

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAJJAD ALI SHAH

CIVIL APPEALS NO.700 TO 703 OF 2017

(Against the judgment dated 28.12.2016 of the Lahore High Court, Lahore passed in W.P.No.25317 of 2016)

AND

CIVIL MISC. APPLICATION NO.1407 OF 2018

(Applications for impleadment as party)

- | | | |
|----|--|-----------------|
| 1. | MAG Entertainment (Pvt) Ltd. Vs. Independent Newspapers Corporation (Pvt) Ltd. etc. | In C.A.700/2017 |
| 2. | PEMRA Vs. Independent Newspapers Corporation Pvt. Ltd. etc. | In C.A.701/2017 |
| 3. | M/s Startimes Communications Pakistan Pvt. Ltd. Vs. PEMRA etc. | In C.A.702/2017 |
| 4. | Shahzad Sky (Pvt) Limited Vs. Independent Newspaper Corporation (Pvt) Ltd. etc. | In C.A.703/2017 |

For the appellant(s):	Mr. Aitzaz Ahsan, Sr. ASC Mr. M. S. Khattak, AOR (In C.A.700/2017) Mr. Salman Akram Raja, ASC Ch. Munir Sadiq, ASC Syed Rifaqat Hussain Shah, AOR Mr. Ashfaq Jamani, Executive Member, PEMRA Mr. Ali Zeeshan Gondal, Head Legal, PEMRA (In C.A.701/2017) Mr. Wasim Sajjad, Sr. ASC Mr. Mehr Khan Malik, AOR (In C.A.702/2017) Syed Feisal Hussain Naqvi, ASC Syed Rifaqat Hussain Shah, AOR (In C.A.703/2017)
For the applicant(s):	Mr. Asad Kharal, in person (In C.M.A.1407/2018)
For the respondent(s):	Mr. Jan Asif Mehmood Lar, ASC Ch. Akhtar Ali, AOR

(For respondent No.1 in C.As.700, 701, 703/2017 and
For respondent No.2 in C.A.702/2017)

On Court's notice: Mr. Ashtar Ausaf Ali, Attorney General for
Pakistan
Mirza Nasar Baig, DAG

Date of hearing: 8.5.2018

JUDGMENT

MIAN SAQIB NISAR, CJ:- The judgment impugned before us through Civil Appeals No.700/2017, 701/2017, 702/2017 and 703/2017 was passed by the learned Lahore High Court in Writ Petition No.25317/2016 on 28.12.2016. The appellants in three of the aforesaid appeals are successful bidders for Direct To Home (*DTH; defined in Section 2(hb) of Pakistan Electronic Media Regulatory Authority Ordinance 2002*) licenses to be issued by Pakistan Electronic Media Regulatory Authority (*PEMRA*). PEMRA sought bids for three licenses for DTH distribution service(s). The entire bidding process was challenged by Independent Newspapers Corporation (Pvt.) Ltd (*the respondent*) through Writ Petition No.25317/2016. The respondent challenged the vires of Rule 13(3) and (4) of the Pakistan Electronic Media Regulatory Authority Rules, 2009 (*Rules 2009*) and Regulation 2.5, 2.11 and 3.23 of the PEMRA (Eligibility Criteria and Bidding Procedure for Direct to Home Distribution Service Licensing) Regulations 2016 (*DTH Regulations 2016*). The respondent also challenged Regulation 12(3) of the PEMRA (Radio Broadcasting Station Operations) Regulations 2012 (*Regulations 2012*). The learned High Court held, *inter alia*, that Rules 13(3) and (4) were ultra vires of the parent Act, i.e., Pakistan Electronic Media Regulatory Authority Ordinance 2002 (*PEMRA Ordinance*). The successful bidders for DTH licenses and PEMRA have challenged the impugned judgment.

2. Mr. Aitzaz Ahsan, Sr. ASC appeared on behalf of MAG Entertainment (Pvt) Ltd., which participated in the bidding held by

PEMRA on 23rd and 24th November 2016 for the DTH licenses and whose bid for Rs.4.91 billion was accepted. He argued that there are various producers of programmes who will in future sell their programmes to the DTH distributors and these distributors will beam these programmes directly to the subscribers/consumers via satellite which (*programmes*) will be received by the consumers by means of an antenna dish installed in their homes. According to him the basic question arising in these appeals is whether the producers/broadcasters of these programmes can also be given the rights for distribution. According to the learned counsel the broadcasters/producers (*which he states are interchangeable terms*) were excluded from bidding for the DTH licenses by PEMRA. He states that the decision of the learned High Court is incorrect because it has been held that Section 23(2) of the PEMRA Ordinance does not contain anything to prevent the participation of the broadcasters/producers from bidding for DTH licenses. He states that on the contrary Section 23(2) *ibid* allows PEMRA to promote the objectives of the PEMRA Ordinance as set out in its preamble to, *inter alia*, “*enlarge the choice available to the people of Pakistan*” by means of excluding broadcasters/producers from bidding for DTH licenses in order to prevent undue concentration of media ownership. He argued that while allowing broadcasters/producers to obtain DTH distribution licenses may not create a monopoly, it would certainly create a media enterprise which would be able to use its dominant position to the disadvantage of its competitors. He contended that on 01.06.2016 PEMRA initiated the process for the grant of DTH licenses and promulgated the DTH Regulations 2016. Later these were amended on 20.08.2016 *vide* SRO No.774(I)/2016. He compared the original and the amended Regulation 2.5 read with Regulation 3.23 of the DTH Regulations 2016 to show how PEMRA excluded producers/broadcasters

from participating in the bidding for DTH licenses. He referred to paragraph nine of Writ Petition No.25317/2016 to demonstrate the grounds on which the respondent had challenged the DTH Regulations 2016 and the Rules 2009.

3. Mr. Salman Raja, ASC appeared on behalf of PEMRA and stated that the learned High Court has misinterpreted the proviso of Section 23 of the PEMRA Ordinance and read it (*proviso*) to create a right in favour of every media enterprise to participate in the bidding for DTH licenses. He stated that whilst anti-competitive behavior is generally prohibited the media sector is unique because there must be plurality and diversity of voice in society. According to him there are three tiers of media: the production houses, broadcasters and distributors. According to him the learned High Court failed to see that exclusion of the dominant is often necessary to create diversity and that no 'right' exists in favour of broadcasters to participate in bidding for DTH licenses. He stated that the three successful bidders have participated in an open and transparent bidding process which was allowed by this Court by way of interim relief during the pendency of the instant litigation before the learned High Court.¹ The bidding process was in fact televised and three successful bidders each offered close to Rs.5.00 billion each and that any new bidding process would not garner such high bids as the distribution technology has now advanced beyond DTH. He stated that "undue concentration" has to be defined ex-ante. To determine "undue concentration" ex-post would be difficult and would paralyze the system.

¹ C.M.A. No.7794/2016 came up before this Court on 23.11.2016 and the following direction was made, "...the bidding process, already fixed for today, may be held and take place at the same time and venue already fixed. It is, however, made clear that no final award of bidding or contract would be made by the petitioner. Furthermore, it is also observed that no right or interest shall be created or claimed by any bidder who may participate in the bidding process. It is expected that the learned Bench of the High Court, seized with the matter, may proceed to finalize the same at the earliest. Any process undertaking in pursuant to the order of this Court shall be subject to the final determination by the learned Bench of the High Court."

He contended that there is no violation of Article 19 of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*) as this is not a matter of restricting any person's freedom of expression.

4. Mr. Wasim Sajjad, Sr. ASC appeared on behalf of Startimes Communications (Pvt) Ltd., another successful bidder, and contended that the preamble of the PEMRA Ordinance states that one of the objectives of PEMRA is to enlarge the choice and to do so diverse sources are needed; if the same person is licensed for both broadcasting and distribution this purpose will not be achieved. He referred to Section 39 (2)(e) of the PEMRA Ordinance to state that PEMRA has the power to define the circumstances constituting "undue concentration" of media ownership. He relied upon paragraph 17 of the judgment reported as **Messrs S. M. Ilyas & Sons Ltd. Vs. Monopoly Control Authority (PLD 1976 Lah 834)** to argue that it is settled law that the legislature cannot classify the type of anti-competitive entity and it is, therefore, left to the regulator to classify the same. He also made reference to Article 38 of the Constitution.

5. Mr. Feisal Naqvi, ASC appeared on behalf of Shehzad Sky (Pvt.) Ltd, another successful bidder and stated that the finding of the learned High Court that Rule 13 of the Rules 2009 is ultra vires of Section 23 of the PEMRA Ordinance is incorrect because the relevant section of the PEMRA Ordinance is not Section 23 but Section 39 which clearly confers on PEMRA the power to define "undue concentration" and prevent the same. He stated that the learned High Court read down Section 39 to fit the scope of Section 23 *ibid* and held that PEMRA was not justified in prohibiting the broadcasters from participating in the bidding for DTH licenses whereas it was a discretionary power to be exercised by PEMRA under the aegis of Section 39(2)(d) and (e) of the

PEMRA Ordinance. He relied on the case reported as **Pakistan Broadcasters Association and others Vs. Pakistan Electronic Media Regulatory Authority and others (PLD 2016 SC 692)** to argue that the licenses issued to the broadcasters contain a clause to the effect that they will abide by the Rules and Regulations of PEMRA and, therefore, they are estopped from challenging the same. Finally he stated that the respondent itself argued in its Writ Petition No.25317/2016 that the cable operators discriminated against the respondent. There are 3500 cable operators in Pakistan and if they cannot be trusted not to discriminate then how is it possible to allow the respondent who already holds 5 broadcasters' licenses to become even more powerful by grant of one of three DTH distribution licenses and trust it not to abuse its power?

6. Learned counsel for the respondent(s) defended the order of the learned High Court. He argued that broadcasters are not barred under the Ordinance from applying for distribution licenses, rather this was so done through delegated legislation, and that under the Ordinance itself the respondent(s) is entitled to hold distribution and broadcasting licenses. In this regard he referred to Sections 25, 23(2) and 2(l) of the PEMRA Ordinance. He also referred to Section 39(d) and (e) of the Ordinance to argue that though PEMRA has the power to make rules, no rules have been framed that affect vertical integration, in that the circumstances that constitute "undue concentration" have not been defined. Learned counsel contended that the said rule-making power is beyond the object, intent and preamble of the Ordinance. In this regard he relied upon the preamble of the Ordinance and the judgment reported as 2013 parent statute ultra vires. According to him, the Rules 2009 can be struck down on the touchstone of Section 23 of the PEMRA

Ordinance. Finally, he stated that the language of “undue concentration” used in Section 23 of the PEMRA Ordinance implies that there is a certain amount of concentration that is permitted before it becomes “undue”.

7. Heard. The primary questions before us are whether PEMRA has the authority and power to exclude the broadcasters from bidding for the DTH licenses and whether such authority has been conferred upon PEMRA under the PEMRA Ordinance 2002? If yes, what is the extent of that authority/power?

8. The relevant provisions of law are reproduced below for ease of reference:-

PEMRA Ordinance, 2002

23. Exclusion of monopolies.– (1) *No person shall be entitled to the benefit of any monopoly or exclusivity in the matter of broadcasting or the establishment and operation of broadcast media or distribution service or in the supply to or purchase from, a national broadcaster of air time, programmes or advertising material and all existing agreements and contracts to the extent of conferring a monopoly or containing an exclusivity clause are, to the extent of exclusivity, hereby declared to be inoperative and of no legal effect.*

(2) *In granting a licence, the Authority shall ensure that open and fair competition is facilitated in the operation of more than one media enterprise in any given unit of area or subject and that undue concentration of media ownership is not created in any city, town or area and the country as a whole:*

Provided that if a licensee owns, controls or operates more than one media enterprise, he shall not indulge in any practice which may impede fair competition and provision of level playing field.

39. Power to make rules.– (1) *The Authority may, with the approval of the Government, by notification in the Official Gazette, make rules to carry out the purposes of this Ordinance.*

- (2)
- (a)
- (b)
- (c)
- (d)
- (e) *to define the circumstances constituting undue concentration of media ownership and abuse of powers and anti-competitive practices by media companies.*

PEMRA Rules, 2009

13. Media ownership concentration and exclusion of monopolies.– (1) *To ensure that fair competition is facilitated, media diversity and plurality are promoted in the society and undue concentration of media ownership is not created. Maximum number of licences that may be issued to a person or any of its directors or partners where such person is a company or firm, who is directly or indirectly, controlling, owning or operating more than one media enterprise, shall not exceed a total of four satellite TV, four FM Radio licences and two landing rights permissions.*

- (2)
- (3) *A licensee who owns, controls or operates directly or indirectly any other distribution service license shall not be granted a landing rights permission or broadcast media licence.*
- (4) *A licensee who owns, controls or operates directly or indirectly broadcast media license or landing rights*

permission shall not be granted a distribution service licence.

DTH Regulations, 2016

2.11. The applicants must not already be a licensee who owns, controls or operates directly or indirectly any broadcast media licence or landing rights permission, in compliance with Rule 13 of the PEMRA Rules 2009.

Section 23(2) of the PEMRA Ordinance 2002 enjoins upon PEMRA a duty to prevent monopolies in the field of broadcasting and distribution. According to the preamble to the PEMRA Ordinance it is the duty of the regulator to enlarge the choice available to the people of Pakistan. The prevention of monopolies is therefore necessary as meaningful choice is only possible in the presence of genuine competition. Vertical and horizontal integration in the field would both tend to restrict choice. This was considered by the Competition Commission of Pakistan (CCP) in **The Matter Of Show Cause Notices Issued To Jamshoro Joint Venture Ltd (JJVL) & LPG Association Of Pakistan (LPGAP) (No. 3/LPG/Dir(Inv)/M&TA/CCP/2009)** which examined the issue of collusive pricing. CCP held that vertical integration would lead to an abuse of dominant position and facilitate collusive activity. It was observed as under:-

179. Competition jurisprudence acknowledges that a single producer or supplier can accumulate market power by taking over distribution networks downstream in the market. This can either be done by entering into vertical agreements, or by vertical integration. An examination of JJVL"s downstream operations reveals that it is engaged in both types of relationships downstream. It has vertically integrated distributors, Lub Gas and Mehran Gas; and it has also entered into vertical agreements with some 30 or

so LPG companies downstream. Hence the market structure and JJVL's dominance could possibly facilitate vertical collusion.

Bansal² explains that:-

[A] broadcaster basically faces competition at three different levels namely, (i) at the content level to produce or procure TV content from third parties; (ii) access to distribution network e.g. DTH; and (iii) viewership i.e. number of TV channels and duration of content viewed by end consumers. For distribution companies as well, there exists serious competition to provide popular TV channels at reasonable subscription rates. They have to provide low carriage fee to the broadcasters and promise a robust distribution system and infrastructure that can perform seamlessly. Distributors also need to compete with companies operating on the same technology platform and also across different technology platforms.

According to him in highly competitive markets broadcasting and distribution companies may vertically integrate which may have certain detrimental effects such as non-provision of TV channels, i.e., denial of access by the vertically integrated broadcaster to the competing distributors by refusing to provide its TV channel content. As a result the competing distributors lose market share and consumers face lack of distributor choices. Therefore, competition in the market is effectively reduced. Secondly, the vertically integrated distributor-broadcaster may raise entry barriers for other competing broadcasters by not carrying certain TV channels which would reduce their viewership, occasioning

² Aakshita Bansal, "Vertical Integration in TV Broadcasting And Distribution Sector In India: A Competition Audit" (July 2013), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=2ahUKEwir04ij2MzcAhUryIUKHamGCqcQFjAAegQIAhAC&url=http%3A%2F%2Fwww.scoop.it%2Fdoc%2Fdownload%2F3gnG53cXJJ_Kx2mnTcqcHkx&usg=AOvVaw2LIBLqaogw-6p_8eT-70-.

losses. Thirdly, a vertically integrated distributor may abuse its increased market power by arbitrarily disconnecting its channels from the local cable operators. Fourthly, the vertically integrated distributor-broadcaster may charge rival broadcasters discriminatory placement and carriage fees. Finally, the vertically integrated distributor-broadcaster may abuse its market power by restricting the choice of channels for the consumers by tying in unwanted channels with popular offerings.

9. The EC Guidelines³ on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings look into both the non-coordinated and coordinated effects of vertical integration. When assessing the non-coordinated effects, the guidelines prescribe a three-step process for the assessment of vertical mergers. First, whether the merged entity would have, post-merger, the ability to substantially foreclose access to inputs? Second, whether it would have the incentive to do so? This step evaluates whether a foreclosure strategy would be profitable considering only the static responses of rivals and consumers. Third, whether a foreclosure strategy would have a significant detrimental effect on competition downstream? Factors such as buyer power, likelihood of entry and the impact of efficiencies are examined to determine the long run impact of the merger on competition. Merely proving the existence of harm to competitors is not sufficient to deter a merger. Instead, it needs to be shown that there will be harm to competition. This can take the form of increased prices, reduced quality or reduced choices that are available to consumers. Mergers may change the nature of competition in such a way that firms who previously were not coordinating their behaviour, may be

³ Guidelines On The Assessment Of Non-Horizontal Mergers Under The Council Regulation On The Control Of Concentrations Between Undertakings (2008/C 265/07), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008XC1018%2803%29>.

more likely to coordinate and raise prices or otherwise harm effective competition. Therefore we are convinced that whilst vertical integration is not per se barred it is a cause for concern when it leads to loss of genuine competition.

10. The learned High Court in the impugned order relied on the proviso to Section 23 of the PEMRA Ordinance to create a right in favour of every media enterprise to participate in the bidding for DTH licenses. This interpretation of the proviso is not correct. We are fortified in our view by the ratio of the following judgments. In the judgment reported as **Ibrar Hussain and others Vs. Government of NWFP through Secretary, Board of Revenue and others (2001 SCMR 914)**, Irshad Hassan Khan, C.J., held that:-

*“5. It is well-settled principle of interpretation of statutes that it is to be read as a whole and not in bits and pieces. Generally three functions are ascribed to a proviso:--
(1) To exempt something from the enacting clause;
(2) to qualify or restrain its generality;
(3) and to exclude some possible misinterpretation of it as extending to cases not intended by the Legislature.”*

In **Special Reference No. I of 1957 by the President of Pakistan under Article 162 of the Constitution of the Islamic Republic of Pakistan [PLD 1957 SC (Pak.) 219]** this Court in its advisory jurisdiction dilated upon the functions of a proviso, as succinctly stated by Crawford at pages 128-129 of the 1940 Edition of “Statutory Construction” in the following terms:-

“...A proviso, on the other hand, is a clause added to an enactment for the purpose of acting as a restraint upon, or as a qualification of the generality of the language which it

follows. Sometimes, however, as a precautionary measure, it is used to explain the general words of the Act and to exclude some ground of misinterpretation which would extend it to cases not intended to be brought within its operation or purview.”

[Emphasis supplied]

In the case reported as **Sh. Liaquat Hussain and others Vs. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others** (PLD 1999 SC 504) this Court observed that a proviso or an exception to the main enacting part is to be construed strictly. In **Mst. Nawab Bibi and 3 others Vs. Ch. Allah Ditta and others** (1998 SCMR 2381) it was held as under:-

“It is settled law that proper function of a proviso is to accept and deal with a case which would otherwise fall within the general language of the main section, and its effect is confined to the rule or section to which a proviso has been added. The proper way to regard the proviso is as a limitation upon the effect of principal section or rule. A proviso, which is in fact and in substance a proviso, can only operate to deal with a case which, but for it, would have fallen within the ambit of the section to which the proviso is a proviso. To put it in another way the section deals with a particular field while proviso excepts or takes or carries out from the field a particular portion and therefore, it is perfectly true that before a proviso can have any application the section itself must apply.”

In the case cited as **Commissioner of Income Tax Vs. Nasir Ali and another** (1999 SCMR 563), Saeeduzzaman Siddiqui J. opined that:-

“4. It is a well-settled principle of interpretation that a proviso deals with the subject, which is covered by the enacting part of the provision. The proviso only carves out

an exception which, but for the proviso, would fall within the language and meaning of the enacting part.

5. A proviso, therefore, has to be interpreted strictly, and where the language of main enacting part is clear and unambiguous, the proviso cannot by implication exclude from its purview what clearly falls within the express terms of the main enacting part. We would, therefore, first determine the scope and meaning of the main enacting part of section 3(4)(a) of the Ordinance in the light of the above stated legal position.....

6.The enacting part of the section is not to be construed in the light of the proviso but it is the proviso which is to be interpreted in light of the main enacting part of the statute.”

[Emphasis supplied]

In the judgment reported as **Messrs Shahi Bottlers Limited, Lahore Vs. The C.I.T., Central Zone, Lahore** (1999 PTD Lah 3518) the learned High Court quoted the following extract from Craies, The Construction of Statute Law:-

“The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing it to that effect.”

The Court then goes on to discuss the meaning of a proviso given in various judgments and observed as under:-

“11. From the foregoing examination, the following principles for the interpretation of proviso emerge; that proviso excepts and deals with a case which otherwise would have fallen within the language of main enactment; that for the purpose of its construction the whole of the Act is to be taken into consideration and a strict construction is to be accorded to proviso which should keep it within the ambit of substantive provisions.”

In the judgment reported as Messrs East and West Steamship Company Vs. Pakistan and others [PLD 1958 Supreme Court (Pak.) 41] it was held:-

“...a proviso is to be regarded as something which excepts a particular case from a general principle. The effect of a proviso is to except something out of the preceding portion of the enactment or to qualify something enacted therein which but for the proviso would be within it.

...the words of a proviso are to be construed strictly and confined to the special case which its words enact; it would be wrong to construe those words as being co-extensive with those used in the purview, particularly where the effect might be of bringing about a repeal of the purview.”

[Emphasis supplied]

11. In light of the settled law as reflected in the aforementioned judgments, the interpretation of the proviso to Section 23 of the PEMRA Ordinance by the learned High Court in the impugned judgment cannot be sustained. This Court has often adopted the purposive approach while interpreting statutes. In the judgment reported as Dr. Raja Aamer Zaman Vs. Omar Ayub Khan and others (2015 SCMR 1303) it was held that:-

“...The Courts in Pakistan have always preferred a purposive rather than a literal interpretation of Statutory Instruments.”

In the case cited as Federation of Pakistan through Ministry of Finance and others Vs. M/s Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710) it was held:-

“Even if the Schedule of the Act is given a subordinate position as was done in Premier Mills Ltd. v Commissioner of Income-tax (1985) 152 ITR 457, the legislative intent and the object of this specific legislation remains beyond doubt. Such intent and purpose must be given effect to and not thwarted on any vague and nebulous theoretical concept.”

It is clear that Section 23 of the PEMRA Ordinance confers upon PEMRA a duty to ensure *“that undue concentration of media ownership is not created in any city, town or area and the country as a whole.”* “Undue concentration” is not defined in the PEMRA Ordinance. In fact, Section 39(e) of the PEMRA Ordinance allows PEMRA to frame rules with respect to defining *“the circumstances constituting undue concentration of media ownership and abuse of powers and anti-competitive practices by media companies.”* As the regulator, PEMRA is best placed to assess the “media market” in terms of the factors outlined in paragraphs 8 and 9 hereinabove and other relevant considerations. It is evident that having considered the relevant factors, PEMRA was of the view that vertical integration, which would come about as a result of the broadcasters being allowed to also hold distribution licences, would be detrimental to the public interest in that it would stifle choice which PEMRA is mandated to encourage. Therefore PEMRA framed and amended the PEMRA Rules 2009 to exclude such vertical integration by

means of Rule 13(4) whereby a broadcaster was barred from also holding a distribution licence. There is no violation of the respondent's fundamental rights by so doing; Article 18 of the Constitution allows for the regulation of businesses. This regulation may be in the form of licenses which carry certain conditions to protect the public interest. In this particular matter the public interest is best served by ensuring that the "media market" is one where genuine competition prevails. We cannot make a fetish of the respondent's purported fundamental right to compete for and acquire a distribution license in addition to its broadcasting license(s) at the expense of the broader public interest of genuine healthy competition and the resultant choice. In the circumstances, these appeals are allowed and the impugned judgment is set aside.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Islamabad, the
8th of May, 2018
Not Approved For Reporting
Waqas Naseer