

Competition & Antitrust - Pakistan

Competition Commission dismisses abuse of dominance complaints

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Complaint against PTCL Complaint against Ministry of Industries and Production

The Competition Commission recently dismissed the following complaints filed under Section 3 of the Competition Act 2010.

Complaint against PTCL

The commission recently passed an order on a complaint that Wise Communication Systems (Private) Limited (Wisecomm) filed against Pakistan Telecommunication Company Limited (PTCL).

In its complaint, Wisecomm stated that PTCL enjoyed a dominant position in the fixed local loop market and had unilaterally discontinued services to Wisecomm, a PTCL customer and competitor in that market. Wisecomm claimed that this violated Section 3(3)(g) of the Competition Act 2010, which prohibits a company from abusing its dominant position by boycotting or excluding any other company from the production, distribution or sale of goods or provision of a service.

The commission constituted an enquiry committee to investigate the complaint. Next, Wisecomm was asked to present its case at hearings before the full bench of the commission.

In its order, the commission expanded on the concept of 'exclusionary conduct' and stated that this exists where a commercial decision leads to anti-competitive foreclosure by the dominant firm without any objective justification, which causes an actual or potential threat to the market and consumers.

The commission highlighted certain important facts and circumstances surrounding the case including action that the Pakistan Telecommunication Authority had taken against Wisecomm for engaging in alleged illegal telecommunication business and a subsequent Federal Investigating Agency raid, which resulted in the seizure of equipment installed at Wisecomm's office and ultimately to the suspension of PTCL's services to its competitor.

Wisecomm alleged that the payment which PTCL had issued was an attempt to exclude it from the fixed local loop market. Further, Wisecomm admitted during the course of the hearing that the disputed amount was still under consideration before the high court. Wisecomm also placed reliance on emails attached to the complaint in which PTCL had directed it to make payments, failing which PTCL would take action against Wisecomm.

The commission noted that Wisecomm had 7,000 to 8,000 subscribers in five regions, which was a tiny market share. A competitor with a negligible market share cannot be said to exert enough competitive pressure in the relevant market such that its exclusion would affect the behaviour of the dominant undertaking and prejudice consumers. The commission observed that Wisecomm had provided no evidence to show harm to consumers in terms of price, quality and choice due to PTCL's alleged action.

Given the contractual dispute and action that the Pakistan Telecommunication Authority had taken, the commission held that PTCL's suspension of services to Wisecomm did not have the object of preventing, restricting, reducing or distorting competition in the relevant market. The commission thus dismissed the complaint on the grounds that Wisecomm had failed to show that PTCL had violated Section 3 of the act.

Complaint against Ministry of Industries and Production

The Competition Commission also dismissed a complaint that a bi-axially oriented polypropylene (BOPP) film manufacturer had filed regarding the Ministry of Industries and Production's grant of pioneer industry status (PIS) to manufacturers of bi-axially oriented polyethylene terephthalate (BOPET) film.

The complainant claimed that BOPET film manufacturers did not qualify under the criteria laid down

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for PIS and had falsely claimed this status, which in turn had distorted competition in the relevant market. It alleged that the economic benefits of PIS granted to BOPET manufacturers had enabled them to abuse their dominant position in violation of Sections 3 (1), (2) and (3)(f) of the Competition Act by imposing predatory pricing, impeding market entrance and monopolising the market.

The commission conducted a public hearing at which the complainant, respondents and representatives of the Engineering Development Board submitted their views and comments on the matter.

The commission observed that an assessment of abuse of dominance depends on the determination of the relevant market, which is primarily comprised of substitutable products in a particular geographical area. The products involved in this case were BOPP and BOPET film sheets produced in Pakistan. Considering the characteristics, unique properties and end usage of the products, BOPP and BOPET film sheets are best used together and are not interchangeable. The commission noted that since BOPP and BOPET do not form part of the same relevant market, the grant of PIS to BOPET manufacturers had not restricted, reduced or distorted competition in the BOPP market.

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