



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

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Decision of the Authority Pursuant to Court Order 13th April, 2021 passed in W.P No. 53468/2020 titled Pak Telecom Mobile Ltd Vs FOP etc

File No: PTA/Enforcement/Enforcement Wireless/Complaints/60/2021/597

Venue of Hearing:

PTA HQs, Islamabad

Date of Hearing:

26th April, 2021

Panel of Hearing:

Maj. Gen. Amir Azeem Bajwa (R):

Chairman

Dr. Khawar Siddique Khokhar:

Member (Compliance & Enforcement)

Muhammad Naveed:

Member (Finance)

Issue:

"Sale of SIMs/ Door to Door/ Kiosk Activities"

DECISION OF THE AUTHORITY

1. FACTS OF THE CASE:

1.1 Brief facts of the case are that Pak Telecom Mobile Ltd. (the "licensee") filed a Writ Petition No. 53468 of 2020 before the Lahore High Court, Lahore, impugning therein: *i) letter dated 25th June, 2020; and ii) clause 5(q) of the Standard Operating Procedure on SIM Sale and Activation through Biometric Verification dated 2nd April, 2019* (hereinafter referred as "SOP").

1.2 The Honorable Lahore High Court vide its consolidated order dated 13th April, 2021 disposed of the above writ petition in the following manner:

"Para 3..... these petitions stand disposed of in the terms that actions / order impugned therein are quashed and the matter will deem to be pending before respondent No.2, who after consultation of record as well as providing right of audience to all the concerned will resolve the ongoing issue at his end in either way through well-reasoned speaking order under the mandate of relevant law within the sixty days positively. Till then no adverse action will be initiated against the petitioner. However, any of the party aggrieved thereby will definitely have each & every independent right to assail the same as well as to reiterate the prayers extended herein before the appropriate forum. The parties will appear before respondent No. 2 on 26.04.2021.

1.3 In respectful compliance of the Court Order dated 13th April, 2021, the matter was fixed for hearing before the Authority on 26th April, 2021. Mr. Naveed K Butt, GCRO, Mr. Tayyab Siddiq, (Counsel), Mr. Muhammad Omer Malik, Advocate Supreme Court and Mr. Rafique Ahmed, Manager Legal, appeared on the said date and made arguments at length on the subject matter. The Crux of the arguments are as under:

- a. The counsel contended that regulations or SOPs issued by the Authority prescribing limitation not supported by the provision of the Act or in contravention thereof, would be illegal and unlawful. The clause 5(q) of the SOPs is alien to the scheme of the Act and against the Article 18 of the Constitution.
- b. The counsel asserted that after the insertion of Article 10-A of the Constitution of Islamic Republic of Pakistan, every functionary is bound to follow the due process before taking any adverse action against a person. In the instant case the letter dated 25th June, 2020 has been issued in violation of Article 10-A of the Constitution and amounts to abuse of the due process of law hence is liable to be set aside on this ground alone.
- c. The counsel narrated that even though the rights under Article 18 are not absolute, *they are subject to law*, but clause 5(q) of the SOP issued by the Authority and superimposed upon the licensee are unreasonable and unwarranted as the requirements of the law are being complied with by the licensee by adopting the verification procedure which ensures the verification/the identity of the subscribers, therefore, any impediment, condition and/or restriction on the manner of sale of SIMs becomes irrelevant *vis-à-vis* the SOPs and clause 5 (q) of the same.
- d. The counsel stressed that the due process under Article 4 of the Constitution, freedom to carry out a lawful trade or business under Article 18 by maintaining fair competition and the right against discrimination under Article 25 of the Constitution, collectively provided the requisite constitutional underpinning to maintain level playing field in all public sectors at all times.

2. FINDINGS OF THE AUTHORITY:

Standard Operating Procedure Issued by Authority (*for sale of SIM*)

2.1 Pakistan Telecommunication Authority (PTA) issued SOP dated 2nd April, 2019 for sale of SIM and activation through Biometric Verification. As per clause 5(q) of the SOP, concession was granted to CMOs to carry out door to door/ kiosk activities only after approval of PTA. However, it has been observed that the CMOs started blatantly misusing the permission. On account of persistent violation of the clause 5(q) of the SOP, letter dated 25th June, 2020 was issued

wherein it was stated that “**all non-compliant operators are, therefore, directed to stop stall activities with immediate effect**”.

2.2 Clause 5(q) of the SOP provides that door to door/kiosk activity shall be carried only after approval from PTA on case to case basis. The permission may be obtained wherever there is need for Kiosk/door to door sale/ activities. The CMOs on the other hand have been attempting to claim and assert an unfettered right of selling of SIMs without fulfilling the procedures (*without permission*) as laid down under the applicable regulations and SOPs which has serious national security and law & order related implications.

PTA directions with regard to unabated stall activities by CMOs

2.3 The licensee's submission that the letter dated 25th June, 2020 issued by PTA was without affording an opportunity of hearing thus, unjustified. The Authority is the view that there is no question of being condemned unheard. In the said letter, all non-compliant operators were directed to stop stall activities with immediate effect. In this regard it is clarified that in the said letter only legal position was intimated and conveyed to all CMOs.

2.4 The licensee's articulation that a blanket ban vide letter dated 25th June, 2020 is lacking just and legal reasoning or interpretation is misconceived. The fundamental reason behind the stopping was that the CMOs indulged in misusing/abusing the said concession which was merely to the extent of the licensee's employees and continued to conduct Kiosk/ Door to Door activities illegally and as a result the number of grey SIMs in the market arose to an alarmingly high level. It is pertinent to mention here that the instructions vide letter dated 25th June, 2020 were issued and applicable to those licensees who are non-compliant and not for those licensees who were carrying out Kiosk/Door to Door sale activities as per applicable regulatory laws.

2.5 The contention of the licensee that restrictions imposed by Authority on a lawful trade are to be adjudged on the touchstone of the doctrine of proportionality, and the letter dated 25th June, 2020 being capricious and arbitrary and substance fails the test of proportionality is based on misperception. In this regard, it is stated that concerns of national security and law & order situation is more than sufficient to satisfy any threshold of proportionality. Regulation of any activity necessarily entails the aspect of restriction if the same is required. If the Authority does not impose these restrictions, the very purpose of having a regulatory framework would become redundant.

2.6 The licensee's contention that insertion of clause 5(q) of the SOP has curtailed the right of free lawful trade and the same is in violation of Article 18 of the Constitution which provides equal rights of free lawful trade is based on misconception. It is clarified that the regulatory framework in place sufficiently empowers the Authority to impose requirement of prior approval for carrying out Kiosk/ stall/ door to door sale/ activities. In addition, there is nothing in the law that allows the

licensee to conduct or carry out the same in an unfettered way. It is completely unnecessary to have sale of SIMs carried out at every road and corner since that leads to serious issues of non-compliance and has grave repercussions for national security and law & order. It is pertinent to mention here that the Authority has not completely banned the Kiosk activities, permission has been granted for the same even after issuance of the letter dated 25th June, 2020.

2.7 The licensee's submission that sale of SIM cards include certain pre-conditions such as the submission of CNIC, verification process etc. are sufficient and the restriction imposed vide clause 5(q) of the SOP are unwarranted and tantamount to violation of Article 4, 18 of the Constitution is incorrect and not in line with the prevailing laws. The licensees have repeatedly pointed out that they are not in a position to control their existing sale channels, whereas at the same time they wish to obtain an unfettered right to sell SIMs through Kiosk/ Stall/ door to door sale/ activity, which cannot be allowed/permitted since lapses and non-compliance in this context has grave repercussions for national security and law & order situation. The licensee's only concern over here appears to be maximizing its commercial profits, even if it is done at the cost of national security and law & order concerns for the public at large.

3. ORDER:

3.1 What has been discussed above, it is concluded that the licensee has failed to place on record any cogent, satisfactory and plausible reasons in support of assertions made with regard to setting aside letter dated 25th June, 2020 and clause 5(q) of the SOP dated 2nd April 2019 therefore, all actions and proceedings initiated as per applicable regulatory regime are within the four corners of law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 31st day of August, 2021 and comprises of (4) pages only.