GOVERNMENT OF PAKISTAN
PAKISTAN TELECOMMUNICATION AUTHORITY
Headquarters F-5/1, Islamabad
http://www.pta.gov.pk

No.PTA/Licensing/Warid-Mobilink-Merger/69/2015

Notice of Proposed Change in Substantial Ownership Interest of Pakistan Mobile Communications Limited and Warid Telecom (Private) Limited, and Request for Permission of Merger between Pakistan Mobile Communications Limited and Warid Telecom (Private) Limited

ORDER OF THE AUTHORITY

1. Background of the case:

1.1 Brief facts of the case are that the Pakistan Telecommunication Authority (the "Authority") received notices on 15th December, 2015 from the Pakistan Mobile Communications Limited (the "PMCL") and Warid Telecom (Pvt.) Ltd. (the "Warid") respectively (collectively referred hereinafter as the "Parties"), for the change in substantial ownership interest in PMCL and Warid and merger between the Parties.

1.2 **Parties to the Merger**

1.2.1 **Pakistan Mobile Communications Limited (PMCL)**

PMCL has been issued the following licenses by the Authority:

i. Mobile Cellular License issued under Section 21 of the Pakistan Telecommunication (Re-organization) Act, 1996 (License No. MCT-05/WLL &M/PTA/2007 dated 6 July, 2007);

ii. Mobile Cellular License issued under Azad Jammu and Kashmir (AJ & K) Council Adaptation of Pakistan Telecommunication (Re-organization) Act 2005 (License No. MCT- 01/WLL & M/PTA/2006 dated 26 June, 2006);

iii. Next Generation Mobile Services (NGMS) License issued under Section 21 of the Pakistan Telecommunication (Re-organization) Act, 1996 (License No. NGMS - 04/WLL &M/PTA/2014 dated 21 May, 2014);

iv. License (DIR (L)/CVAS-04/AJK&NA/PTA/2008) dated 28 May 2008 to establish, maintain and operate Voice Class Value Added Services in Northern Areas TR-3; and

v. License (DIR (L)/CVAS-03/AJK&NA/PTA/2008) dated 28 May 2008 to establish, maintain and operate Voice Class Value Added Services in Azad Jammu and Kashmir.

1.2.2 PMCL's Subsidiaries

In addition to the licenses awarded to PMCL, there are two subsidiaries of PMCL which have also been issued various telecommunications licenses by the Authority. Details of all subsidiaries including licensees of PTA are as follows:

i. **Business and Communications System (Pvt.) Ltd ("BCSPL")** is a wholly owned subsidiary of PMCL. It is a private limited company engaged in the provision of human resource services to PMCL;

ii. **LinkDotNet Pakistan (Pvt) Ltd (LinkDotNet)** is an indirect wholly owned subsidiary of PMCL, registered as a private limited company, and provides broadband and value added services in Pakistan ;

iii. **LinkDotNet Telecom Limited** is a direct subsidiary of PMCL and is providing Local Loop (LL) and Wireless Local Loop (WLL) services in 5 and 12 telecom regions respectively as well as Long Distance & International (LDI) telecommunication services in Pakistan. The company also holds a data CVAS license for Pakistan; and

iv. **Waseela Microfinance Bank Ltd (Waseela)** is direct subsidiary of Global Telecom Holding ("GTH"), PMCL's parent concern and is thus its sister company.

1.2.3 PMCL's Shareholdings

i. 100% of the shares in PMCL are owned by International Wireless Communications Pakistan Limited **("IWCPL"),** a company incorporated in Malta. IWCPL is a wholly owned subsidiary of Global Telecom Holding SAE, which in turn is an indirect subsidiary of **VimpelCom Limited**.

ii. Global Telecom Holding S.A.E., is a company incorporated as a joint stock company under the laws of the Republic of Egypt and has its offices in Cairo, Egypt ("Global Telecom Holding").

iii. **VimpelCom** is a company incorporated in Bermuda and headquartered in Amsterdam, the Netherlands. **VimpelCom** was established in 2010 by the combination of OJSC **VimpelCom** and **Kyivstar**.

iv. **VimpelCom** is one of the world's largest integrated telecommunication services operators. Through companies in its group, VimpelCom provides voice and data telecommunication services utilizing a range of wireless, fixed and broadband technologies. The **VimpelCom** group has operations in Russia, Ukraine, Italy, Algeria, Bangladesh, Pakistan, Kazakhstan, Uzbekistan, Tajikistan, Georgia, Armenia, Kyrgyzstan, Laos and Zimbabwe, covering territory with a total population of about 740 million. As of June 30, 2015 VimpelCom had 213 million active mobile subscribers and 6 million fixed-line broadband customers on a combined basis. VimpelCom's operating companies provide services, inter alia, under the "Beeline", "Kyivstar", "WIND", "PMCL", "banglalink", "Telecel" and "Djezzy brands.

1.2.4 **Warid Telecom (Private) Ltd**

Pursuant to licenses No. MCT-02/RBS/PTA/2004 dated 26 May 2004 and License No. MCT-03/WLL& M/PTA/2006 dated 26 June 2006 provides cellular mobile services in Pakistan and Azad Jammu and Kashmir and Gilgit Baltistan.

1.2.5 **Warid's Shareholdings**

The sharing holding of Warid comprises of Warid Telecom Pakistan LLC ("WTPL") and Bank Alfalah Limited ("Bank Alfalah"). WTPL, a company duly incorporated in the United Arab Emirates, currently holds 91.24% shares in Warid. On the other hand, the remaining 8.76% shares of Warid are held by Bank Alfalah, a banking company incorporated in Pakistan.

2. The Transaction Between the Parties

2.1 IWCPL, PMCL, WTPL, Bank Alfalah and Warid have entered into an Acquisition Agreement on 26 November, 2015 ("**Acquisition Agreement**"). Pursuant to the Acquisition Agreement, it is intended that **PMCL and Warid** shall merge subject to all regulatory approvals and compliance with all legal and procedural formalities. The proposed transaction shall be implemented in two steps ("**Transaction**").

- **Step 1** entails the acquisition of the entirety of the issued and outstanding shares of Warid by PMCL, whereupon Warid shall become the wholly owned subsidiary of PMCL, and PMCL shall issue and allot shares to the Warid Group Shareholders, which shall comprise up to 15% of the issued and paid up shares of PMCL, upon completion.

- **Step 2** entails the legal merger of Warid with PMCL through sanction of a Scheme of Arrangement in terms of Sections 284 to 287 of the Companies Ordinance 1984 ("Ordinance"). Such merger is to be effected through the sanction of Scheme of Arrangement under Sections 284 to 287 of the Ordinance by the High Court upon such legal merger being effected, all the assets and liabilities of Warid (including but not limited to Warid License, Network, Spectrum, towers, infrastructure etc.) shall stand transferred/assigned to PMCL.

3. Competition Commission of Pakistan's Order dated 18th March, 2016

While analyzing the instant request, the Authority after careful examination of the order dated 18th March 2016, passed by Competition Commission of Pakistan (CCP) wherein the C.C.P *at para 189 to 202* of the order, *ibid*, addressed the conditions / areas related to telecom sector i.e. Spectrum Concentration, Wholesale Access to MVNOs, Interconnection, Joint Control / Cross-holding, Infrastructure Sharing, Non Compete Clause and related Party Shareholding. The CCP, after detailed assessment and considering the competition concerns, the countervailing factors and efficiencies allowed the proposed merger with certain obligations on the matters as stated above.

4. Proceedings before the Authority

4.1 By virtue of section 4 read with sections 5 and 6 of the Pakistan Telecommunication (Re-organization) Act, 1996 (hereinafter referred to as the **"Act"),** the Authority is mandated to regulate the establishment, operation and maintenance of telecommunication system and the provision of telecommunication services in Pakistan including transfer of licenses, regulate competition in the telecom sector and protect interest of licensees and telecom consumer rights. For ready reference relevant provisions as prescribed under the Act are reproduced below:

> "**Section 4(1) (a) the Authority shall regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan.**
>
> **Section 4(1)(c) promote and protect the interests of users of telecommunication services in Pakistan.**
>
> **Section 4(1)(m) regulate competition in the telecommunication sector and protect consumer rights.**
>
> **Section 5 (2)(f) regulate the transfer of licenses.**
>
> **Section 6(a) the Authority shall ensure that rights of licenses are duly protected.**
>
> **Section 6(e) the Authority shall ensure fair competition in the telecommunication sector exists and is maintained.**
>
> **Section 6(f) the Authority shall ensure the interest of users of telecommunication services are duly safeguarded and protected.**

Section 21(4)(j) restrictions or limitations on transfer or assignment of license. "

4.2 In addition to the statutory provisions of the Act provided earlier; Rule 11 of the Pakistan Telecommunication Rules 2000, read with regulation 21 of Pakistan Telecommunication Authority (Functions and Powers) Regulations 2006, prescribed the procedure to requests related to the transfer of license and ownership of licensees in the following manner:

4.2.1 "Rule 11 Transfer of license and ownership.___ (1) A license granted under the Act and the rules shall be personal to the licensee and shall not be assigned, sub-licensed to, or held on trust for any person, without the prior written consent of the Authority.

(2) Subject to sub-rule (3), the licensee may not, without the prior written permission of the Authority, through any sale or pledge of, or mortgage or charged over, any of its licensed telecommunication system, through contract or otherwise, render itself incapable in performing any of its obligations under its license provided that the Authority's permission shall not be required where the licensee creates the charge over any of its assets to secure repayment of a loan or any other financing facility obtain in the normal course of business.

(3) If, pursuant to sub-rule (2), the licensee is required to obtain the permission of the Authority, then it shall furnish to the Authority all such documents and information as the Authority may consider necessary to enable the Authority to make a determination as to whether permission should be granted or not. On receipt of requisite documents and information, the Authority may grant permission to the licensee for the proposed sale and pledge of, or mortgage, or charge over, any specified part of the licensee's licensed telecommunication system either un-conditionally or subject to such conditions as the Authority may deem appropriate to protect the interest of the consumers using the licensee's telecommunication services.

(4) A permission given by the Authority under sub-rule (3) shall include the requirement that the licensee shall take all necessary action to ensure the continuous and uninterrupted use of that part of the licensed telecommunication system being sold, pledged, mortgaged or charged.

(5) If a substantial ownership interest in, or control of, a licensee is proposed to be changed, the licensee shall give the Authority notice of such fact in writing. That written notice shall include all relevant details of the proposed change. If the Authority is of opinion, that change shall adversely affect the ability of the licensee to provide its licensed telecommunication services, it may impose such additional conditions in the license as shall be reasonable and directly relevant to the proposed change.

Explanation.- For the purpose of sub-rule (5):-

i. "**control**" means the ability to direct the exercise, whether directly or indirectly and whether through one or more entities, of more than fifty percent of the voting rights exercisable at any general meeting of the shareholders of the licensee; and

ii. "**substantial ownership interest**" means more than ten percent of the issued share capital of the licensee.

(6) The Federal Government may terminate the license on service of not less than thirty days written notice to the licensee if, in the opinion of the Federal Government, the transfer of control threatens or potentially threatens national security.

(7) Any modifications to the license pursuant to sub-rule (3) or (5) shall be made only in accordance with the provisions for modifications of license contained in section 22 of the Act and rule 10."

4.3 Under section 8 of the Act, Federal Government i.e. Ministry of Information and Technology (MoIT) issued the Telecommunications Policy 2015, whereby the framework for transfer of business and Merger & Acquisitions has been provided as reproduced below :

"Clause 5.3 Termination or Transfer of Business:

Clause 5.3.2: Therefore, the regulatory framework applicable on the exit of a licensee from the market or transfer to another company or a business holding a telecommunication license will be strengthened to ensure an orderly termination or transfer of business, and in particular;

(a) to protect customers and other stakeholders in the business

(b) to acquire the return of annual deposits and payments of outstanding dues to PTA and GoP.

(c) on transfer, to enable the transfer of licenses and obligations to acquiring businesses subject to the approval of PTA.

Clause 8.17 Mergers and Acquisitions:

8.17.1. On merger or acquisition of a company with spectrum assigned under its telecommunications license, spectrum and license rights and obligations of licenses will be transferable to the merged or acquiring organization. Where Mergers and Acquisitions are concerned, access to spectrum, and the associated license, is a critical asset of companies that rely on wireless communications.

8.17.2. Whether a merger or acquisition should be allowed to proceed is a competition matter which is outside the jurisdiction of spectrum management, and legitimate mergers should not be impeded by inability to transfer spectrum licenses. Therefore, except where there are overriding technical reasons, or reasons arising out of the national interest, the spectrum rights and obligations of licenses will be transferable to the merged or acquiring organization. PTA/ PEMRA are to intimate FAB of any merger/ acquisition.

8.17.3. Mergers and acquisitions will be allowed subject to having met all license obligations including payment and roll out obligations."

4.4 Stakeholders Consultation and Their Responses:

4.4.1 In light of the aforementioned statutory provisions and applicable regulatory regime, the Authority while considering the relevant regulatory aspects of cellular market and mandate as stated above, initiated a consultation process with the concerned stakeholders, including licensees, Government Organizations, Frequency Allocation Board, relevant Ministries and relevant Standing Committees of the National Assembly / Senate, wherein all were required to provide their concerns / comments within two weeks. Moreover, through public notice published in newspapers dated 15th April, 2016, the Authority also invited written comments from telecom consumers, stakeholders interested / affected persons and the general public regarding the subject merger.

4.4.2 A summary of the comments/feedback is given below:

i. Interconnection: available capacity of interconnect circuits to LDIs for termination of international traffic;

ii. Infrastructure sharing: Concerns by guest operators regarding decommissioning of the sites by the Merged Entity, unilaterally;

iii. Spectrum concentration of 900 MHz with the Merged Entity;

iv. Increased market share of the Merged Entity;

v. Use of two NDCs by the Merged Entity compared to availability of only one NDC by other mobile operators; and

vi. Possible abuse of dominant position by the Merged Entity and negative impact on competition in the telecommunication sector.

4.4.3 Pursuant to public notice published in the leading newspapers of Pakistan on 15th April, 2016 comments received from the general public are as follows:

i. Impact of the transaction on third party businesses (i.e. franchisees, resellers etc.);

ii. Unemployment / layoff of employees;

iii. Possible abuse of dominant position by the Merged Entity; and

iv. Future of pending litigation/claims etc.

5. Presentation / Meeting by/with the Parties:

5.1 In order to evaluate the proposed transaction and to determine the impact in general on the telecom industry and in particular with reference to telecom regulatory compliance i.e., technical aspects, consumer protection and licensees' interests, competition and other ancillary matters, the Parties were required to make presentation on 14th January, 2016 and 18th April, 2016.

5.2 Chief Executive officers of the Parties along with their relevant officers appeared before the Authority and presented the matter.

5.3 In addition to the presentations and meetings, the Parties were also required to submit their report / response on the queries / observations of the Authority and comments were received from the stakeholders through letters dated 13th April, 2016 and 27th April, 2016, respectively.

6. Regulatory Aspects - Cellular Mobile Market

With reference to the instant matter the Authority also considers the following regulatory aspects essential for determining the impact of the transaction:

6.1 Market Shares

6.1.1 Currently, cellular mobile segment of the telecom sector of Pakistan consists of five cellular mobile operators (CMOs), out of which four are offering 3G services, one is offering 4G services and one is offering LTE services. The cellular segment is highly competitive. PMCL is the dominant player in terms of shares in total cellular mobile revenue (28.7%) and subscriptions (29%). Warid has the smallest share in terms of revenue (11.2%) and subscribers (8.4%) amongst the five mobile operators. Merger of PMCL and Warid will lead to Merged Entity's combined revenue share of 39.9% and subscribers share of 37.4%. Details in the following table:

Market Shares (%)

	Total Revenues	**Total Subscribers**	**Broadband Subscribers**
Telenor	28.4%	28.0%	27.6%
PMCL	28.7%	29.0%	30.5%
Warid	11.2%	8.4%	1.0%
Ufone	16.9%	15.8%	18.6%
Zong	14.8%	18.8%	22.3%
Total of PMCL and Warid	**39.9%**	**37.4%**	**31.5%**

Notes:

1. Subscribers shares are as of March 2016
2. Revenue shares are based on revenue data for the year 2014-15

Source: PTA

6.2 Competition in the Cellular Mobile Sector

6.2.1 PTA under section 4 (1)(d), section 4(1)(m) and section 6(e) of the Act, is mandated, *inter alia*, to; i) regulate competition in the telecom sector; ii) promote the availability of competitive telecommunication services; and iii) encourage fair competition in the telecommunication sector throughout Pakistan is mandated.

6.2.2 Mobile Cellular Telecommunications market of Pakistan is currently being served by five operators and market shares of cellular mobile operators are in the range of 10% to 36% based on revenues from the licensed mobile telecommunication services to subscribers.

6.2.3 As per Telecommunications Policy 2015, Pakistan has some of the lowest mobile call charges in the world and the affordability of services has contributed to phenomenal growth in the mobile services. All the five CMOs are involved in aggressive marketing campaigns and promotions. Therefore, the cellular mobile sector of Pakistan needs a review so that financial viability and health of the sector can be assured. In this regard, PTA has already initiated consultation on the extraordinarily lower tariffs on on-net calls compared to off-net calls in March 2016. PTA is also considering to introduce a floor price to stop decreasing cellular mobile tariffs to the extremely low level where companies cannot recover reasonable return on their investments. In the following sections, tariff packages and promotional schemes offered by mobile operators have been analyzed.

6.2.4 Tariffs Offered by CMOs

i. Prepaid Tariffs

In Pakistan, all the CMOs are offering two to five standard prepaid packages with pulse durations of 1 second, 20 second, 30 second and 60 seconds. The operators are offering aggressive promotions which include unlimited on-net calls as well as free calls to off-net mobile and fixed-line networks. Standard lowest prepaid tariff packages (excluding tax) offered by each operator are tabulated below:

	PMCL (Mobilink)	Telenor	PTML (Ufone)	CMPak (Zong)	Warid
Package Name	Champion	Talk Shawk 75	Super Sasta	Zong 20	30 seconds
Pulse Duration	30 seconds	30 seconds	30 seconds	20 seconds	30 seconds
On-net Rs. / min	1.69	1.50	1.70	1.65	1.70
Off-net Rs. / min	1.69	1.50	1.70	1.65	1.70
FnF Rs. /min	-	-	-	-	
On-net					0.98
Off-net					1.50
SMS Rs. (On-net & Off-net)	1.01	1.50	1.48	1.30	1.50

Source: CMOs' websites

As evident from the above table, Telenor is offering lowest tariff for on-net and off-net calls i.e. Rs.1.50 per minute to its prepaid customers. Zong is offering 20 second pulse duration and is charging Rs. 1.65 per minute. Ufone and Warid Telecom are charging Rs. 1.70 per minute whereas PMCL is charging Rs. 1.80 for on-net and off-net calls. Warid is the only operator which is also offering "Friends and Family" tariff for five numbers at Rs. 0.98 per minute (on-net) and Rs. 1.50 per minute (off-net). SMS tariff offered by CMOs are in the range of Rs. 1.20 (PMCL) and Rs. 1.48 (Ufone).

ii. Post-paid Tariffs

In case of postpaid, CMOs are offering four to seven postpaid packages with pulse duration of 30 seconds and 60 seconds respectively. Monthly subscription charges / line rent offered by CMOs are in the range of Rs. 49 to Rs. 4,000 charged by Ufone and Warid Telecom respectively. On-net tariff is in the range of Rs. 1.00 to Rs. 1.30 per minute whereas off-net tariff is in the range of Rs. 1.25 to Rs. 1.60 per minute. Minimum line rent / subscription charges along with on-net and off-net tariff (excluding tax) offered by CMOs are tabulated in the following table:

	PMCL (Mobilink)	**Telenor**	**PTML (Ufone)**	**CMPak (Zong)**	**Warid**
Package Name	M300	Smart300	Ultra U49	EconoExcess	W250
Pulse Duration	60 seconds	60 seconds	60 seconds	30 seconds	60 seconds
Line Rent Rs.	300	300	49	149	250
On-net Rs. / min	1.50	1.40	1.25	1.30	1.50
Off-net Rs. / min	1.50	1.50	1.60	1.30	1.50
Free Minutes		300		100	
On-net	150		40		125

Off-net	150		24		125
Free SMS	150	50	-	300	100
Free MBs	500	300	-	150	32
FnF (on-net) Rs. /min	0.75	-	-	-	0.75
SMS Rs. (On-net & Off-net)	0.75	1.00	0.50 & 1.00	1.00	0.50 & 1.00

Source: CMOs' websites

iii. On-net Promotions

There is a significant difference in on-net and off-net tariff of CMOs, for example some of the operators are charging Rs. 5.00 per day for unlimited on-net calls and Rs. 1.00 per minute for off-net calls. Resultantly, consumers prefer those operators who offer attractive on-net package plans thus forcing smaller operators to also offer same kind of unlimited packages.

As stated in the preceding paragraphs, the operators have launched aggressive marketing campaigns and are trying to retain and make new customers by offering innovative and discounted price promotions. The number of approximate promotions offered by each operator is tabulated below:

		PMCL (Mobilink)	Telenor	PTML (Ufone)	CMPak (Zong)	Warid
Call Offers	Promotions	18	38	29	5	13
	Location based offers	36	50	41	148	4
SMS Offers		5	11	10	5	4

Source: CMOs' websites

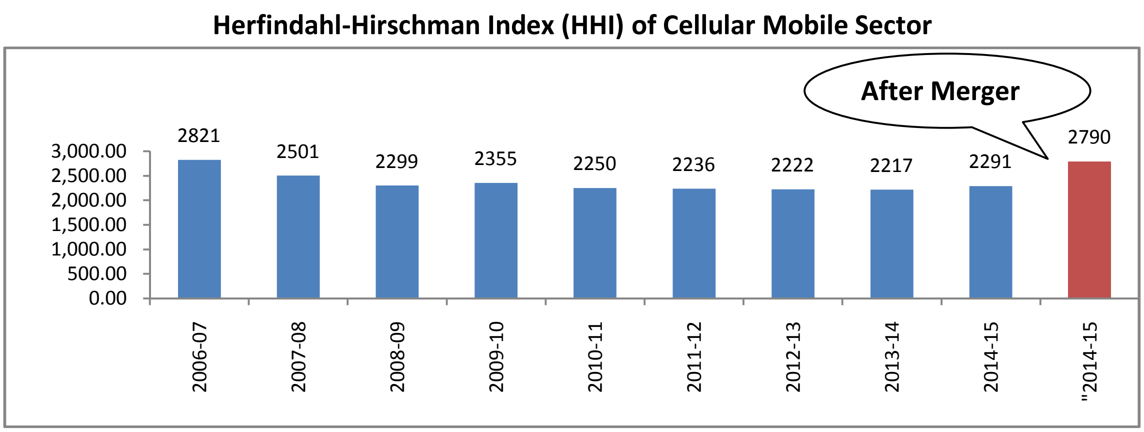
In addition to the above, Ufone and Telenor are also offering monthly cards wherein free on-net and off-net minutes are being given to subscribers. Furthermore, free internet is being provided to the subscribers in these cards.

iv. Herfindahl Hirschman Index (HHI)

Due to mobile number portability, customers can easily switch from one operator to other according to their best suitable tariffs and packages. These developments in the market have resulted into reasonable market shares of individual CMOs except Warid.

Cellular Mobile Subscribers Shares (%)						
	PMCL	PTML (Ufone)	CM Pak (Zong)	Instaphone	Telenor	Warid
2014-15	29.2	15.5	19.3	-	27.5	8.6
2006-07	41.9	22.2	1.6	0.5	16.9	16.9

Herfindahl-Hirschman Index (HHI) is an index that measures concentration in a market. The higher the HHI, the less competitive the market is. If the value of HHI is 10,000 it shows a monopoly and if HHI is closer to zero, the market is considered highly competitive. HHI of cellular mobile sector over the last three years has been around 2250, which shows a competitive market. After the merger, concentration in the market will substantially increase i.e. HHI from 2291 to 2790. Therefore, necessary safeguards are required to be in place so that healthy competition in the cellular mobile market is maintained and consumer interests are protected after the merger.

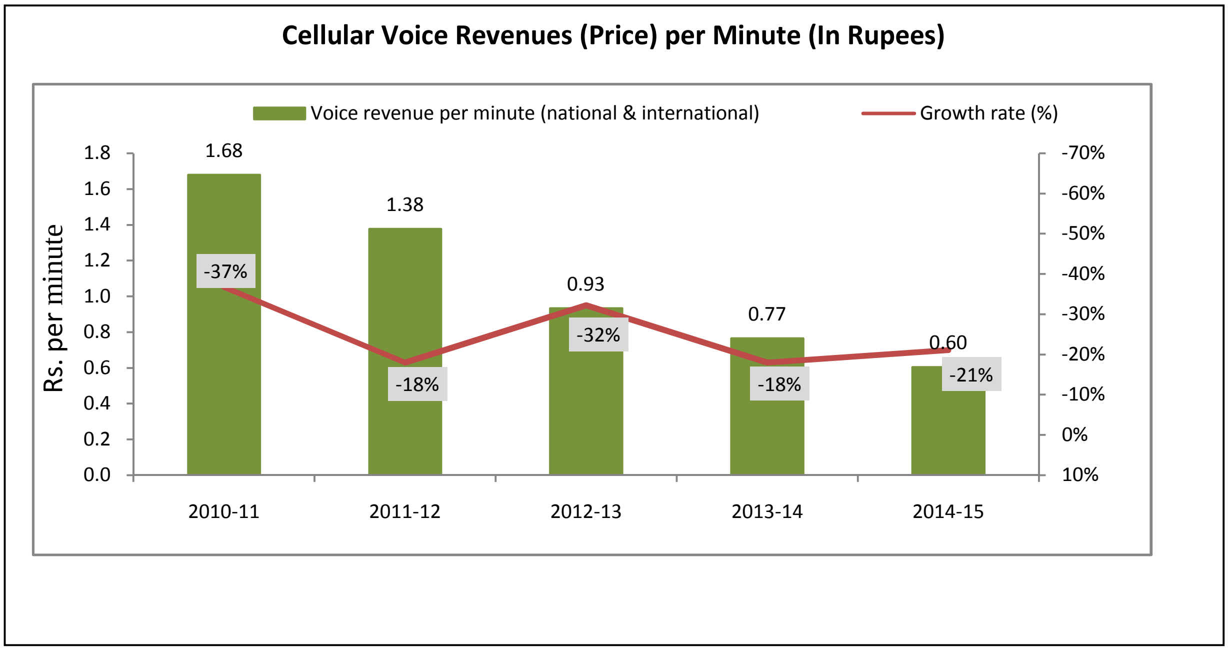


Note: HHI is calculated by taking sum of the square of individual operator's share in the market.
Source: PTA

v. Declining Voice Revenues per Minute

In the last few years, apart from standard call rates, all cellular mobile operators are offering consumer centric packages, bundles and offers for unlimited number of on-net calls or certain number of off-net call minutes for fixed price of a package.

Cellular voice revenues per minute (Price per voice minute) have been calculated from the overall outgoing cellular minutes and cellular voice revenues. This approximately shows the average effective tariffs of voice calls per minute in the cellular mobile market of Pakistan. Trends provided in the figure shows that effective price of cellular mobile calls in FY 2010-11 was about Rs. 1.68 per minute, which has substantially reduced to Rs. 0.60 per minute in FY 2014-15 i.e. price per minute of cellular mobile call is now almost one third of the price in FY 2010-11.



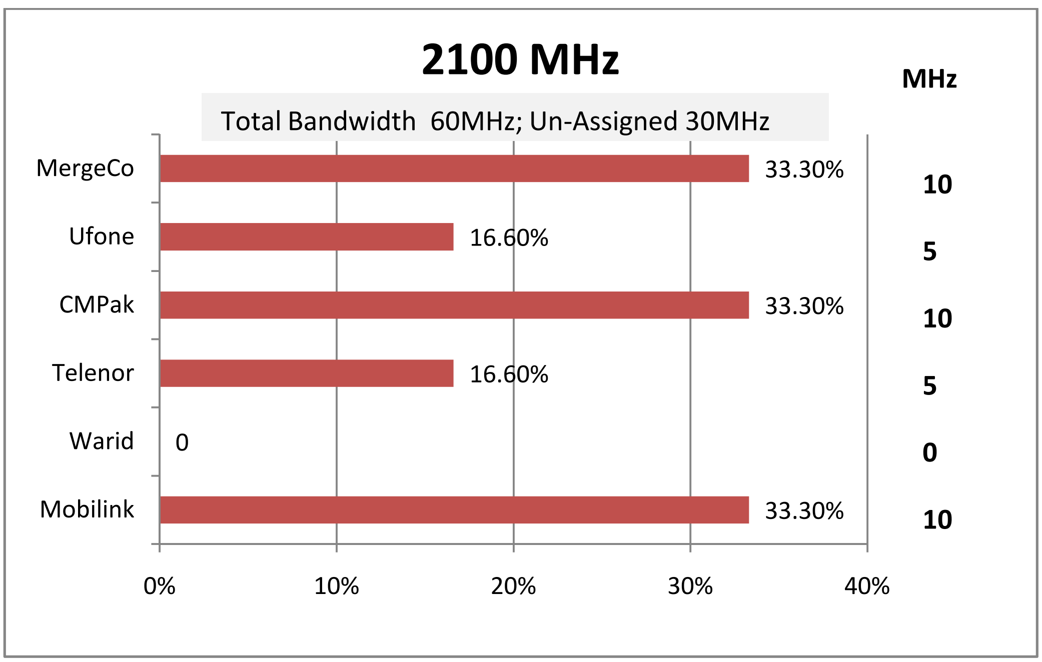
vi. Financial Health of Cellular Mobile Sector

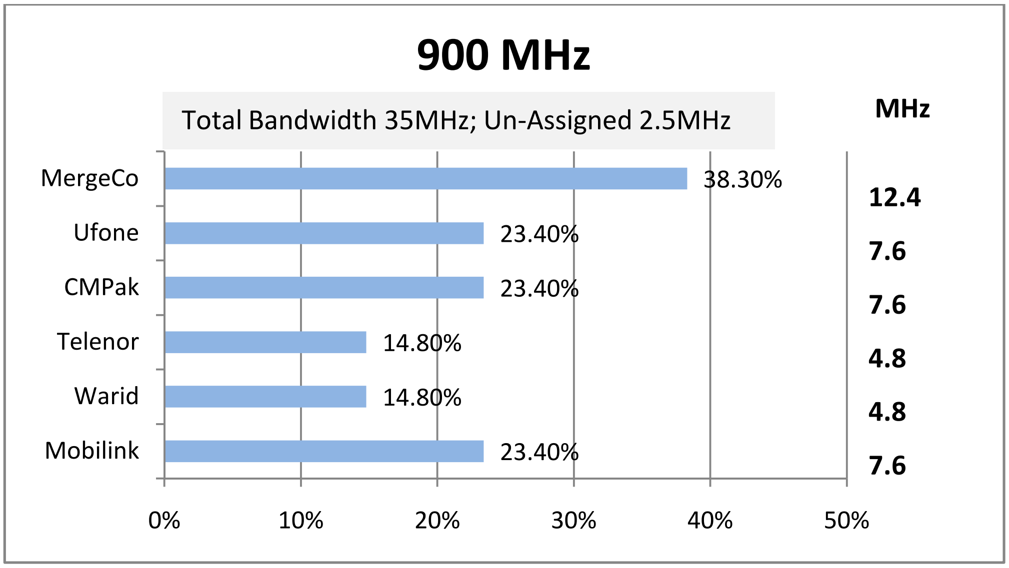
The financial position of cellular mobile operators is continuously under pressure due to slower growth in the voice market, saturation, intense competition, very low tariffs, increasing cost of business and high taxes. In the year 2014, four out of five mobile operators registered net losses (after tax). One of the operator that remained profitable till 2013 has also shown losses in 2014. Only one mobile operator has consistently shown profitability during the last five years.

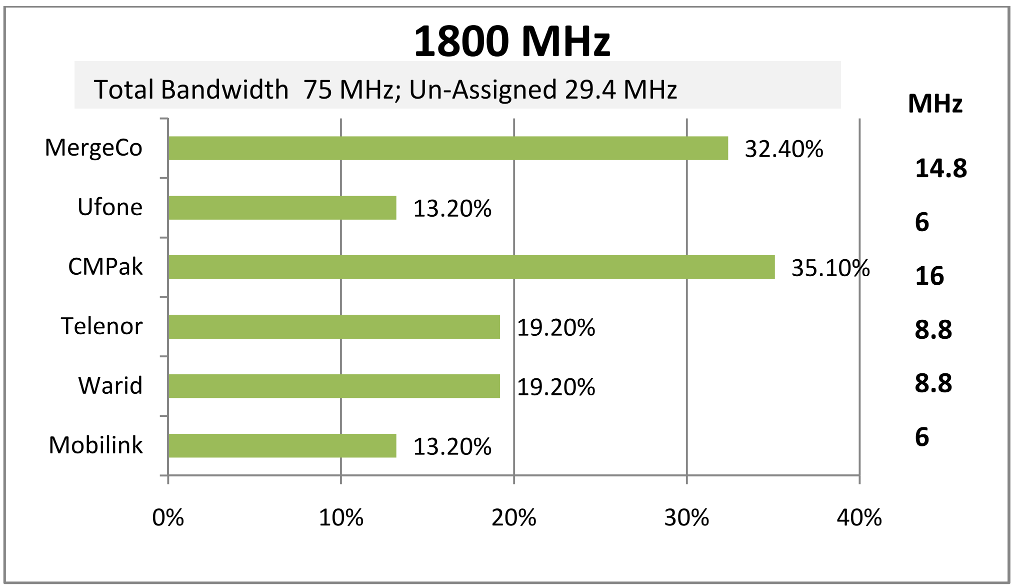
6.2.5 Radio Frequency Spectrum

The merger will increase competition in the market specifically for Ufone and Telenor to provide improved quality of service specially to the data customers. Both these operators do not have enough spectrum to meet the competitive pressure. Hence their appetite for the additional spectrum in 2100 MHz and 1800 MHz or any other band offered by PTA is expected.

Band specific percentage and division of the spectrum in graphical from is shown below for the understanding of the individual spectrum assignments. Currently there is no cap for maximum spectrum holding, in spite of this PTA has managed to maintain a reasonably proportionate spectrum holding with the mobile operators. PTA, however, will consider working with the Telecom Licensees, FAB and MoIT for readjustment of the spectrum in order to obtain spectrum efficiencies and to arrange contiguous spectrum.







MoIT through Telecom Policy 2015 has also extended the opportunity to the existing licensees regarding spectrum sharing and trading along with active sharing of the systems. This aspect after the frameworks are finalized will definitely help the licensees with lesser spectrum. In this regard, CCP has also asked PTA to develop a spectrum sharing framework, after which in a case when new operator that wants to operate in the country comes in and there's no additional spectrum available then Merged Entity will be allowed to negotiate the terms with new entrant to share the spectrum with it. Merged Entity, however, is restricted, by CCP, from entering into any spectrum sharing or trading arrangements with Telenor Pakistan due to structural link between Telenor ASA and VimpelCom unless approved by the PTA and the Competition Commission of Pakistan.

6.2.6 Quality of Service

It is expected that the merger of PMCL and Warid would result in the availability of LTE services to approx. 49 million subscribers of Merged Entity; which is currently available to about 11 million Warid subscribers. Similarly, the merger would also result in the availability of 3G services to over 49 million subscribers compared to existing 38 million subscribers of PMCL. The Merged Entity shall ensure quality of LTE Services currently being provided to Warid's LTE subscribers and quality of 3G services being provided to PMCL's 3G subscribers. In view of the foregoing, PTA requested PMCL and Warid to provide details of technical and business plans to enhance QoS of the current licensed services. PMCL/Warid have committed that: "We would like to reassure PTA that an excellent customer experience is our forte and priority. Considerable network investments have been made to ensure that both PMCL and Warid fulfill their license obligations *inter alia*, with respect to QoS standards. We are currently carrying out planning and dimensioning exercise of the Merged Entity network and have set the dimensioning parameters similar to our current network designs to ensure similar QoS performance and as a consequence the capacity at both 3G and LTE networks will be enhanced to accommodate more subscribers. Accordingly, the Merged Entity will continue to invest and maintain the QoS thresholds as per the License obligations".

6.2.7 Infrastructure Sharing

As per Mobile Cellular Policy, 2004 passive infrastructure was encouraged. The Policy was silent on active sharing. As a result of merger, the Merged Entity will dismantle some BTSs. The Merged Entity will be required to judicially decide on disposal of such sites. CCP has also decided that Ongoing Infrastructure Sharing Agreements between Warid and PMCL and other mobile companies, where merged Entity will plan to discontinue its sites should be re-negotiated. PMCL can also plan that instead of removing of closely located sites the same may be installed in far-flung areas to address issues of QoS and service to un-served area.

6.2.8 National Dialling Code

Merged Entity will become one operator and it would continue to have access to two NDCs, namely 030 allocated to PMCL and 032 allocated to Warid, which will double the numbering capacity compared to any of the other mobile operators. Operators have also raised their concern on this issue, calling it an unfair competitive advantage being given to the Merged Entity, which will prejudicially affect the rights of operators, particularly at a time when the demand for numbers is increasing exponentially on account of data services and M-2-M.

PTA allocates the numbering resources according to the criteria laid down in Numbering Allocation & Administration Regulations (NAAR), 2011. As per sub-regulation (1) of regulation (8) of NAAR, 2011 the Authority may consult on application for a change of use of an existing allocation. Furthermore, as per sub-regulation (2) of regulation (8) of NAAR, 2011 such consultation shall normally take place where in the Authority's judgment, the allocation of numbering capacity while consistent with the structure of the plan and with these regulations would be unusual or might set a precedent in such a way that the views of interested parties shall be sought.

i. As per sub-regulation (3) of regulation (14) of NAAR, 2011, the recipient of Primary Assignment shall not transfer or sell their assigned resources, except in exceptional circumstances and with prior authorization of the Authority.

ii. As per sub-regulation (5) of regulation (14) of NAAR, 2011, the licensee shall not translate, alter or delete the telephone number or other identification associated with its subscribers.

It has been analyzed critically regarding the two NDCs by the CMOs at one time while keeping in mind the management and transfers took place in mobile and fixed sector vis-a-vis current numbering regulation so that fair practice is maintained in the Telecom sector.

6.2.9 License Renewal

Licenses issued to Warid and PMCL for provision of mobile communication services in Pakistan will expire in 2019 and 2022 respectively. Once the companies are merged, licenses of both these companies will be transferred to the Merged Entity. Therefore, technically there seems to be no issue in case licenses remain separate or consolidated as one license. Currently examples of separate licenses exist in fixed and mobile sector hence keeping two Licenses of similar services by the Merged Entity will not be of much concern.

7. Decision of the Authority

7.1 After due deliberations and considering the comments on the issue of acquisition and proposed merger in the manner as requested by the Parties, the Authority hereby disposes of the request dated 15th December, 2015, subject to the following conditions:

7.1.1 100% Acquisition of Warid by PMCL and 15% Substantial Ownership in PMCL (Step -1)

i. No Objection Certificate dated 16th March, 2011 issued by PTA vide its letter No. 14-191/L&A/PTA/1007 regarding the proposed change of control of PMCL and its subsidiaries and conditions provided therein would remain effective and considered as an integral part of the NOC.

ii. PMCL shall accept and unconditionally own all the liabilities of Warid with respect to terms and conditions of the license of Warid license No. MCT-02/RBS/PTA/2004 dated 26th May, 2004.

iii. The Parties shall not change names and brand names without 30 days' prior written notice to PTA.

iv. The Parties shall not reduce total number of interconnection circuits (E1s) allocated by them to other operators including LL, LDI, cellular licensees, without prior approval of PTA. Interconnect capacities or their pricing shall not be used in a manner to impede other operators access to the customer of the Merged Entity.

v. The determination is subject to clearance of all outstanding dues by the Parties in accordance with 8.17.3 of the Telecommunications Policy 2015.

vi. If any information given or documents submitted by both PMCL and Warid are found to be incomplete, false and fabricated at a later stage and such information or documents have impact on the transaction, PTA may take legal action.

vii. In case of failure on the part of the Parties in discharging liabilities in accordance with the conditions made herein PTA may take legal action.

viii. The Parties shall continue to operate as separate legal entities till the amalgamation order.

ix. If the Parties intend to do on-net calls amongst each other before the amalgamation order, they shall submit proposal for PTA's approval.

x. The Parties shall not merge their networks and shall not decommission any network element. BTSs may be decommissioned with 30 days prior notice to PTA. PTA may restrict decommissioning of any BTS, if so considered by PTA in alignment with condition 201 and 202 of the CCPs decision on merger.

xi. PMCL and Warid will continue to submit their annual audited financial statements as separate entities till the amalgamation order.

xii. The NOC will be subject to the terms and conditions contained herein and to the Act, Rules and Regulations.

xiii. The Parties shall establish, maintain and operate the Licensed Systems, and shall provide the Licensed Services, in compliance with the laws of Pakistan.

xiv. That pursuant to grant of NOC, PMCL and Warid shall provide duly certified copies (by SECP) of updated Form 29, Form 7 and Form A issued by SECP within 30 days of the issuance of the NOC.

xv. The Parties shall be responsible for the clearance of all tax liabilities, in any form, as a consequence of this transaction (acquisition as well as merger), as and when required by FBR under the relevant / applicable tax laws. The Parties shall indemnify PTA alongwith submission of acceptance of the order of the Authority being given through this determination.

xvi. The agreements between the Parties and franchises / authorized retailers / sellers shall remain unchanged for a term of 6 months from the date of issuance of the NOC. Thereafter, the agreements shall be executed in accordance with the provisions of the Act, Rules and Subscriber Antecedents Verification Regulations, 2015. A fair / transparent franchises retention process shall be adopted to maximize customer benefits.

7.1.2 Merger between the Parties (Step -2)

As a result of proposed merger, once finalized, under the applicable law, Warid Telecom (Pvt.) Ltd. shall cease to exist as a separate legal entity, thus matters pertaining to its consumers, license terms and conditions in license No. MCT-02/RBS/PTA/2004 dated 26th May, 2004 shall be complied with by the Merged Entity in the following manner:

7.1.2.1 The Parties will inform all the consumers and public at large through advertisements in at least two leading daily Newspapers, i.e., one Urdu and one English, of major circulation for three consecutive days regarding the merger within seven working days of the date of amalgamation order.

7.1.2.2 That pursuant to amalgamation order, the Merged Entity shall provide duly certified copies (by SECP) of updated Form 29, Form 7 and Form A issued by SECP within 15 days of the amalgamation order.

7.1.2.3 Radio Spectrum

i. Rationalization / re-arrangement/ redeployment of BTS sites may occur as a result of merger. Merged Entity to ensure efficient deployment of microwave backhaul frequency links after the merger and return redundant and unused microwave spectrum scarce resource to FAB as coordinated and determined by FAB.

ii. In order to bring spectral efficiencies and contiguous frequency spectrum assignment, the Merged Entity shall reasonably readjust / rearrange spectrum assignments as and when required by PTA, in accordance with a framework to be introduced by PTA and FAB in consultation with MoIT on industry-wide basis.

7.1.2.4 Disposal of BTS Sites Rendered Surplus

While decommissioning of surplus BTS sites consequent to merger, Merged Entity shall ensure the following:

i. All BTS sites of PMCL and Warid shall continue to remain operational and will not be dismantled for a minimum of 4 months' period from the date of NOC.

ii. The Merged Entity shall give first right to guest user (currently sharing BTS site with PMCL / Warid) to acquire BTS sites rendered surplus. In case, the guest user refuses to acquire surplus BTS sites, the Merged Entity shall apply a judicial and transparent process / method to transfer ownership of BTS sites to other telecom licensees including tower / infrastructure licensees in order to avoid possible dismantling of BTS sites.

iii. All BTS sites disposal plan with time line / process will be notified to PTA and FAB, 12 weeks in advance.

iv. Merged Entity shall ensure uninterrupted service to all customers during the process of and subsequent to disposal / decommissioning of BTS sites. Decommissioning of BTS sites shall not reduce the pre-merger coverage area of the services by PMCL and Warid.

v. Merged Entity shall ensure that record of all de-commissioned BTS sites and backhaul links is updated with FAB and PTA.

7.1.2.5 Utilization of surplus / redundant cell sites: Merged Entity will endeavour to explore the possibility of extending the services in rural and far flung areas through the utilization of the cell sites becoming available through dismantling of the redundant sites.

7.1.2.6 Quality of Services

i. Merged Entity shall ensure that QoS being experienced by PMCL customers for 3G does not deteriorate with the joining of Warid's customers as a result of merger. Similarly, the QoS being experienced by Warid's LTE customers should not deteriorate.

ii. That the Parties and Merged Entity shall meet or exceed the prevailing quality of service standards/KPIs being availed by the consumers. Merged Entity will fully comply with any enhanced QoS standard set on an industry wide basis.

7.1.2.7 National Destination Codes and Numbering Series:

If upon expiry of existing cellular mobile license No. MCT-02/RBS/PTA/2004 dated 26th May, 2004, the Merged Entity does not get the existing license renewed, the Merged Entity shall make the following payment:

i. Allocation Fees for NDC (032) = US$ 5 million (or equivalent Pak Rupees). This will be upfront payment and will be charged once.

ii. Annual Number Fees per MSISDN as per the provisions of Numbering Allocation & Administration Regulations, 2011 or its amended version which PTA may issue from time to time.

7.1.2.8 Protection of Data: Merged Entity shall follow all legal obligations for protection of data and privacy post-merger.

7.1.2.9 Provision of Monitoring by Merged Entity: All existing monitoring systems will continue to work without any hindrance.

7.1.2.10 Renewal of Licenses: The renewal process under clause 1.2 of the cellular mobile license shall be handled by the Merged Entity / Parties on time as per the terms and conditions of the licenses, the Rules, the Regulations, the Act, policy directives of the Federal Government at the relevant time.

7.1.2.11 Terms and Conditions of Warid License

i. Subject to the conditions contained in this determination, the terms and conditions of the respective license (including tenure etc.) shall remain unchanged and will not be affected in any manner as a consequence of the merger.

ii. Modification of Warid License (No.MCT-02/RBS/PTA/2004) issued on 5th December 2014 shall be complied with in letter and spirit.

7.1.2.12 SLAs between Warid and other Licensees of PTA: The existing SLAs prior to the merger shall remain intact and the Merged Entity shall continue to honor the SLAs after merger as these SLAs would become applicable to the Merged Entity by operation of law.

7.1.2.13 Interconnection

i. Merged Entity shall submit its Reference Interconnect Offer (RIO) to PTA for approval within six months from the date of amalgamation order. Merged Entity shall offer interconnection to other operators in accordance with RIO approved by the PTA.

ii. Subject to 7.1.2.13 (i) above, interconnection Agreements between Warid and other licensees of PTA will stand transferred to the Merged Entity, pursuant to the amalgamation order. Any modification to an interconnection agreement already signed, shall be subject to mutual agreement between the parties to the agreement and approval of the PTA.

iii. Merged Entity shall ensure compliance of the Interconnect Guidelines, 2004 and PTA decisions/directions. Merged Entity shall not unfairly discriminate the terms of interconnection among different operators. Merged Entity shall offer same interconnection terms to other operators as compared to its own similar operations or affiliates.

iv. The Merged Entity shall not reduce total number of interconnection circuits (E1s) allocated by them to other operators including LL, LDI, cellular licensees, without prior approval of PTA. Interconnect capacities or their pricing shall not be used in a manner to impede other operators access to the customers of the Merged Entity.

v. Merged Entity shall provide interconnection and related services and facilities on the basis of unbundled [1] network elements and charge accordingly.

7.1.2.14 Competition and Consumer Rights

i. The benefit of merger to the consumers and the increased investment as a result of merger will lead to enhanced competition and furtherance of consumer rights; and the Merged Entity to ensure it fairly, transparently and without prejudice in line with the provisions of the Act, Rules and Regulations.

ii. Merged Entity shall ensure active role in enhancing competition other than price such as innovation, better quality of service, wider network coverage and enhanced speeds.

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[1] Unbundling means provision of services by an operator, separately from each other, in a way permitting access to only demanded network components including transmission, switching and interfaces as per Interconnection Guidelines, 2004.

7.1.2.15 Compliance with Law:

i. The Merged Entity shall comply with the terms and conditions contained herein and to the Act, Rules and Regulations.

ii. The Merged Entity shall establish, maintain and operate the Licensed Systems, and shall provide the Licensed Services, in compliance with the laws of Pakistan.

7.1.2.16 Tariffs

i. The Merged Entity's pricing/ tariff offers shall not be in any way anti-competitive, unfair or burdensome.

ii. The Merged Entity shall be required to get prior approval of its tariffs from PTA.

iii. The Merged Entity shall inform all its consumers about latest packages of Merged Entity. However, if consumers intend to opt for existing packages, they shall be facilitated to do so without any disruption of packages till 4 months from the date of amalgamation order.

iv. The Merged Entity shall strictly follow the Telecommunication Consumers Protection Regulations, 2009 pertaining to advertising and marketing campaigns and shall ensure that no anticompetitive marketing trends are set and level playing field is maintained.

v. The Merged Entity shall be required to comply with price/tariff ceilings and price/tariff floors as determined by PTA for the industry.

vi. The Merged Entity shall not activate automatic renewal of subscription based packages upon the expiry of that package, without soliciting explicit consent of the subscriber/consumer.

vii. The Merged Entity shall not charge the Consumers for services supplied on a free trial basis during the trial period.

7.1.2.17 National Roaming Obligations: The Merged Entity shall be obliged to permit mobile operators to roam on Merged Entity’s network on commercial terms mutually agreed.

7.1.2.18 Accounting Separation: The Merged Entity shall submit separated accounts to PTA on annual basis.

7.1.2.19 Consumer Protection: Merged Entity shall submit Code of Commercial Practice (CCP) and Standard Contract of Service for approval of PTA afresh within 90 days of the date of amalgamation order.

8. In view of the above, the Authority may grant No Objection Certificate for the acquisition / proposed merger / change in substantial ownership of shareholdings of Warid and PMCL as per requests of PMCL and Warid dated 15th December, 2015 subject to submission of an unconditional acceptance by the Parties to the above listed conditions, within 15 days of the issuance of this determination. This determination, in any manner, directly or indirectly, whatsoever, shall not be considered as a No Objection Certificate.

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Syed Ismail Shah
Chairman

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Tariq Sultan	Abdul Samad
Member (Finance)	Member (Compliance & Enforcement)

This order is signed on **_____**day of May, 2016 and comprises 25 pages.