

New 14/11

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A chance to begin anew

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The decision of Shalimar Television Network on November 10 to cancel the contract with Network Television Marketing is a belated but welcome affirmation of the principles of transparency and fair, open competition in the award of contracts.

The contract was deliberately re-formulated in 1994 in such a way that the interests of NTM and its patrons were given complete protection because termination can only be done due to a default by NTM and that, too, for a period of three months, and only after arbitration is conducted. Thus, it would be instructive to learn from STN about the legal basis on which the termination has been done. There is a danger of this move backfiring because it may not have been done according to the letter of the law. Thus, the attempted cure may prove to be worse than the disease: unless the affected party desists from challenging the termination in the interest of becoming a bidder anew.

The cancellation also vindicates the stand that I have taken since 1991 when, through newspaper articles first published in *The News International*, and statements, the various illegal and unfair dimensions of this contract were identified for the first time. I called for an open, fair and transparent process. Later, 14 advertising agencies whose heads are members of the Advertising Practitioners' Guild filed a writ petition challenging the award of the contract in the Sindh High Court which was admitted for hearing in 1993.

The caretaker government of Prime Minister Moeen Qureshi had made an attempt in October 1993 to replace the original contract with an open, competitive arrangement, but the PPP government of 1993-96 ignored the pendency of the petition in the Sindh High Court, bypassed the arrangement made by the Moeen Qureshi government and perpetuated the monopolistic contract for an additional ten years by authorising a fresh agreement between STN and NTM in September 1994.

While the need for a non-monopolistic and competitive arrangement for STN remains paramount, the manner of the cancellation of the contract is questionable and inappropriate.

To prevent loss to innocent third parties such as advertisers, advertising agencies, independent programme producers, creative talent, etc., due notice should have been given by STN to NTM to minimise hardships and uncertainties. The management of NTM in 1997 was also making attempts to improve its programme content and efficiency. There was a moral obligation for STN to give

ject. There are both merits and demerits. Instead of a blanket ban, the issue should be dealt with on a case-by-case basis to prevent undue concentration of media power.

As regards the ban on any individual already holding an interest in electronic media e.g. (FM stations, Shaheen Pay TV, etc.) the restriction placed by STN on such bidders is a positive and welcome move because it will prevent those who obtained contracts through an unjust and non-transparent process (as in the case of FM stations, Shaheen Pay TV) from further adding to their respective media monopolies.

However, there are three major flaws in the terms specified in the STN advertisement calling for new bids as published in the press on November 12. It appears that the intention is to award the new contract again to a single party. If so, this would result in the replacement of one monopoly by a new monopoly. Instead, in line with the excellent model established by the Independent Television Commission in the United Kingdom, the seven days of the week and total time available for telecast should be allocated to at least two to three different contractors e.g. Monday-Tuesday as one slot, Wednesday-Thursday as one slot, Friday-Saturday-Sunday as one slot. Or in a further variation, having separate slots for morning TV, evening TV or weekend TV. Such segmented franchises have worked extremely well in London and elsewhere. They ensure healthy competition and provide increased choices to all concerned.

A second major flaw in the terms for the new contract are that the awardees will not be allowed to produce their own news and current affairs programmes. This restriction directly contradicts the principles of freedom of expression and democracy as enshrined in Article 19 of the Constitution of the Islamic Republic of Pakistan. If the people of Pakistan are capable of sustaining independent print media that produce news and current affairs material then the Pakistani nation is equally capable of operating independent electronic media which offer alternative and credible news and current affairs programmes that will compete with government-controlled Khabarnama and similar programmes.

Thirdly, in evaluating bids, due weightage should have been specified for the professional relevance and competence of bidders, their programme production concepts, their past reputation for creative work, etc., so that the highest bid alone should not necessarily be the winning bid.

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To prevent loss to innocent third parties such as advertisers, advertising agencies, independent programme producers, creative talent, etc., due notice should have been given by STN to NTM to minimise hardships and uncertainties. The management of NTM in 1997 was also making attempts to improve its programme content and efficiency. There was a moral obligation for STN to give a reasonable notice period before cancellation instead of such abrupt termination.

The reasons given by STN for cancelling the contract in themselves are valid i.e., "that the original contract was given under pressure, coercion, etc." But it is strange that STN under the second PML government has forgotten what STN failed to do during the first PML government between 1990 and 1993. The federal government has a majority of directors — five — on the board of Shalimar Recording Co. Ltd., the parent company of STN, and it is therefore the responsibility of the federal government to ensure that STN acts in a proper manner.

Despite being aware of the illegality and non-transparency of the contract, and despite receiving a letter in June 1991 from the Pakistan

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In the commendable spirit of making a fresh start which has been demonstrated by the action of cancelling the contract, it is hoped that the government and STN will rectify these major flaws in the terms specified for new bids.

The only effective, credible and long-term solution to this issue is to make any new contract subject to a law such as the EMRA law, the Electronic Media Regulatory Authority Ordinance promulgated by the caretaker government last February which lapsed in June. Through the enforcement of EMRA in the form of an Act of Parliament will we alone be able to ensure truly competitive, open, transparent conditions for electronic media in Pakistan in which independent alternative sources for news and current affairs programmes on Radio and TV are also made available to the people in keeping with the needs of a democratic system.