



BEFORE THE  
COMPETITION COMMISSION OF PAKISTAN

IN THE MATTER OF

SHOW CAUSE NOTICE ISSUED TO  
NFC EMPLOYEES CO-OPERATIVE HOUSING SOCIETY LTD

(F. NO: 80/NFCEHS/C&TA/CCP/2016)

Date(s) of hearing: 07-09-2017  
03-10-2017  
26-04-2018

Commission: Dr. Shahzad Ansar  
**Member**

Dr. Muhammad Saleem  
**Member**

Assisted by: Noman A. Farooqi  
Director General (Legal)

Present on behalf of:

M/s NFC Employees Cooperative Housing Society (NFCEHSL) Mr. Mumtaz Hussain Baloch  
*Financial Consultant & Officiating Secretary*

M/s Malik Cable Networks

Mr. Raza Shahbaz and  
Mr. Asad Iftikhar



## ORDER

1. This Order shall dispose of the proceedings under Section 30 of the Competition Act 2010 (the '**Act**') initiated *vide* Show Cause Notice Nos. 02/2017 and 03/2017 both dated 18<sup>th</sup> April 2017 (the '**SCNs**') issued to NFC Employees Cooperative Housing Society Limited (the '**Society**') and M/s Malik Cable Networks (the '**MC Networks**'), for *prima facie* violation of Section 4 of the Act.
2. The principal issue in this case is whether the Society and MC Network have entered into agreements for the provisions of cable TV services to the residents of Phase-I of the Society, which has the object or effect of preventing, restricting, or reducing competition with the relevant market in contravention of Sections 4(2)(a) and 4(2)(d) read with Section 4(1) of the Act.

## FACTUAL BACKGROUND

### A. COMPLAINT, ENQUIRY AND SHOW CAUSE NOTICE:

3. In September 2016, the Competition Commission of Pakistan (the '**Commission**') received concerns raised by a resident of the Society alleging that they were being forced to subscribe to the sole cable television network provider i.e. MC Networks and were deprived of the choice of any alternate or competing services provider in the locality. It was further alleged that the residents were being forced to pay whatever subscription amount MC Networks would charge regardless of the quality of service provided.
4. As an initial probe, the Commission shared the concern and sought comments and information from the Society and its management. The Commission further advised Society's management to provide any existing and available copies of the agreements entered into with MC Networks and other operators. The Society's management responded *vide* letter dated 11<sup>th</sup> August 2016, submitting that only MC Networks was allowed to carry on cable TV business in Phase-I of the Society. The document submitted by the Society's management included a copy of agreement dated 1<sup>st</sup> February 2016, executed between the Society and MC Network, (the '**Agreement**'), which provided for exclusivity provisions with the



*VA* 



effect that for the next five (5) years, no competitor of MC Networks would be accommodated in Phase-I of the Society.

5. On 6<sup>th</sup> September 2016, another letter was written to the Society's management - seeking information regarding cable operators in Phase-II of the Society and whether any other cable operators have expressed their willingness to lay down their cable TV services in the Society. The Society's management, *vide* its letter dated 29<sup>th</sup> September 2016 responded that Phase-II of the Society remains uninhabited, *however*, in Phase-I, PTCL (Pakistan Telecommunication Company Limited), have also been providing Smart TV services since 2012/13.
6. Subsequently, pursuant to Section 37(1), the Commission constituted an enquiry committee (**the Enquiry Committee**) to conduct further investigations into the alleged and possible violations of the Act. The Enquiry Committee was directed to investigate whether the Society's management and MC Networks have acted in contravention of Section 4 of the Act. On 27<sup>th</sup> December 2017, the Enquiry Committee submitted its Enquiry Report dated with conclusions that by virtue of the exclusivity agreement a *prima facie* contravention of Sections 4(2)(a) and 4(2)(d) read with Section 4(1) of the Act was made out against the Society and MC Networks.
7. On 18<sup>th</sup> April 2017, the Society and MC Network were both issued SCNs by the Commission directing them to submit their written replies within fourteen (14) days and to appear before the Commission on 4<sup>th</sup> May 2017 to plead their case. Relevant portions of the SCNs are reproduced as follows:

*"5. WHEREAS, in terms of the Enquiry Report in general and paragraph 20 in particular, the relevant geographic market is limited to Phase-I of the Undertakings; and*

*6. WHEREAS, in terms of the Enquiry Report in general and paragraph 20 in particular, by virtue of an agreement signed between the Undertaking and MC Network dated 01-02-2016 (the Agreement"), a barrier to entry has been created, as no other*



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*cable operators are allowed to provide services within the same jurisdiction of the society; and*

*7. WHEREAS, in terms of the Enquiry Report in general and paragraph 25 in particular, by virtue of exclusivity granting clause to MC Network, the residents of the Undertaking are forced to subscribe to the sole cable operator, which restricts the choice of consumers despite the presence of a host of other cable operators, thereby restricting competition in the relevant market; and*

*8. WHEREAS, in terms of Enquiry Report in general and paragraphs 26, 27 and 30 in particular, the Agreement amounts to 'imposing restrictive trading conditions' as per Section 4(2)(a) read with Section 4(1) of the Act respectively; and*

*9. WHEREAS, in terms of the Enquiry Report in general and paragraphs 26, 27 & 30 in particular, the Agreement amounts to 'limiting technical developments and investment' as per Section 4(2)(d) read with Section 4(1) of the Act respectively; and*

*10. WHEREAS in terms of the Enquiry Report in general and paragraph 28 in particular, it appears, prima facie, that the Undertaking is in violation of Section 4 of the Act and shall remain so till the Agreement is valid"*

**B. SUBMISSIONS MADE BY THE PARTIES IN RESPONSE TO THE SCN:**

8. The Society's management, *vide* letter dated 18<sup>th</sup> July 2017, submitted that it is a housing society registered under the provisions of the Cooperative Societies Act, 1925 (the 'CS Act'). The Phase-I of the Society was a bounded colony managed by its Managing Committee and General House, both elected after every three (3) years through secret balloting. The Society is not a thoroughfare and as per its stated policy and practice, commercial activities are allowed within its parameters through approvals and payment of rent/service charges.



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9. Referring to Section 2(1)(q) of the Act, it was submitted that the Society does not fall within the definition of 'Undertaking' for the purposes of the Act. Furthermore, it was submitted that the development works of the Society have been in progress since the 1990s. After partial development, the Society did not have more than thirty (30) occupants until 2003. In order to remove hardships of its members, the management took several initiatives, such as providing transportation services on a temporary basis and persuading public transport operators to extend their routes to Phase-I of the Society, but to no avail.
10. It was further submitted by the Society that after much efforts the management was able to encourage MC Networks to provide cable TV services for the residents of Phase-I of the Society. Accordingly, the first agreement between the Society and MC Networks was executed in February 2003. Since then, the agreement has been extended for several times by mutual consent. It was further submitted that there were around 700 houses in the Society and more than 60% of the plots/houses were vacant, hence in this situation, it was not feasible to grant permission to more than one service provider in Phase-I of the Society. Furthermore, MC Networks was not the only cable TV service provider, but PTCL was also providing similar services to the residents. Finally, the Management has not received any complaints from the residents. On the other hand, it was submitted that after the expiry of the Agreement with MC Networks, they would invite other service providers through advertisement and may grant permission to another party for ensuring competition and choices for the residents.
11. In furtherance the Society's management, *vide* letter dated 2<sup>nd</sup> October 2017, submitted that they have examined their record and found that during this period only one cable service provider, *namely* M/s Mian Cable Network (MCN) having its office at main Shahbaz Road, Baghbanpura, Lahore, had approached them in 2010, requesting for grant of exclusive rights to provide its services in the region. While the negotiations were underway, MC Networks approached the Cooperative Court against cancellation of its agreement. However, during the proceedings, MC Networks agreed that it will not object to the introduction of a new service provider in the Society. Therefore, the Society's management informed the Deputy District Officer Cooperative, *vide* letter dated 9<sup>th</sup> March 2010, that there is no



restriction in the Agreement with MC Networks for the entry of additional service provider in the Society and they are willing to negotiate with MCN for the provisions of cable TV services. However, during the proceedings, MCN withdrew its offer and ultimately the petition was disposed of.

12. Against this backdrop, the Society's management submitted that every service provider desires to have exclusive rights to operate within the area. However, if other service providers would show willingness, the Society would endeavour to accommodate them subject to the payment of an appropriate fee as is being charged from the existing service provider and compliance of other terms and conditions of the Society. Furthermore, in order to resolve the controversy, the Society intends to invite expression of interest from other service providers through public advertisement on the terms and conditions settled with MC Networks, who have already been conveyed by the management. Finally, it was submitted that the Society has never tried to avoid competition between the service providers.

**C. HEARINGS:**

13. On 3<sup>rd</sup> October 2017, the first hearing in this matter was held, wherein Mr. Mumtaz Baloch, Financial Consultant & Officiating Secretary represented the Society's management. HE admitted that they have executed an agreement with MC Networks containing exclusivity clauses for the provision of cable TV services in Phase-I of the Society. The Agreement is valid during the years 2016-2021 and may be renewed upon expiry. On the question as to why only MC Networks have been granted exclusivity status, The Society's representative reiterated the stance earlier submitted to the Commission in writing. That is, there has been very little development in the Society as few houses were constructed. Therefore, the management have to persuade service providers to operate their cable TV and allied services network on subsidized rates in the Society.

14. It was further submitted that the Society has definite plans inviting other cable TV service providers through advertisement in the daily newspapers. Moreover, MC Networks have agreed to remove the exclusivity provisions from the Agreement and would have no objection in publishing the advertisement for new contracts for



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the provision of cable TV services in the area. This initiative has been taken by the Society's management after the SCNs were issued to them. At that point, the Bench directed the Society's representative to submit a copy of its amended agreement with MC Networks, in addition to a draft of the proposed advertisement inviting other cable TV operators as commitments, pursuant to the Competition Commission (General Enforcement) Regulations 2007 ("**GE Regulations**").

15. In pursuance of our directions, the Society's management, *vide* letter dated 7<sup>th</sup> October 2017, submitted a number of documents which *inter alia* include:

- i. Copies of the proposal for installation of Wateen TV Cable & Wireless Internet by Mian Cable Network and case record filed with the Deputy District Officer Cooperative, Lahore;
- ii. Copies of notifications regarding the appointment of administrators/ caretaker committee and elected Managing Committee;
- iii. Letter to MC Networks regarding amendments to the Agreement;
- iv. Copy of reply/ consent by MC Networks regarding amendments in agreement;
- v. Draft of advertisement to be published in the newspaper;
- vi. Draft of an addendum to the agreement dated 1st February 2016;
- vii. Draft of an undertaking by Secretary of the Society submitting that the Society shall invite expression of interest for a second cable provider in the society if practically possible in the current environment.

16. On 22<sup>nd</sup> February 2018, second hearing was held. After a detailed appraisal of the case record referred to in the preceding paragraph and verbal submission, the authorized representatives of the Society were advised to submit their commitment in pursuance of GE Regulations with the Office of Registrar of the Commission. On 26<sup>th</sup> April 2018, final hearing in the matter to review the commitments submitted by the Society's management was held.



## ISSUES

17. The issues that need to be addressed in this case are:
- i. *Whether the Society is an undertaking within the meaning of Section 2(1)(q) of the Act? and*
  - ii. *What is the relevant market for the purpose of these proceedings and in terms of Section 2(1)(k) of the Act?*
  - iii. *Whether the exclusivity granted to MC Networks by the Society for the provisions of cable TV services has the object or effect of preventing, restricting or reducing competition in the relevant market in contravention of Section 4 of the Act?*

## ANALYSIS AND DECISION

### ISSUE NO. I

18. In respect of the applicability of the Act, the Commission notes that the Society in its written reply has submitted that it is a cooperative society and does not fall within the meaning of Undertaking provided under Section 2(1)(q) of the Act. For the sake of reference, Section 2(1)(q) of the Act is reproduced hereunder:

*2(1)(q).-“undertaking” means any natural or legal person, Governmental body including a regulatory authority, body corporate, partnership, association, trust or other entity in any way engaged directly or indirectly, in production, supply, distribution of goods or provisions or control of services and shall include an association of undertaking.*

19. Based on the documents available on the record and by the Society's own submissions it is clear that the Society is, directly or indirectly, engaged in the business of developing real estate, *albeit* primarily for its employees. This includes, *inter alia*, granting the right to access utility corridors or pathways for laying cable TV and other related infrastructure on the basis of revenue sharing



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and/or other commercial terms. This is evident from the Society's letter dated 2<sup>nd</sup> October 2017 addressed to the Commission, wherein it was stated that:

*"...if any service provider is willing to work as a second service provider the society may consider the grant of permission **subject to payment of an appropriate fee as is being charged from the existing service provider...**"*

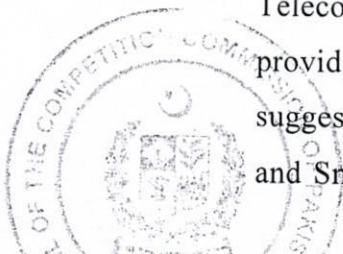
20. In this context, it is pertinent to mention that the Commission in one of its recent orders, namely *in the matter of Show Cause Notice issued to Utility Stores Corporation of Pakistan (Private) Limited dated 15<sup>th</sup> December 2017*, reported as *2018 CLD 292* has observed as follows:

*"If any legal entity or natural person is engaged **in any way** in the production, supply, distribution of goods or provision or control of services, the said entity falls within the purview of the term 'Undertaking'."*

21. Furthermore, the concept of undertaking includes every entity, whether natural or legal, as long as it is engaged, directly or indirectly, in any commercial or economic activity, regardless of the legal status and way in which it is financed. Furthermore, the Act does not classify the private economic operators or public entities differently as long as they are engaged in any commercial or economic activity in a given market, they would fall within the definition of the term "*Undertaking*". We, therefore, are of the considered view that the Society is an Undertaking for the purpose of the Act and remains liable for contraventions of the Act, if any.

## ISSUE NO. II

22. On relevant product/services market, the Society's management has asserted that MC Networks is not the sole service provider because Pakistan Telecommunication Company Limited (hereinafter the 'PTCL') was also providing similar services to the residents of Phase-I of the Society, thereby suggesting that the two services *i.e.* Analogue cable TV offered by MC Networks and Smart TV offered by PTCL are substitutable. In this regard, the Commission



firstly notes that paragraph 19 of the Enquiry Report has distinguished between Analogue cable TV Services and smart TV Services offered by the two operators in Phase-I of the Society. However, before expounding over the facts and the precise market definition in the case, the Commission would refer to the definition of “relevant market” under the Act:

*2(1)(k).-“relevant market” means the market which shall be determined by the Commission with reference to a product market and a geographical market and a product market comprises of all those products or services which are regarded as interchangeable or substitutable by consumers by reasons of the products’ characteristics, prices and intended uses. A geographical market comprises the area in which the undertakings concerned are involved in the supply of products or services and in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring geographic area because, in particular, the conditions of competition are appreciably different in those areas.*

23. The definition of the relevant market reproduced above, suggests identifying whether the two or more products belong to the same market. The relevant market assessment also requires determining the geographic market held by the parties in question and their competitors. Once the product market and the geographic market are identified, the Commission is required to carry out a more detailed analysis based on the concept of substitution. The business undertakings subject to competition must respect two major competitive constraints in terms of demand substitutability and supply substitutability. A market is considered to be competitive if customers can choose between a range of products/services by reason of their characteristics, prices charged and intended use.

24. Paragraph 19 of the Enquiry Report states that the intended use of both services analogue cable TV and Smart TV might be substitutable to a certain extent, however, the service characteristics and prices charged are the differentiating





factors. Hence, the two services are not substitutable from the demand-side *i.e.* consumer's perspective. Unfortunately, the assessment of the Enquiry Report vis-à-vis the Relevant Market is not correct. In one of our recent decisions *i.e.* *In the matter of Show Cause Notice issued to M/s Wateen Telecom Limited* (the 'Wateen Order'), while dealing with a similar situation and services, held as follows:

*20. The European Commission (EC) has comprehensively dealt with the question of whether ATV and DTV make up for separate relevant markets. One of the key differences between ATV and DTV services is the increased bandwidth available in the case of DTV and following from this a greater diversity of the programmes offered.<sup>1</sup> Although the EC in the past has used the content of programmes as a criterion to delineate markets<sup>2</sup> it refused to do so in the case of ATV and DTV services as in its view the pay TV market could not be subdivided into ATV and DTV as DTV was merely a further development of ATV.<sup>3</sup> Moreover, inevitable digital evolution of pay TV services through the transition from gradual replacement to complete supersession of ATV by the more superior DTV technology did not justify segmenting ATV and DTV into two separate sub markets within the pay TV services market.<sup>4</sup> Therefore, the EC has repeatedly held that the main distinction lies between the market for retail distribution of pay TV (through subscriptions) and the market for free TV (through advertising). This is because of the different trading relationships involved, the different conditions of competition, price of the services and the characteristics of the two types of television.<sup>5</sup>*



<sup>1</sup> Commission Decision, 94/922/EC, MSG Media Service, [1994] OJ L 364/1, para. 33.

<sup>2</sup> Commission Decision, 94/922/EC, MSG Media Service, [1994] OJ L 364/1, para. 33; Commission Decision, Case IV/M.410, 2 August 1994, Kirch/Richemont/Telepiu, para. 15; Commission Decision, Case IV/M.110, 10 September 1991, ABC/Generale des Eaux/Canal+/W.H. Smith TV, para. 11.

<sup>3</sup> See Commission Decision, 1999/153/EC, Bertelsmann/Kirch/Premiere (Case IV/M.993), [1999] OJ L 53/1, para. 18; Commission Decision, 1999/242/EC, TPS I (Case IV/36.237), [1999] OJ L 90/6, para. 26; Commission Decision, 2001/98/EC, Telia/Telenor (Case IV/M.1439), [2001] OJ L 40/1, para. 262; Commission Decision, Case COMP/JV.37, 21 March 2000, BSKyB/Kirch Pay TV, para. 25.

<sup>4</sup> See Commission Decision, 1999/153/EC, Bertelsmann/Kirch/Premiere (Case IV/M.993), [1999] OJ L 53/1, para. 18; Commission Decision, 2001/98/EC, Telia/Telenor (Case IV/M.1439), [2001] OJ L 40/1, para. 262.

<sup>5</sup> See Commission Decision, Case COMP/JV.37, 21 March 2000, BSKyB/Kirch Pay TV, para. 24; Commission Decision, 1999/781/EC, British Interactive Broadcasting/Open (Case IV/36.539), [1999] OJ L 312/1, para. 24.

Thus, since its last major decision dealing with the TV broadcasting industry, *Newscorp/Telepiù*<sup>6</sup>, the EC did not see any reasons to depart from these views.<sup>7</sup>

21. The Commission in the instant proceedings is also of the considered view that there exists no justifiable reason to distinguish between the markets for ATV and DTV services, both forming an integral part of pay TV services as a whole. The Commission is also fortified in its view that DTV is merely a further development of ATV technology and therefore neither of them constitute a separate relevant product market from a competition point of view.

22. Moreover, in terms of market players, all pay TV operators build up the relevant product market of "pay TV services". Therefore, the provision of packages of TV programmes to final users by operators of satellite/ FTTH/ IPTV digital platforms as well as analogue based cable operators or analogue TV providers though HFC, are all classified as the same relevant market for the provision of pay TV services as consumers are provided with a very similar service for the same intended use (regardless of the applied technology) with a slight variation in price, quality and characteristics.

25. We are in full agreement with the findings of Wateen Order that "the provision of packages of TV programmes to final users by operators of satellite/ FTTH/ IPTV digital platforms as well as analogue based cable operators or analogue TV providers though HFC, are all classified as the same relevant market for the provision of pay TV services as consumers are provided with a very similar service for the same intended use (regardless of the applied technology) with a slight variation in price, quality and characteristics." Accordingly, the relevant product market in the instant matter is the market for provision of pay TV services.

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<sup>6</sup> See also R. Capito, in: EMR (supra note 8), paras. 1.66 et seq.

<sup>7</sup> Commission Decision, Case COMP/M.2876, 2 April 2003, *Newscorp/Telepiù*.

<sup>8</sup> See Commission Decision, Case COMP/C.2.-38.287, 29 December 2003, *Telenor/Canal +/Canal Digital*, para.

<sup>9</sup> See also Commission Decision, Case COMP/M.3411, 17 May 2004, *UGC/Noos*, paras. 13 et seq.





26. However, with reference to the relevant geographical market, we are in agreement with the conclusions of the Enquiry Report that the relevant geographic market, in this case, consists of phase-I of the Society as delineated in paragraph 20 of the Enquiry Report and the SCNs. Our view is reinforced by the fact that other phases of the Society are at different stages of development, hence they are not considered to be part of the relevant geographic market at present. Therefore, in the matter under examination, both the product market and the geographic market have appropriately been defined in the Enquiry Report.

### ISSUE NO. III

27. Having determined the relevant market in the matter at hand, we may now turn to the question whether or not the exclusivity granted by the Society to MC Networks in an agreement entered on 1<sup>st</sup> February 2016 for a period of five years *i.e.* until 31st January 2021, tantamount to a contravention of Section 4 of the Act. The relevant clauses of the Agreement are reproduced hereunder:

*Clause 2 (Exclusivity): "During this agreement, no other competitor will be accommodated subject to the satisfactory performance of the Cable Network Service."*

*Clause 8 (Renewal): "On the expiry of five years agreement if some better offer from other Cable Service is received than M/s Malik Cable Network Service shall have to match the new offer or the society management shall be at liberty to hire the services of other better party."*

28. Paragraphs 25 and 26 of the Enquiry Report suggest that by incorporating the aforementioned provisions, the parties have "by object" created artificial barriers to entry as no other cable TV operators are allowed to enter into the market for a minimum of next five years. Consequently, the residents of the Society would be left with limited choices *vis-à-vis* the pay TV services.



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29. A bare perusal of the afore-referred clauses indicate that they are anticompetitive and restrictive of competition under Sections 4(2)(a) and 4(2)(d) (as well as Section 4(2)(b)- *albeit* not referred to in the Enquiry Report) of the Act read with Section 4(1) of the Act. It is also noted that MC Networks has factually been operating exclusively in the relevant market since 2003 and by virtue of clause 2 and clause 8 of the Agreement. It will continue to enjoy a monopolistic status *vis-à-vis* the cable TV Services, which constitutes a major portion of the relevant market until 2021, which is a substantial period of time keeping in view the technological dimensions and evolution of the relevant market. Therefore, We find that the exclusivity granted to MC Networks prevents, restricts and reduces competition by imposing restrictive trading conditions, restricting output as well as technical advancement in terms of innovation and efficiencies and investment in violation of Sections 4(2)(a), 4(2)(b) and 4(2)(d) read with Section 4(1) of the Act.
30. Another issue which needs to be discussed is that of “*matching right*” granted to MC Networks by the Society by virtue of Clause 8 of the Agreement reproduced above. In its order **in the Matter of Show Cause Notice issued to Wateen Telecom Private Limited & Defence Housing Authority** dated 22<sup>nd</sup> March 2011 (**DHA-Wateen Order**), the Commission has interpreted such “*matching rights*” or matching obligation equivalent to “*right of last refusal*”. In paragraph 43 of the said Order, the Commission has observed that:

*“This right amounts to the creation of a significant entry barrier that could deter future potential entrants and as a result limit the number of competitors in the relevant geographic market. While the right of first refusal gives one party to a contract the first right to make an offer for the provision of a service or the first right to refuse to provide a service, the last right of refusal gives a party to a contract the right to match the terms the other party to the contract is willing to accept from a third party. This provides Wateen the right to match the last best bona fide third party offer for the provision of any telecommunication and media services in the DHA Region. Wateen is given more protection under this right*





*than it would have if the first right of refusal had been provided to it.”*

31. Against the backdrop of the Commission’s interpretation above, Clause 8 of the Agreement directly or indirectly provides for such right to MC Networks by stipulating that *“on the expiry of five years ... if some better offer from other [operator] is received than [MC Network] shall have to match that offer”*. In effect, this clause regulates the future rapports between the parties to the agreement. If fulfilled, MC Network will continue to enjoy exclusivity or monopoly preventing other cable TV operators in the relevant market. Therefore, it is of the Commission’s considered opinion that this clause has the object as well as the effect of reducing, restricting, and preventing competition in the relevant market as envisaged under Section 4 of the Act.
32. Now we would briefly discuss the question of liability on part of the two parties to the exclusivity Agreement. In its DHA-Wateen Order, the Commission (in paragraph 38) has referred to Section 27-A of the Pakistan Telecommunication (Re-organization) Act of 1996, where it is provided that every licensee shall have right to share any public or private right of way for the purposes of installation of their telecommunication system. In order to have access and lay down telecom infrastructure, a licensed operator has to make a request to the owner to grant the right of way (ROW). Thus, the ROW is granted not by virtue of having such license only but it is also subject to the approval of the owner of land in question. In the instant matter, the ownership of the land and/or grant of NOCs (No Objection Certificates) is held with the Society. Any licensee or cable operator desiring to install its infrastructure has to obtain an NOC and execute an agreement with the Society. In respect of exclusivity granted to MC Network, it is important to note that the Society’s management is the sole authority to execute such agreements. There is nothing on the record that MC Networks has persuaded the Society to grant exclusivity in its 2016 Agreement, *albeit* it is reasonably possible in the circumstances of the case. It is also pertinent to mention that at all relevant times, the Society has not applied for a grant of exemption to the exclusivity granting restrictive covenants under Section 5 read with Section 9 of the Act. The Society has the primary obligation not to grant such exclusivity to



any service provider in respect of land managed by it unless the Commission deems it appropriate to grant an exemption for a limited period of time.

33. By virtue of the clauses granting exclusivity to MC Networks, no service providers would have the option to provide (cable) TV and allied services in the Society which detrimental to consumers and overall competitive process in the relevant market. Therefore, we hereby hold that these clauses are in violation of Section 4 of the Act and are infact void in terms of subsection (3) of Section 4 of the Act.

### COMMITMENT AND COMPLIANCE

34. During the hearings, the Society's authorized representative tendered unconditional apology and submitted its commitment (**the Commitment**) to amend its Agreement with MC Networks to the satisfaction of the Commission. The relevant parts of the Commitments submitted by the Society are reproduced hereunder:

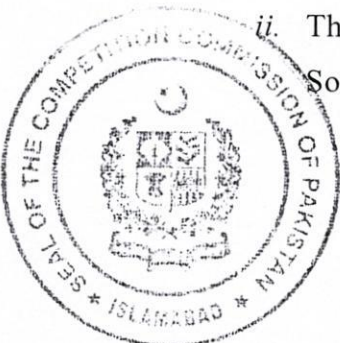
- i. On behalf of MC Networks and the Society submitted an executed copy of the addendum vide their letter dated 7<sup>th</sup> October 2017, wherein the impugned clauses have been amended as follows:

*"Clause No. 1 "The period of the agreement shall be five years i.e. 01.02.2016 to 31.01.2021 which may be extended for a further period with mutual consent."*

*Clause No. 2 and 8 of existing agreement are hereby deleted. All other terms and conditions of agreement dated 01.02.2016 will remain unchanged."*

- ii. The following undertaking has been submitted by the Secretary the Society:

*I, Mr. Muhammad Mumtaz Hussain Balouch  
Secretary of the society do hereby undertake that the  
society will try its best to arrange second Cable*





Service Provider in the Phase-I of the society. In his context, we are inviting expression of interest for second cable service provider through advertisement. We will take all necessary steps to arrange second cable service provider if practically possible in the current environment in the present environments especially present population of the society and the prevailing terms and conditions with the agreed with the existing service provider which would be minimum bench mark for every service provider.

- iii. In addition to the above, the following draft advertisement has been submitted to be published in the newspaper and through another medium:

Draft  
پیشکش مطلوب ہے

Annex 4r-2

این ایف سی کوآپریٹو ہاؤسنگ سوسائٹی فیزا، نزد واہڈاٹاؤن لاہور میں دوسرے کیبل نیٹ ورک آپریٹنگ سہولت کے لئے پیشکش مطلوب ہیں۔ دلچسپی رکھنے والے ممبر اسے منظور شدہ کیبل آپریٹنگ سوسائٹی سر ممبر پیشکش زیر دستخطی کو ارسال کریں۔ واضح رہے کہ سوسائٹی ہذا میں پہلے ہی ایک کیبل آپریٹنگ کام کر رہا ہے جبکہ اب سوسائٹی کو اپنے ممبران کی سہولت کے لئے دوسرے کیبل آپریٹنگ سروسز درکار ہیں جس کے لئے یہ پیشکش مطلوب ہے۔ پیشکش موصول ہونے کی آخری تاریخ \_\_\_\_\_ 2017ء ہے۔ انتظامیہ کو کوئی وجہ بتائے بغیر کسی ایک یا ساری پیشکش کو رد کرنے کا پورا اختیار حاصل ہوگا۔ مزید تفصیلات کے لئے زیر دستخطی سے رابطہ کیا جاسکتا ہے۔



سیکرٹری این ایف سی ایسپلائز کوآپریٹو ہاؤسنگ سوسائٹی فیزا، نزد واہڈاٹاؤن، لاہور۔

فون نمبر: 35180873

ویب سائٹ: www.nfcechs.com

35. It is on the record that the Society has made the aforementioned amendments in its existing agreement with MC Network and has tendered expression of interest to invite potential service provider in Phase-I of the Society, to the satisfaction of this case.

### REMEDIES AND PENALTIES

36. At the very outset we note that in modern times, prevalent communication, electronic media/broadcasting industries, including radio, cable television, film, the internet, multimedia and mobile platforms are transforming at an unprecedented pace. Majority of the market players are competing not only on product/services pricing but also on quality and innovation. While incumbents may tend to preserve their monopolistic status, new business models *such as* cable/telecom cross-ownership and new technological solutions are constantly emerging and thriving in the market whether at local, regional or national level. This trend is likely to change the entire industry fundamentally. By raising and strengthening barriers to entry in the market, the Society has not only stifled price competition but also non-price competition *i.e.* technological innovation and investment based competition in the relevant to consumer's detriment.
37. We are of the considered opinion that the contravention of Section 4(2)(a), 4(2)(b) and 4(2)(d) read with Section 4(1) of the Act stands established in terms of what has already been discussed above. Nevertheless, taking into account the compliance-oriented approach of the Society and its management and commitments not to repeat or indulge in contravention of Section 4 including Chapter II of the Act and Rules and Regulations promulgated thereunder, we decide to take a lenient approach at this instance. Therefore, pursuant to Regulation 37 of the GE Regulations read with Section 38 of the Act, we are inclined to impose a penalty in the sum of PKR 1,000,000/- (Rupees One Million Only) on the Society. The Society and its management are further directed to file a compliance report in terms of commitments contained in paragraph 35 & 36 above with the Registrar of the Commission within sixty (60) of this order and also to deposit the penalty so imposed from the date of issuance of this order.



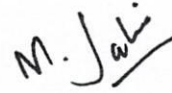
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38. In case of non-compliance with the above directions to the satisfaction of the Commission or failing to comply with the commitments filed by the Society and directions of the Commission, the Society shall be liable to pay a further penalty in the amount of PKR 50,000 (Rupees Fifty Thousand Only) per day from the date of issuance of this order in addition to initiation of criminal proceedings against the management of the Society under sub-section (5) of Section 38 of the Act before the court of competent jurisdiction.
39. Before parting with this order, the Society and any other related party(s) are reprimanded and warned of severe consequences specified under the Act for any subsequent violation, whether on their own or on behest of any service provider(s) in the Society.
40. In terms of the above, the SCNs Nos. 02/2017 and 03/2017 both dated 18<sup>th</sup> April 2017 are hereby disposed of.



Dr. Shahzad Ansar  
*Member*



Dr. Muhammad Saleem  
*Member*

ISLAMABAD, 26<sup>th</sup> day of November 2018

