



TRANSPARENCY INTERNATIONAL-PAKISTAN

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18th August, 2016

Honorable Justice Anwar Zaher Jamili,
Chief Justice of Pakistan,
Supreme Court of Pakistan,
Constitutional Avenue, Islamabad.

Attn: Human Rights Cell

Sub: HRC No. 2155-S/2013 in the Supreme Court of Pakistan, Islamabad
Recovery of US \$ 2 Billion from PTCL/ Etisalat

May it please your Lordship,

My Lord, Transparency International Pakistan refers to its comments dated 15.4.2013 on PTA reply date 12.4.2013 submitted of the Honorable Chief Justice of Pakistan, that PTA is prima facie not stating true facts by side-tracking Honourable Court Order to PTA, as clarified below. **Annex-A.**

Supreme Court letter to PTA: *“The Human Right Cell of the Supreme Court of Pakistan vide letter dated HRC No.2155-S/2013 ,dated February 27, 2013 forwarded your application/complaint regarding provisioning of copies of Sale Purchase Agreement ”SPA”, dated 30 June2005, and the revised agreement which was signed in 2006,so as to enable Transparency International Pakistan “TIP”, to examine the default of the company as per law of Pakistan.”*

PTA Reply: *“In this regard it may please be noted that Authority/PTA - a distinct statutory body corporate established by the Federal Government under Section 3 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act") - has been given the mandate under the Act, interalia, to regulate the establishment, operation and maintenance of telecommunication systems. the provision of telecommunication services in Pakistan and to grant and renew Licenses in this regard. As such the Authority/PTA has no such mandate/jurisdiction under provisions of the Act either to carry out the process of privatization and/or the sale etc of any licensed entity/company, including the one mentioned in the captioned application/ complaint i.e. PTCL.*

Since June 2013, Senator Ishaq Dar has made half hearted efforts to retrieve from PTCL Exchequer revenue of US \$ 2 Billion (US \$ 800 plus annual profit of US \$ 1.2 Billion last 11 years at 13%). A news report of 6.2.2014 discloses his efforts which are quoted below.
Annex-B & C

- *Minister of Finance Ishaq Dar has again begged the government of UAE to pursue leadership at Etisalat to pay the \$ 800 million that it owes to government of Pakistan as part of deal according to which Etisalat bought 26% shares of Pakistan Telecommunication Limited (PTCL).*



- *Ishaq Dar met with the UAE state minister for Foreign Affairs Dr. Anwar Mohammed Gargash and asked him and his government to assist Pakistan to get its money from UAE based Etisalat. Gargash was clever enough to dodge the plea by saying to Dar that He would take up the issue with UAE leadership.*
- *It is not the first time that Mr. Dar has asked for help from UAE officials. Last December he had made similar pleas to UAE's Foreign Minister Shaikh Abdullah Bin Zayed for payment of \$800 million by Etisalat. Dar even met with the delegation of Etisalat in 2013 which beautifully conned Dar into promises of paying back the amount to Pakistani government.*

Another effort by PAC is also quoted from newspapers dated 21.5.2015, **Annex-D**.

- *Privatisation Commission chairman Mohammad Zubair informed the committee that of the 3,248 properties, 3,214 had been transferred.*
- *According to him, the value of outstanding properties is \$92 million whereas Etisalat has stopped payment of \$800m since 2007.*
- *He said Etisalat had been requested to pay the outstanding money after adjusting the amount of leftover 34 properties, but it insisted to proceed with the matter in accordance with the share purchase agreement under which the government was required to transfer all the properties to the PTCL.*
- *"Aren't these properties being transferred to Etisalat?" the PAC chairman asked.*
- *Mr Zubair replied: "As per the agreement the properties need to be transferred to the PTCL, and not to Etisalat."*

Transparency International Pakistan feels that since 2005 all government functionaries failed to recover US \$ 800 million from Etisalat which is owned by Dubai rulers, as they are personal friends of Ex Presidents and Prime Ministers and Finance Ministers of Pakistan.

The Honourable Court is requested to convert HRC No. 2155-S/2013 into Suo Moto case, so that Exchequer's dues US \$ 800 in 2005, increased in 11 years to US \$ 2 Billion are recovered from PTCL/ Etisalat.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

An indulgence of the Honorable Court in the matter is prayed for.

Yours Obediently,

Syed Adil Gilani,
Adviser

Encl: Annex A, Annex B , Annex-C and Annex-D



TRANSPARENCY INTERNATIONAL-PAKISTAN

ANNEX-A
5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defence Housing Authority, Karachi.
Tel: (92-21)-35390408, 35390409, Fax: 35390410
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Website: www.transparency.org.pk

15th April 2013

Honorable Justice Iftikhar Muhammad Chaudhry,
Chief Justice of Pakistan,
Supreme Court of Pakistan,
Constitutional Avenue, Islamabad.

Attn: Human Rights Cell

Sub: HRC No. 2155-S/2013 in the Supreme Court of Pakistan, Islamabad
Copies of the 2 PTCL Privatization agreements between GoP and Etisalat

May it please your Lordship,

My Lord, Transparency International Pakistan prays that the Honorable Chief Justice of Pakistan that PTA is prima facie not stating true facts, in their reply to Honourable Supreme Court dated 12 April 2013. Annex-A.

How can PTA deny access to the copies of Sale Purchase Agreement SPA dated 30th June 2005 the Shareholders Agreement (SHA) if any, and the revised agreement, signed in 2006, of the PTCL awarded to M/s Etisalat in view of following provision of Law:

1. Pakistan Constitution Article 19-A. The following remarks of Justice Syed Mansoor Ali Shah in the judgment in case of Ataullah Malik v. Federation of Pakistan Lahore High Court on this article are relevant

"Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable."

2. National Accountability Ordinance 1999, Section 33 B "every department, whether federal or provincial, is required to furnish its contracts worth Rs50 million and above to the NAB after signing them."
3. According to Public Procurement Rules 2004, Rule 47, **Public access and transparency.**- *As soon as a contract has been awarded the procuring agency shall make all documents related to the evaluation of the bid and award of contract public:*

Instead of providing the three documents to TIP, Pakistan Telecommunication Authority has been trying delaying tactics, and to misguide Privatization Commission and now to Supreme Court of Pakistan. PTA has replied to the Supreme Court after 43 days, as SC letter of 27.2.2013 has been replied on 12 April 2013, and following reply is sent, which is not relevant to questions asked by the Honorable Court;



Supreme Court letter to PTA: *"The Human Right Cell of the Supreme Court of Pakistan vide letter dated HRC No.2155-S/2013 ,dated February 27, 2013 forwarded your application/complaint regarding provisioning of copies of Sale Purchase Agreement "SPA", dated 30 June2005, and the revised agreement which was signed in 2006,so as to enable Transparency International Pakistan "TIP", to examine the default of the company as per law of Pakistan."*

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The matter was also discussed with former Minister of Law, who agreed in a meeting with TIP on 22 January 2013 to direct PTA and Privatization Commission to provide the documents to TIP. The same was requested in TIP subsequent letter to MoL on 28 January 2013 with following views also .Annex-B.

As there are reported efforts by M/s Etisalat to avoid payment of US \$ 800 million GoP dues since last 8 years, and also claim restrictions on GoP to sell 2G, 3G and 4G spectrum licenses, study of the agreements between GoP and Etisalat is essential. According to default of M/s Etisalat in paying outstanding dues of US \$ 800 million, the law of land requires this company to be barred from participating in the auction process.

Transparency International Pakistan therefore requests the Honourable Court for taking up Suo Moto case so that regulators shall not lie to the nations, nor to the honourable Supreme Court, as it is not possible that PTA can regulate PTCL, without monitoring covenants of their two agreements

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

An indulgence of the Honorable Court in the matter is prayed for.

Yours Obediently,

Syed Adil Gilani,
Adviser

Encl: Annex A, Annex B



TRANSPARENCY INTERNATIONAL-PAKISTAN

28th January 2013

5-C, 2nd Floor, Khayaban-e-Ittehad, Phase VII,
Defence Housing Authority, Karachi.
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E-mail: ti.pakistan@gmail.com
Website: www.transparency.org.pk

Senator Farooq H. Naek,
Federal Minister Law & Justice,
Government of Pakistan,
Block F,
Government Secretariat,
Islamabad

Sub: Delay in Auction of 3G spectrum license is due to Privatization Commission

Dear Sir,

In order to vet/amend the Request for Proposals for the appointment of Consultants for 3G License for PTA, on 26th December 2012, TIP sent a letter to the Federal Secretary, Ministry of Privatization to provide copies of Sale Purchase Agreement SPA dated 30th June 2005 the Shareholders Agreement (SHA) if any, and the revised agreement was signed in 2006 of the PTCL awarded to M/s Etisalat.

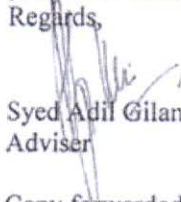
After almost one month of delay, Ministry of Privatization on 22nd January 2013 has informed TIP that they have sought the advice of Minister Law & Justice whether the required documents may be given to TIP or Not. (enclosed).

In our meeting held on 22 January 2013 at your office, in your presence Dr. Hafeez Shaikh asked TIP to expedite the 3-G Auction, and I had informed him that PTA as well as Ministry of Privatization are deliberately delaying the auction by not providing the required documents which are to be examined for vetting the RFP.

As there are reported efforts by M/s Etisalat to avoid payment of US \$ 800 million GoP dues since last 8 years, and also claim restrictions on GoP to sell 2G, 3G and 4G spectrum licenses, study of the agreements between GoP and Etisalat is essential. According to default of M/s Etisalat in paying outstanding dues of US \$ 800 million, the law of land requires this company to be barred from participating in the auction process.

Kindly respond to Ministry of Privatization to provide the documents to TIP so that we can proceed to finalize RFP for 3G Consultants.

Regards,


Syed Adil Gilani
Adviser

Copy forwarded for the information of;

1. Minister of Finance, Islamabad.
2. Chairman, PTA, Islamabad



Government of Pakistan
Ministry of Privatisation
(Privatisation Commission)

Director General

Islamabad, the 22nd January, 2013

Subject: Delay in Auction of 3G is due to Privatisation Commission

Reference your letter No: nil dated 09th January 2013 on the subject mentioned above.

2. The Privatisation Commission under the Privatisation Commission (Confidentiality and Secrecy of Documents) Regulations 2003 and certain clause of the Share Purchase Agreement (SPA), has sought the advice of the Ministry of Law & Justice vide its letter dated 17th January 2013 for provision of the required documents to Transparency International Pakistan.

3. Necessary action shall be taken upon receipt of reply from Ministry of Law & Justice.

Yours sincerely,

(Engr. Khurram Bhatti)
Director (P & C)
Phone # 051 - 9201955

✓ Mr. Syed Adil Gillani
Advisor
Transparency International Pakistan
5-C, 2nd Floor, Khayaban-e-Ittehad
DHA Phase VII
Karachi

CC:

1. Chairman Public Accounts Committee, Islamabad
2. Chairman NAB, Islamabad
3. Minister of Finance, Islamabad
4. Secretary Law & Justice Division, Islamabad
5. Registrar, Supreme Court, Islamabad
6. MD PPRA, Islamabad

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Lahore

Etisalat cons Ishaq Dar with another promise

DECEMBER 19, 2013

In a meeting that was held between Government of Pakistan and top leadership of Etisalat, parent company of Pakistan Telecommunication Company Limited (PTCL), the UAE based company just vowed that they'll consider the payment of \$800 million which is being held back as part of their payment for acquiring 26% shares of PTCL.

Finance Minister Ishaq Dar led the Pakistani delegation while Etisalat delegation was led by its CEO Ahmad A K Juffar. It is reported that Mr. Dar was very annoyed with the behavior of the international telecom giant to withhold the funds on issue of non-transfer of property. He took the stance that even if non-transfer was causing any kind of loss to PTCL then as the majority shareholder of the company, the burnt is caused more to the Government then to the minority shareholder, Etisalat.

During the course of the meeting it was also told that 60 out of the 131 of non-transferred properties are already transferred or in the last stages of transfer. CEO Etisalat said that he is going to consult his legal team on the issue and can only give a final call on the issue of payment of money after the meeting of the board of Directors.

Meeting was also attended by Walid Irshad, President and CEO, PTCL, AR Al-Nooryani, Chairman Etisalat investment in Pakistan and Sarken Orkandan, CFO, Etisalat and senior officials of the Ministry of Finance.

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Ishaq Dar again begs UAE to make Etisalat pay \$ 800 Million

FEBRUARY 6, 2014

Minister of Finance Ishaq Dar has again begged the government of UAE to pursue leadership at Etisalat to pay the \$ 800 million that it owes to government of Pakistan as part of deal according to which Etisalat bought 26% shares of Pakistan Telecommunication Limited (PTCL).

Ishaq Dar met with the UAE state minister for Foreign Affairs Dr. Anwar Mohammed Gargash and asked him and his government to assist Pakistan to get its money from UAE based Etisalat. Gargash was clever enough to dodge the plea by saying to Dar that He would take up the issue with UAE leadership.

It is not the first time that Mr. Dar has asked for help from UAE officials. Last December he had made similar pleas to UAE's Foreign Minister Shaikh Abdullah Bin Zayed for payment of \$800 million by Etisalat. Dar even met with the delegation of Etisalat in 2013 which beautifully conned Dar into promises of paying back the amount to Pakistani government.

Etisalat won the 26% shares of PTCL, the largest and government owned telecom operator in 2005 by open bidding for a price near \$ 2.6 billion. According to the deal struck between the government and Etisalat, there was to be transferred some 1000 properties to Etisalat but from past 8 years, government has failed to fully transfer the properties to Etisalat which led to UAE telecom giant's stoppage of money that it owed as per the deal. Now there is a dispute of some 79 properties which are still left to be transferred. At one point, Mr. Dar even suggested that Etisalat must pay at least \$600 million as majority of the said properties are transferred to Etisalat already but the telecom giant even decline to abide by this suggestion.

Government must follow the example of PTA that recently made PTCL to pay a fine of Rs. 83 million that it was denying to pay for past few years. A single notification to stop the services of PTCL by PTA, made the company to pay back the amount of fine overnight to save its business. Unless, government takes some rash action against Etisalat, there is no chance that they can get paid their \$800 million.

FOUNDED BY QUAID-I-AZAM MOHAMMAD ALI JINNAH

DAWN

Flaws found in PTCL sale deal, PAC told

MAY 21, 2015 06:48AM

The auditor general included the PTCL in the audit plan, but the latter refused to get its accounts audited.—Courtesy: ptcl.com.pk

ISLAMABAD: The National Accountability Bureau has found defects in the \$2.6 billion deal for sale of 26 per cent shares of the Pakistan Telecommunication Company Limited with management control to the UAE-based telecom company, Etisalat.

A NAB representative informed the Public Accounts Committee on Wednesday that last month the bureau had pointed out some flaws in the agreement but it could not proceed onward because of lack of cooperation from the ministry of information technology and Etisalat.

He said the case had now been referred to NAB chairman Qamar Zaman Chaudhry.

The bureau had started investigating the case in May 2013, he said.

As per the 2004 agreement, the government was required to transfer 3,248 properties to the PTCL. The properties were leased, hired and owned by the federal government.

PAC chairman Khurshid Shah had on May 13 stopped transfer of properties to Etisalat and sought a presentation from the Privatisation Commission on the agreement.

'Investigation couldn't proceed because of non-cooperation from ministry, Etisalat'

The previous PPP government tried to transfer all properties to the PTCL and secure payment of \$800 million from Etisalat, but failed.

Privatisation Commission chairman Mohammad Zubair informed the committee that of the 3,248 properties, 3,214 had been transferred.

According to him, the value of outstanding properties is \$92 million whereas Etisalat has stopped payment of \$800m since 2007.

He said Etisalat had been requested to pay the outstanding money after adjusting the amount of leftover 34 properties, but it insisted to proceed with the matter in accordance with the share purchase agreement under which the government was required to transfer all the properties to the PTCL.

“Aren’t these properties being transferred to Etisalat?” the PAC chairman asked.

Mr Zubair replied: “As per the agreement the properties need to be transferred to the PTCL, and not to Etisalat.”

Mr Shah said: “If the properties are going to the PTCL, we have no objection.”

Audit officials informed the meeting that Etisalat had got itself exempted from the audit by the auditor general of Pakistan by invoking Section 6 of the Telecom Act, 1996, in the agreement.

They told the committee that after the passage of the 18th Amendment, the auditor general included the PTCL in the audit plan, but the latter refused to get its accounts audited.

The PAC chairman directed audit officials to conduct the audit of PTCL accounts.

He asked the law ministry to give legal opinion on the matter. The audit authorities, however, said the law ministry had already furnished its opinion and had given a green signal to conduct the audit of PTCL accounts.

Published in Dawn, May 21st, 2015

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Published in Dawn, May 21st, 2015

The Tale of PTCL's Sale and How Etisalat Got Away without Paying USD 800 Million

AMIN YUSUFZAI

4 MONTHS AGO

The Privatization Commission of Pakistan extensively advertised and marketed sale of 26% shares of Pakistan Telecommunication Company Limited (PTCL) along with management control in 2004- 2005. In response, 18 parties submitted their Expressions of Interest. Of these, 12 parties submitted their Statement of Qualifications (SOQs) and 9 parties were pre-qualified for the bidding. Subsequently, three parties participated in the bidding process which was held on 18th June, 2005.

The consortium led by Etisalat emerged as the highest bidder with an offer far above the reference price of Rs. 62 per share approved by (CCoP) Competition Commission of Pakistan.

Details of offers are as under:

Bidder	US\$ per share	Total (amount in billion dollars)
Etisalat	1.96 (Rs. 117.01)	2.599
China Mobile	1.06 (Rs. 63.48)	1.409
Singtel	0.88 (Rs. 52.54)	1.167

The CCoP approved the bid submitted by M/s Etisalat and a Sale Purchase Agreement (SPA) was signed in 2005 which was to mature in September 2005. However, EIP (Etisalat International Pakistan) requested certain modifications to the transaction structure and the SPA.

Key modifications made upon EIP's requests were as under:

- Staggered Payments
- Cost of Voluntary Separation Scheme (VSS)
- 3248 Properties to be mutated in favor of PTCL with clean and clear titles

The CCoP on January 6, 2006 approved the above mentioned modification, after which a new SPA was signed on March 12, 2006. The Cabinet approved the revised terms and conditions of SPA in a meeting held on April 12, 2006.

Subsequently, upfront payment of US\$ 1.4 billion was made by Etisalat on 12-04-2006 against total bid amount of US\$ 2.598 billion.

Balance of US\$ 1.2 billion was to be paid in 9 biannual installments starting from September 2006 and ending on September 2010.

However, Etisalat has so far paid three installments totaling US\$ 400 million and the balance US\$ 800 million is still outstanding. M/s Etisalat has not paid any installment since July 2007.

- **Total sale price** For sale of 1326,000,000 shares of PTCL @\$1.96: USD 2.598 Billion
- **Amount Received from Etisalat:** \$1.799 Billion
- **Pending Payment:** USD 799.3 Million

As per the Share Purchase Agreement, the payment of the balance USD 1.2 billion was contingent upon transfer of clean and clear titles of 100% properties by January 2008.

In case of failure, valuations of the properties not transferred till January 2008 will be carried out by both the Seller and the Purchaser separately and higher of the two valuations will be considered for deduction from the balance installments.

Status of Transfer of Properties

At the time of privatization of PTCL, there were a total of 3248 properties to be mutated in favor of PTCL. Of these, 3,215 have already been transferred till date leaving behind 33 outstanding properties.

Valuation of Non-Transferred Properties

Privatization Commission has had the properties assessed by three valuers at different times. Hamid Mukhtar & Co was first engaged in 2009. Subsequently, National Bank of Pakistan was tasked in 2011 and lastly by M/s Iqbal Nanjee & Co in 2013.

According to Pakistani authorities, at present, the valuation of 33 non-doable properties totals to approximately USD 87.89 million.

However, Etisalat is yet to disclose its valuation of the remaining properties.

Recent Developments

Etisalat International Pakistan (EIP), the purchaser of PTCL, is delaying further payments on the ground that all properties included in the Share Purchase Agreement have not been transferred in the name of PTCL. Privatization Commission is actively pursuing and facilitating the process of transfer of properties to PTCL of which 3215 (98.98%) have been transferred and 33 (1.1%) remain to be transferred due to various reasons, including, legal impediments.

Since January 2010, approximately 278 properties have been transferred in favor of PTCL. The Federal Government (Finance Division) has either paid or given guarantees to the respective Provincial Governments and the Departments for the payments relating to the transfer of these properties.

GoP has on multiple occasions requested M/s Etisalat to withhold approximately US\$ 50-75 million and release the balance amount, after adjusting the proportionate amount equivalent to its holding of 26% of the value of 33 properties. However, despite all efforts of the GoP, M/s Etisalat has not released any further installment of US\$ 133.333 million.

The Privatization Commission on its part is doing all it can to facilitate the transfer of properties. Finance Ministry is also aware of the situation and Finance Minister is personally pursuing this case; but with not much of results.

Investigations on PTCL Privatization

Independent investigations on the privatization of PTCL have been initiated and completed in the past by both, National Assembly Standing Committee on IT and National Accountability Bureau (NAB).

The same have recently been submitted to the Public Accounts Committee (PAC). Both the reports are available with the respective organizations.

Will this Money Ever be Recovered?

Technically speaking, as per sale purchase agreement, Government of Pakistan is bound to transfer all — cent percent — properties or Etisalat (again as per agreement) can set literally any value of remaining properties, even if its one property that isn't transferred; which means, Etisalat can set USD 800 million as value of the last remaining property and never pay the remaining dues again.

This will mean that Government of Pakistan will have to transfer each and every property before claiming USD 800 million dollars. And if GoP fails to do so, Etisalat will have all the legal standing to hold the payment and get away with such hefty amount.

What Pakistan can do at best is to nab the people who signed agreement with Etisalat and see why they granted EIP such unprecedented rights and benefits.