also opt to purchase from the Hosting Party, at Hosting Party's discretion, any or all fixtures, Tower or any other equipment on such prices as may be determined and agreed upon by the Parties.

***The Notifying Parties' Commitment***

201. *"In respect of sites having one or more guest operators which are intended to be decommissioned as a consequence of the Transaction (Sites), the hosting party shall offer the guest operator the option to:*

*a) Retain the existing terms of the infrastructure sharing agreement set out above ("**Option 1**"); or*

*b) Require the hosting party to provide a twelve (12) month notice period for decommissioning the Site to all the guest operators of the Site on the following terms ("**Option 2**"):*

*i. For the period of 3 months commencing from date of notice, all services shall continue to be provided in accordance with the existing infrastructure sharing agreements relating to the subject Site;*

*ii. Thereafter, the guest operator(s) shall be responsible to manage, supply and ensure provision of energy to the subject Site till the completion of the twelve (12) month notice and the applicable monthly rental shall stand proportionately reduced based on the reduction of services rendered. After expiry of the notice period, the guest operators shall vacate the Site.*

*In case the guest operator agrees to accept Option 2 noted above, the terms of the existing infrastructure sharing agreement shall stand amended accordingly.*

*The guest operator shall be required to choose, in writing, one of the above options within fifteen (15) days of the offer by the hosting party failing which the existing infrastructure agreement shall continue to remain in force.*"

***The Commission's Assessment***

202. The Notifying Parties' commitment is accepted subject to the following additions:

In the event any option is exercised:

i. If there is only one tenant on a site, MergeCo shall allow such guest operator to buy all fixtures, Tower or any other equipment on such Site on fair value and reasonable commercial terms and conditions within the period of thirty (30) days from initial notice;

ii. If there is more than one tenant on a Site, MergeCo shall auction all fixtures, tower or any other equipment on such Sites subject to a fair value reserve price within the period of thirty (30) days from initial notice. Upon successful sale, the acquiring MNO will continue to host the other guests on the same terms and conditions

iii. If parties cannot agree on the fair value noted above the same shall be determined by an independent valuer mutually agreed between the parties who shall carry out the valuation within fifteen (15) days from reference;

iv. If the sale is not completed within the thirty (30) day period set out in (i) and (ii) above (or if valuer determines fair value within seven (7) days of fair value determination) and Option 2 has been chosen, Paragraph (ii) of Option 2 will apply and the guest operator(s) shall vacate the Site upon completion of the period set out in Paragraph (ii) of Option 2;

v. For a period of five (5) months from the date of this Order, MergeCo shall not request an MNO that is a guest on its Sites to leave the site without granting one of the two options noted above so long as such MNO continues to make payment of dues.

### 6. Non-compete clause

203. The Commission hereby directs the Notifying Parties to

a.

b.

c.

d.

204.

### 7. Related Party Transactions

The Commission directs that except for Schedule 8, Clause 3 of the Shareholders' Agreement:

i. Mobilink will, by board resolutions and through proper procedures, ensure that the ADG representative on its board of directors is strictly excluded from any discussions, meetings and decisions which relate to (i) Mobilink's or its Subsidiaries' transactions with the Wateen Group and (ii) any matter relating to the MergeCo's subsidiaries which are competitors of the Wateen Group;

ii. The management of Mobilink and its Subsidiaries will be expressly prohibited by board resolutions and through proper procedures, from sharing commercially sensitive information relating to the businesses of MergeCo and its subsidiaries in Pakistan with the Wateen Group;

iii. Mobilink and its Subsidiaries are strictly prohibited from entering into any arrangement with the Wateen Group to procure goods and services, other than arrangements of the kind presently in place, except on an arm's length basis;

iv. Mobilink will notify the Commission if and when there is any change in ADG's shareholding in MergeCo after the consummation of the proposed transaction.

205. Without prejudice to sub-section 14 of Section 11, or any other provision under the Act and Merger Regulations hereunder (as amended from time to time), the Commission reserves the right to assess and review the effects of the Transaction on the relevant market on its own or upon application by any concerned undertaking.

206. Subject to the conditions imposed in this Order, the proposed merger is hereby authorized under Section 31(1)(d)(i) of the Act.

207. In view of the entitlement of confidentiality attached to certain business information provided by the merging parties and contained in this Order, the Registrar to the Commission shall maintain both confidential and public versions of this Order.

208. It is so ordered.

| Vadiyya Khalil | Shahzad Ansar | Ikram Ul Haque Qureshi |
|---|---|---|
| ***(Chairperson)*** | ***(Member)*** | ***(Member)*** |

Islamabad, 18th March, 2016