



Decision of the Pakistan Telecommunication Authority on “Mobile Financial Services”

No: PTA/Finance/Mobile/Telenor6/2006/407

Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 13th December, 2022

Panel of Hearing

Maj. Gen. Amir Azeem Bajwa (R) : Chairman
Dr. Khawar Siddique Khokhar : Member (Compliance and Enforcement)
Muhammad Naveed : Member (Finance)

Issue:

“Mobile Financial Services”

1. Facts of the case:

1.1 Precisely stated facts of the case are that Pakistan Telecommunication Authority (the “**Authority**”) issued provisional demand notes dated 22nd April, 2020 and 6th May, 2020 to Telenor Pakistan (Private) Limited (the “**licensee**”) requiring therein to pay Annual Regulatory Dues (“**ARDs**”) on account of Mobile Financial Services, International Roaming, etc. among other amounts payable in respect of revenue earned by licensee. Being aggrieved from provisional demand notes, the licensee filed a W.P No. 2083 of 2020 before the Honorable Islamabad High Court, Islamabad. The Honorable Court vide its order dated 04th November, 2020 disposed of the petition. Relevant paras of the court order are reproduced below:

“11. As noted above, in somewhat similar circumstances, this Court in FAO No. 67-2020 in case titled ‘LinkDotNet Telecom Limited Vs. Pakistan Telecommunication Authority etc.’, disposed of the appeal in the following terms: -

“4. In view of above contention of learned counsel for the respondents PTA, appellant contends that if the respondents PTA will not claim any amount till the final adjudication, his appeal may be disposed of for adjudication for the instant matter by the respondents Authority.

5. *Be that as it may, instant appeal is disposed of with the direction to the respondents PTA to adjudicate upon the matter on primary question as to whether the foreign carriers fall within the term 'inter-operator' as provided in the license and any cost sustained by the appellant has to be considered as an allowable deductions, till then the respondents shall not take any coercive measures against the appellant for payment referred in the provisional Demand Notes dated 23.04.2020 and 11.05.2020"*

12. In light of above, instant petitions are also disposed of by referring the matter of the petitioners to Pakistan Telecommunication Authority to adjudicate upon the matter, as to whether the foreign carriers fall within the term 'inter-operator' as provided in the license.

13. Needless to observe that till such time that the matter is adjudicated and decided by PTA, no coercive measures shall be adopted against the petitioners and no demand qua Late Payment Additional Fee, shall be made, which in any case, becomes applicable from the due date which would be if and when matter is decided against the petitioners and the demand is made to make the payment."

1.2 Pursuant to the said court order, the issue regarding non-deduction of amount on account of International Roaming was decided by the Authority on 8th April, 2022. However, with regard to Mobile Financial Services ("MFS"), a consultation process with all the stakeholders including the licensee was initiated. For ready reference para 3.2 of the said Authority's decision is reproduced below:

"3.2 At the very outset with regard to determination of issue MFS is concerned, it is clarified that PTA initiated consultation process on the issue of MFS, therefore, the same will be finalized subject to conclusion of the consultation process with all the stakeholders including the licensee"

1.3 After carrying out consultation with the licensee, the matter relating to MFS was fixed for hearing on 13th December, 2022 before the Authority. Mr. M. Irshad (Legal Counsel), Mr. Haseeb Sheikh (Regulatory Head) and Mr. Syed Ali Yasir (Legal) appeared on behalf of the licensee. During the hearing, the representative of the licensee submitted that per se MFS is not a licensed service as per license terms and conditions and the licensee is complying with all regulatory laws with regard to making payment on account of Annual Regulatory Dues (ARDs). For ready reference, the contentions of the licensee with regard to MFS as mentioned in the petition are reproduced below:

i. Section 22 of the Act prohibits modification of the license without licensee's consent. The purported amendment vide impugned letters is that the ARDs would also be payable on Non-licensed services revenue and that the allowable deduction of inter-operator payments will be confined to local operators. An implied amendatory clause in the license is no less an amendment than an express amendatory clause; what can be done directly, cannot be done indirectly.

ii. Clause 4.1.2 of the license stipulates that the ARDs are payable only on revenues from "licensed services". Clause 4.3.1 goes on to state that the calculations of the ARDs shall be based on the audited financial statements of the licensee, that would "..... disclose separately the Annual Gross Revenue between licensed and non-licensed services and.... inter-operator payments that are allowable to determine the adjusted gross revenue."

iii. The impugned letters under the rubric Mobile Financial Services incorporate the entire revenue received from Telenor Micro Finance Bank Limited in the ARDs calculation, when only apart thereof pertains to mobile communications services provided by the petitioner / licensee to TMBL; the remainder does not accrue from "Licensed Services", i.e., Services rendered using the petitioner's / licensee mobile communication network. The list of non-mobile communication activities of services was there in the petitioner's application to the respondent. The impugned do not answer this point.

iv. Further, clause 4.3 of the license stipulates the ARDs to be derived from the annual audited financial statements of the licensee, which are definitive for revenue classification between licensed and non-licensed services. The licensee's application to Authority referred to note 43 of the audited financial statement whereby the revenue from non-mobile communication services was categorized as "other income". The impugned orders tantamount to reading into clause 4.3.1 a non-existent qualification to the effect that the Authority can the revenue conclusions without giving reasons.

1.4 Matter heard and record perused. As a matter of record, it is relevant to point out that pursuant to PTA's letter 29th July, 2021 a committee was constituted to carry out consultation on the issue of MFS. As per mandate given to the committee, nomination from all the stakeholders' including licensee was sought. In pursuance to the PTA's said letter the licensee nominated Mr. Obaid Shahid Dar (Senior Manager Finance), Ms. Nazia Khan (Manager Legal) and Haseeb Sheikh (Head of Interconnect Management) for consultation with the Committee. The representatives of the licensee attended various meetings, provided relevant documents and responded to the questionnaires of the Committee. After due consultation, deliberations and discussions, the committee submitted the report. The conclusion of the Committee's report is reproduced below:

“8. Conclusion:

8.1 *It is evident that Mobile Financial Services/Mobile Banking are being provided jointly by CMOs and their corresponding banks / Electronic Money Institutions (EMIs) involving CMOs to provide Technical Services and banks/electronic money institutions to provide Financial Services. The said arrangement is being executed through Service Level Agreements and Super Agency Agreements, wherein the nature of services and revenue sharing mechanism etc. have been provided.*

8.2 *After extensive consultation with CMOs, it has transpired that although Telecom/Technical Services are being extended by CMOs in relation to Mobile Financial Services, nonetheless, the CMOs couldn't furnish any underlying details as to bifurcation of revenue from Technical / Telecom and non-telecom services required under the license conditions and Mobile Banking Regulations. Further, the operators have stated in their replies to questionnaires and meetings that there is no separate billing mechanism currently in place to invoice/bill the Technical Services provided to corresponding banks/EMIs nor there is any separate record of corresponding consideration received, if any, against telecom services rendered by CMOs in execution of MFS transactions or affiliated marketing services of their MFS brand.*

8.3 *Forgoing in view, Mobile Financial Services/Mobile Banking Services in its entirety can't be termed as licensed services for the purpose of calculation of CMO's Annual Regulatory Dues. Nevertheless, the Technical/Telecom services rendered by the CMOs for the implementation/execution of Mobile Banking Services fall under the scope of CMOs license.”*

2. Agreements provided by the licensee:

While examining the record it has been found that the licensee provided the following agreements:

- a. Deed to Extinguish the Existing Front-End Agreement, Service Level Agreement & Deposit Mobilization Agreement dated 21st December, 2016
- b. Service Level Agreement First Amendment Agreement dated 30th April, 2018
- c. Amended and Restated Services Level Agreement dated 14th December, 2018.
- d. Business Corporation Agreement dated 14th December, 2018.

2.1 The licensee entered into agreement titled “**Deed to Extinguish the Existing Front-End Agreement, Service Level Agreement & Deposit Mobilization Agreement**” with Tameer Microfinance Bank Limited on 21st December, 2016. As per Schedule B of the Service Level Agreement (SLA) dated 21st December, 2016, Technology Services have been provided wherein the “Category” of “Digital Services” includes Services related to VAS and CBS (e.g. SMSC, USSD, ATTU). The licensee also executed another SLA dated 30th April,

2018 with Telenor Microfinance Bank Limited. Clause A of the said agreement with regard to its scope provides as under:

“A. The Parties entered into an agreement entitled “Service Level Agreement” dated December 21, 2016 (the “Original Agreement”) whereby the parties agreed that TP shall act as the super-agent for TB to enable the parties to provide Branchless Banking Services through the mobile banking platform and through designated sub-agents and for the purpose of defining the terms of cooperation between the parties to provide branchless banking services in Pakistan.”

2.2 As per agreement the term “Services” has been defined which states that the services to be provided by TP pursuant to the terms of this agreement as listed in Schedule B (Other Services) in accordance with operating procedure. For ready reference relevant services as provided in the agreement is given below:

Connectivity Services	This includes: USSD Services SMSC Services MPLS (Multi-Protocol Label Switching) used over Nationwide Fiber Optic Network APG (API Gateway) 100 Mbps connectivity @ KHI DC
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2.3 In addition, as per Part II of the agreement also provides responsibility matrix in the following manner:

Connectivity Services	NOC	TP Operations	TB	Output / Comments
USSD Services	1	R.A	I.C	Ensure USSD Services are available as per agreed SLA
SMS Services	1	R.A	I.C	Ensure SMS Services are available as per agreed SLA
MPLS (Backhaul)	1	R.A	I.C	Ensure availability of backhaul
APG	1	R.A	I.C	

It is also relevant to mention here that Appendix-3, Scheduled D of agreement provides that a lump sum fixed fee on account of Connectivity Services, payable by TB to TP, under the agreement is as under:

Connectivity services	6,919,065
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2.4 In addition, the licensee also entered into “**Amended and Restated Service Level Agreement**” dated 14th December, 2018 (Amended SLA) with Telenor Microfinance Bank Limited. The scope of the Amended SLA as provided in clause 2.1 provides that this agreement set out the terms and conditions upon which TP shall act as super-agent of TB in

order to enable the provision of branchless banking services to the customers through sub-agents. Both the parties vide clause 6.5 and 6.6 of the amended SLA also agreed that for the provision of services, TP will maintain requisite approvals under Applicable Laws and shall ensure that it complies with the Act and Mobile Banking Regulations, along with all Applicable laws and that TP shall ensure its employees (including S&D Team) to comply with all Applicable Laws and policies required regulatory authorities in Pakistan in relation to the Branchless Banking business.

2.5 Clause 7.3 (a) (ii) of the Amended SLA further provides that operating procedures include, but not limited to, procedure and protocols for satisfying the requirements of BBR, PTA MB regulations, MBI regulations, Agent Framework regulations and such requirements as specified by the SBP and / or the PTA from time to time. It is also relevant to refer clause 9.1 of the Amended SLA which provides that fees for the Services shall be charged by TP to TB in accordance with **Schedule D (Charges)** to this Agreement. TP shall raise the invoice for the Services on monthly basis and TB shall be obligated to make full payment to TP within a period of (15) fifteen days of the receipt of TP's invoice. For ready reference, the fees payable by TB to TP under the Schedule D of the Agreement in respect of Connectivity service is as under:

Connectivity services	6,919,065
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2.6 Furthermore, the licensee has also executed "**Business Cooperation Agreement with Telenor Microfinance Bank Limited**" on 14th December, 2018. Pursuant to sub-clause (a) of clause 2.2.3 of the said agreement, TP undertakes that during the term, the TB and its subsidiaries (Group) will be offered the most favorable wholesale rates for any voice, data, and SMS product or services or any bundles of the foregoing products or services to be procured or purchased by the Group (either on its own account or on the behalf of Group's users) from TP or its applicable Subsidiaries.

3. Telecom Regulatory framework

The Authority issued various mobile cellular licenses for the provision of "Mobile Communications Service". License Condition No. 1.1 provides the said provides the scope license as follows:

"1.1. Scope of the License

1.1.1 This License authorizes the Licensee to provide the Licensed Services in Pakistan (excluding AJK and Northern Areas), and to establish, maintain and operate the Licensed System.

1.1.2 The Licensee shall provide Mobile Communications Service, including the following mandatory services throughout Pakistan;

1.1.2.1 emergency services,

1.1.2.2 operator assistance services,

1.1.2.3 national and international long distance services through LDI operators; and

1.1.2.4 such other Telecommunication Services as the Authority may by Regulation, require.

1.1.3 The Licensee may provide optional services incidental to mobile communications service.”

The term "**Licensed Services**" as defined under license condition No. 13.2.1 "means the Mandatory Services and Optional Services". Whereas, "**Mobile Communications Service**" means a wireless- based Telecommunications Service where the Terminal Equipment may be connected to the Telecommunication System by wireless means and used while in motion.

3.2 With respect to payment of fees, license condition No 4.1.2 of Mobile Cellular License states that:

4.1.2.1 The licensee shall pay Annual License Fee (ALF) to the PTA an amount equivalent to 0.5% of the licensee's Annual gross revenue from licensed services minus inter operator payments and related PTA/FAB mandated payments. However Initial Spectrum Fee, Initial License Fee, leased line charges, late payment additional fee, penalties, collection charges, and other expenses imposed by PTA, if any, and shall not be deducted from the gross revenue.

4.1.2.2 The licensee shall pay Universal Service Fund contribution to the Federal Government, an amount equivalent to 1.5% of the licensee's annual gross revenue

4.1.2.3 The licensee shall pay Annual R&D fund contribution to the PTA an amount equivalent to 0.5% of the licensee's annual gross revenue

Thus, Annual Regulatory Dues – ARDs (i.e., Annual License Fee (ALF), Universal Service Fund (USF) contributions and Research & Development Fund (R&D) contributions) are payable on Licensed Services only. It is mandatory for the licensees to provide Annual Audited Accounts within the period of 120 days after the close of financial year, in support of its calculation of ARDs.

3.3 In addition, the Authority has promulgated Regulations for Technical Implementation of Mobile Banking, 2016 ("**Mobile Banking Regulations**"). By virtue of regulation 3 of the Mobile Banking Regulations, the licensee is authorized to provide technical services for provision of Mobile Banking Services under their existing licenses. For the purpose of more clarity the definition of terms **Mobile Banking**, **Technical Services** and **Technical Transactions** as defined in the Mobile Banking Regulations are reproduced below:

“2 (xviii) **Mobile Banking**” as defined in regulation 2 (xviii) of Mobile Banking Regulations which means conduct of branchless / mobile banking activities through mobile phone devices using mobile phone network in accordance with SPB’s Branchless Banking Regulations, Regulations for Mobile Banking Interoperability, these regulations and other relevant regulations /guidelines / instruction issued SBP and PTA from time to time.

(xxvi) **Technical Services** means the technical platform/setup that facilitates end-to-end connectivity and system integration of mobile banking services (transactions channeling, routing and switching) with proper IT facilities, infrastructure and system under formal SLA among AFIs, telecom operator(s) and TPSP(s).

(xxix) **Technical Transaction** means conduct of activities related to mobile banking in the form of signaling end-to-end transmission from mobile phone devices to AFIs.”

4. The parameters as laid down in afore-referred definitions envisage that for mobile banking, provision of technical services is the essential requirement. While examining the agreements provided by the licensee, it is an admitted position that the licensee entered into SLAs with Authorized Financial Institutions (AFIs) and provides connectivity services which include USSD Services, SMSC Services, MPLS (Multi-Protocol Label Switching) rendered over its Telecommunication System. It is an admitted fact that the provision of connectivity services as provided in the agreements falls within the terms of Telecommunication services / Technical Services as well as technical transaction which cannot be provided without having a license. Thus suffice to conclude that any telecom/technical service provided by the licensee for the purpose of mobile banking is a licensed service and revenue earned thereon is chargeable to ARDs as per license terms and conditions.

5. Order:

5.1 What has been discussed herein above, it is concluded that the Services involving any form of Technical/Connectivity Services provided by the licensee for purpose of carrying out mobile banking is considered as Licensed Service.

5.2 Accordingly, at the time of payment of ARDs, the licensee is required to submit Annual Audited Accounts to the Authority in support of its calculation clearly bifurcating revenue from Licensed and non-licensed services.

5.3 In the instant matter, demand notes for payment of outstanding dues involving revenue earned from provision of licensed services i.e., Technical Services in relation with MFS amounting Rs. 598,028,000, Rs. 422,163,000, Rs. 307,138,000 for the years 2019, 2020 and 2021, respectively, were raised. In addition, despite providing ample opportunities, the licensee has failed to provide any breakup of technical and non-technical services extended to the financial institutions. Further, it is also observed that the licensee has not offered

revenue earned from technical services rendered to financial institutions for calculation of ARDs.

4.4 In view of the above, the licensee is directed to submit detail of all Technical Transactions made through connectivity services/technical support/Technical Services extended to the financial institutions along with corresponding revenue not previously offered for application of ARDs in separate reports for the years 2019, 2020 and 2021. The said reports shall be submitted within a period of thirty (30) days from the date of this order and must be duly certified by the auditors of the company specifying therein basis of bifurcation of technical and non-technical services extended to financial institutions by the licensee.

4.4 In case of non-provision of requisite auditors' certificate in the manner as specified hereinabove, the amount already raised through demand notes for the year 2019, 2020 and 2021 will be considered as final and shall be payable within a period of thirty (30) days from the date of this order.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 31st day of December, 2022 and comprised of (09) pages only.