



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization) Act, 1996 against EDOTCO Pakistan (Pvt.) Ltd.

File No: PTA/Licensing/Wireline Licensing/EDOTCO/747/2015/589

Show Cause Notice:	21 st August, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	22 nd December, 2020

Panel of Hearing:

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

Issue

“Discontinuation of Tower Facility”

Decision of the Authority

1. Facts of the Case:

1.1 Precisely stated that **EDOTCO** Pakistan Private Limited (the “licensee”) is engaged in the business of Telecommunication Towers Facilities in Pakistan pursuant to non-exclusive licenses No.PTA/TTP-009-2015 dated 8th July, 2015 (the “**license**”) issued by the Pakistan Telecommunication Authority (the “**Authority**”) to establish, maintain, lease, rent and sale Telecommunication Tower Facilities in Pakistan on the terms & conditions contained in the license.

1.2 The licensee under prevailing regulatory laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000, (the “**Rules**”) the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the “**Regulations**”) and the terms and conditions of the license is under a continuing obligation to comply with the same.

1.3 As per license condition No. 1.1.1 of the license, the licensee is authorized and mandated to establish and maintain the following telecom infrastructure facilities to lease, rent

out or sell to Telecom Operators licensed/registered by the Authority on mutually agreed terms strictly keeping in view their license/license conditions:

- (a) Telecom Towers;
- (b) Such other Telecommunication infrastructure as the Authority may, by regulation, require.

1.4 Pursuant to license condition No. 5.2.1 of the license, the licensee is not allowed to discontinue, terminate or windup its telecommunication facilities unless the Authority's written approval to such discontinuation has been obtained.

1.5 As per letters dated 22nd July and 24th July, 2020 of the licensee it has been noticed that as a consequence of commercial dispute between the licensee and Wi-Tribe Pakistan (Pvt.) Limited, local loop license holder, tower facilities provided to the Wi-tribe Pakistan (Pvt.) Limited has been disconnected/terminated. Thus, as a result thereof, users are being affected due to non-provision of telecommunication services.

1.6 Upon failure of the licensee to comply with license condition No. 5.2.1 by discontinuing/terminating tower facilities to Wi-Tribe without approval of the Authority, a Show Cause Notice dated 21st August, 2020 was issued to the licensee requiring it to remedy the contravention by adhering license conditions in the best interest of the consumers and submit a compliance report within three working days of issuance of this Show Cause Notice and also to explain in writing, within thirty (30) days of issuance of this notice as to why the license should not be suspended or terminated

1.7 In compliance of the Show Cause Notice, the licensee submitted interim reply vide letter dated 27th August, 2020. In its interim reply, the licensee showed obscurity of the relevancy of the provisions of the regulatory laws mentioned in the Show Cause Notice. The licensee further portrayed that the Wi-tribe has filed a declaratory Suit in Civil Court for restoration of services and it has filed a winding up petition as consequence of non-payment of the service fee before Islamabad High Court on the subject matter of SCN.

1.8 Subsequently, the licensee filed detailed reply to Show Cause Notice vide letter dated 17th September, 2020. The main contentions of the licensee are as under:

- 1.8.1 The licensee entered into Master license Agreement (the "Agreement") with Wi-tribe on 28th June, 2016 as effective from 24th March, 2026. Pursuant to the agreement, licensee granted space to Wi-tribe on its towers across Pakistan. In accordance with the Agreement, Wi-tribe is under obligation to make payment of Service Fees in consideration of the allocated space. However, Wi-tribe has stopped making payment of Service Fee since September, 2017, in breach of terms of the Agreement.

- 1.8.2 These violations were repeatedly brought to the notice of Wi-tribe and the Wi-tribe did not pay no heed thereto. Wi-tribe has not paid the services charges since September, 2017. As a consequence, the amount owed by Wi-tribe till date accumulates to more than rupees One billion. This amount is continuously increasing as licensee is still providing services to Wi-tribe.
- 1.8.3 Despite the continued breach of the Agreement by Wi-tribe, licensee claimed that it had showed immense patience and indulgence prior to exercising its right to terminate its services under agreement. As a gesture of good faith, the licensee consistently constrained itself from exercising its remedy under the agreement for two years with a view to (a) facilitate Wi-tribe; and (b) sustain the contractual relationship between the parties. The licensee also expressed that it had revised the payment plan, through Amendment No. 2 dated 1st September, 2018 which includes the following:
- a. an enormous discount of Rs. 37.5% to the service fees.
 - b. extension in the payment/credit period to three months from one month.
 - c. agreeing that service Fee due from September, 2017 to 2018 to be paid in installments.
- 1.8.4 The licensee sent demand letter to Wi-tribe in July, 2019 and then finally on 12th June, 2020 for the payment of the dues/ services charges with intimation to the Authority as well. However, the same was ignored by Wi-tribe hence the licensee serve a termination notice whereby initially on 23rd, June, 2020, services were terminated on 21 single tenanted towers sites as per terms and condition of the agreement. The Wi-tribe responded to Notice of termination vide its letter dated 1st, July, 2020 admitted in paragraph 4 thereof the liabilities to the extent of Rs. 550 million.
- 1.8.5 The licensee further disclosed that instead discussing the payment delay and the payment of outstanding dues, Wi-tribe approached to the Civil Court and filed Civil Suit for Temporary and permanent injunction seeking a restraining order against the termination service, whereas, the Agreement provides for arbitration being the only recourse for dispute resolution. The Civil Court vide order dated 9th September, 2020 upheld licensee's stance and all the orders including restraining order passed in the favor of Wi-tribe stand abated.
- 1.8.6 The licensee while responding to para-6 of the SCN, vide its reply submitted that the reference to condition 5.1.2 of the license in respect of termination of service to Wi-tribe is completely misconceived. In this regard, the licensee stated that Condition 5.1.2 of the license envisages an event where the operator is closing

down its business or going into wind up and the licensee is not wind up or closing down its business, it has only terminated provision of services to W-tribe on few of its sites on the account that Wi-tribe has failed to pay outstanding service fees to licensee.

1.8.7 In addition to the above, the licensee also highlighted clause 8.2(d) of the Appendix B of the Pakistan Telecommunication Authority Rules, 2000 which is reproduced as under:

- (i) *“The licensee shall not have any obligation under this to supply any apparatus, provide any telecommunication service, or permit the continued connection to the licensed system, of any telecommunication apparatus or telecommunication system, if the person requesting the same.*
- (ii) *is or is likely to become, in breach of any contract with the licensee for those purposes or is in default of any liability owed to the license in respect of that license.”*

1.8.8 With regard to para-7 of the SCN, the licensee stated that partial services of Wi-tribe were terminated as a result of continuous default in paying the services fees and other dues under the agreement. Wi-tribe has also acknowledged its debt to the licensee vide Amendment No. 2 to the agreement and agreed and assured to pay the outstanding debt to licensee as it stood on September, 01, 2018. Wi-tribe has further admitted its further liabilities in its letter dated 1st July, 2020.

1.8.9 The licensee also stressed that relying on the Amendment No. 2 of the agreement, it allowed Wi-tribe to continue its Tower Facilities, however, Wi-tribe again failed to make payment of the service fee, under the terms and condition of the agreement and the amendment No. 2 thereof. The licensee further emphasized that Wi-tribe’s default with regard to its financial obligation has been so egregious that as on 10th September, 2020 the outstanding amount for the service fee stands at more than Rs. One billion.

1.8.10 The licensee also articulated that it neither in its license nor in any provision of the Act or the Rules, has any liability towards the users/consumer. The liability towards users and consumers rests with Wi-tribe further to the terms of its license. Keeping the concerns of consumer’s licensee has been trying to sustain Wi-tribe for the past 3 years, which is no more viable for the licensee.

1.8.11 The licensee vide its reply stated that it has always strived to do business in an ethical manner but the actions of the Wi-tribe have been highly un-ethical. The

basic monthly cost of maintaining the Passive telecommunication towers on which Wi-tribe is tenant is approximately Rs. 50 million per month and if we continue to provide free services to Wi-tribe then we would be at risk of incurring heavy losses, which will gravely affect the viability of licensee's business. In addition, it will also adversely effect on services being provided to other MNOs who in turn are providing services to millions of consumers in Pakistan.

1.8.12 The licensee also intimated that it has filed a Winding up Petition in the Islamabad High Court on the ground that Wi-tribe is unable to pay its debts and the same is subjudice.

1.8.13 The licensee objected on the contraventions raised in the SCN and stated in this regard that they are completely vague, groundless and unjustified. Section 23, sub section (2) of the Act requires that "the notice referred to in sub-section (1) shall specify the nature of the contravention and the steps to be taken by the licensee to remedy the contravention". However, the SCN does not specify the nature of the contravention; it also does not specifically refer to the obligation of the licensee under the license and law and is completely vague.

1.8.14 The licensee emphasized that it is responsible corporate citizen and conducted itself with patience and openness to serve its customers within the bounds of the Agreements, the applicable law, regulations or any contractual relationship that it has with its business partners.

1.9 In addition to the above, the licensee vide letter dated 24th September, 2020 filed supplementary reply to the SCN. The licensee vide its supplementary reply made repetition of the assertions raised vide its initially reply dated 27th August and secondary reply dated 17th September, 2020.

1.10 With this background of the case, the hearing was convened in PTA HQs, Islamabad on 22nd December, 2020. The licensee was represented by Mr. Abdul Aziz (CEO), Ms. Ayesha (head of legal), Mr. Rehan Farooqui (director corporate affairs) and Mr. Rashid Rahim (head of regulatory). During the hearing, the licensee reiterated its stance as expressed in its interim reply dated 27th August, 2020 and secondary reply dated 17th September, 2020. The licensee attributed discontinuation of facilities to the default by the Wi-tribe.

2. Findings of the Authority:

2.1 Matter heard and record perused. The fundamental question before the Authority is to determine that whether the termination of service by the licensee to Wi-tribe pursuant to failure to comply with Agreement by Wi-tribe are within the framework of prevailing regulatory law/rules/ regulations and the terms and conditions of the license or otherwise.

2.2 Pursuant to Article 1.1.1 of the license, the licensee is authorized to establish and maintain telecom infrastructure facilities to lease, rent out and sell to telecom operators licensed by the Authority on mutually agreed terms, however, strictly keeping in view their license conditions. Under Article 1.1.1 of the license, it is obligatory on the licensee to provide telecom infrastructure facilities in compliance with the terms and condition of the telecommunication services providers, in this case the Wi-tribe.

2.3 It is matter of record that the discontinuation of telecommunication tower facilities by the licensee was as consequence of default by telecommunication services provider (Wi-tribe) to abide by the agreement to pay the outstanding dues, and such discontinuation directly resulted into discontinuation of telecommunication services of the service provider as consequence whereof the consumers were affected. Knowingly that the discontinuing the telecommunication tower facility would result into discontinuation of the services of the service provider, the licensee failed to keep into account clause 6.2.1 of the license of the service provider, which provides for framework of discontinuation of service, which the licensee under Article 1.1.1 of the license is bound to strictly keep into account prior to discontinuation of tower facility. For ready reference clause 6.2.1 of the license of the service provider is reproduced as under:

“the licensee shall not discontinue providing the licensed services or category of Licensed services unless (a) the licensee gives the Authority and affected consumers at least 90 days prior notice of such discontinuation, and (b) Authority’s prior approval to such discontinuation is obtained”

2.4 The licensee’s argument that it is not winding up or closing down its business and its towers facilities are still very much active with other service providers is not justified as clause 5.2.1 of its license clearly stipulates that the licensee is not allowed to discontinue, terminate or wind up its telecommunication facilities unless the Authority’s written approval has been obtained. However, in the instant case the licensee has discontinued and terminated its telecommunication facilities to Wi-tribe without obtaining formal or written approval from the Authority, and such partial discontinuation or winding up of its telecommunication facilities to the extent of Wi-tribe and their customers without following the applicable procedure under clause 5.2.1 of its license is not legitimized in the guise of provision of its tower facilities to other service providers and their consumers.

3. **Order:**

3.1 Keeping in view the above-mentioned factual and legal position, the Authority hereby decides as under:

- a) The licensee has failed to fulfill its obligations under clause 5.2.1 of its license, therefore, Authority hereby imposes a fine to the tune of rupees one million to be paid within one month from the date of receipt of this order.
- b) In case of non-compliance of para 3.1(a) above, further action will be initiated under the applicable law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 18th day of October, 2021 and comprises of (7) pages only.