



PAKISTAN TELECOMMUNICATION AUTHORITY  
Headquarters, F-5/1, Islamabad

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

No: PTA/Finance/Mobilink2/2006/2/408

Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 13<sup>th</sup> 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 22<sup>nd</sup> April, 2020 and 6<sup>th</sup> May, 2020 to Pakistan Mobile Communication Limited – PMCL (the “**licensee**”) requiring therein to make payment of Annual Regulatory Dues (“**ARDs**”) on account of Mobile Financial Services (MFS), International Roaming, etc. among other amounts payable in respect of revenue earned by the licensee. Being aggrieved from the provisional demand notes issued by the Authority, the licensee filed F.A.O No. 66 of 2020 before the Honorable Islamabad High Court, Islamabad. The Honorable Islamabad High Court vide order dated 8<sup>th</sup> October, 2020 subsequently corrected vide CM-1004 of 2020 dated 22<sup>nd</sup> December, 2020 and disposed of the matter in following terms:

*“7. After considering the contentions of the learned counsel for the parties this appeal is disposed of with direction to respondent PTA to adjudicate upon the matter on the primary question as to “whether Mobile Financial Services and Mobile Number Portability fall within the purview of licensed services and whether payments made to foreign carriers in respect of International Roaming provided in the license and any cost sustained by the appellant has to be considered as an allowable deduction” till then respondent PTA shall not take any coercive measures against the appellant for the payment referred in the provisional demand notes dated 22.04.2020 and 06.05.2020.*

8. *It is expected that the respondent PTA will adjudicate upon the matter expeditiously in accordance with law by providing opportunity of hearing to the appellant."*

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 8<sup>th</sup> 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 13<sup>th</sup> December, 2022 before the Authority. Mr. Zulquarain Bhatti (Head Litigation), Barrister Adeel Aftab (Legal Counsel), Mr. Fariha Khan (Legal Team, Jazz ), Mr. Azhar Jadoon (Expert Financial Reporting), Mr. Zulfiqar Ali (Stream Head Regulatory Operations), Mr. Mansoor Qadir (Head of Regulatory Operations) and Ms. Tayyaba Fiaz (Manager Financial Reporting) attended the hearing on behalf of the licensee. During the hearing, the representative of the licensee reiterated the stance as mentioned in the petition. For ready reference, the contentions of the licensee with regard to MFS as mentioned in the Appeal are reproduced below:

i. Under clause 4.1.2 of Next Generation Services License ("license"), the licensee is obligated to pay ARDs under the head of ALF, R&D and USF at certain fixed percentage of the licensee's annual gross revenue from Licensed Services minus inter-operator payments and related PTA/FAB mandated payments'. Annual gross revenue (AGR) is therefore the basis for determining ARDs after adjusting allowable deduction and adjustments therefrom/therein

ii. Regulation 23 of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (F&P Regulations) provides definition of "Gross Revenue" as under:

"Gross Revenue means the turnover or gross income exclusive of sale tax or any other tax levied by the Govt. from time to time which is charged and collected by licensee at the time of sale and deposited with the tax authorities and trade discount shown on invoices or bills, derived from sale of goods or from rendering or supplying of services of benefits or form execution of contracts form the licensed and business"



- iii. Going by the above explanation provided in regulation 23 of the F & P Regulations, only that revenue shall constitute Gross Revenue which the appellant earns from its services and business that is licensed by the Authority under its license.
- iv. The scope of the license granted by the Authority clearly stated in clause 1.1.1 of the license i.e. that this license authorizes the licensee to establish, maintain and operate the licensed services and to provide the Next Generation Mobile Services in Pakistan.
- v. The licensed services are defined in clause 13.2 of the license and means “the telecommunication systems.... Provided, maintained and/or operated by the licensee for the purpose of providing licensed services by whatever means allowed under the license.
- vi. Licensed Services are defined by clause 13.2 of the license to mean both “the telecommunication Services and Optional Services”.
- vii. Mandatory Services are in turn defined by clause 13.2 of the license as the telecommunication services that the licensee must provide under the license, as described in clause 1.1.2. Clause 1.1.2 of the license provides that:
  - 1.1.2.1 emergency service
  - 1.1.2.2 operator assistance services
  - 1.1.2.3 national and international long-distance services through LDI operator
  - 1.1.2.4 such other telecommunication services as the PTA may, by regulation requires.
- viii. The Mobile Financial Services clearly do not fall within the purview of Mandatory services.
- ix. Optional services have not been specifically defined in the license. However, clause 1.1.3 of the license provides that the “licensee may provide optional services incidental to Next Generation Mobile Services.”
- x. Next Generation Mobile Services (NGMS) is defined in clause 13.2 of the license as “the mobile communication services offered through technologies standardized for 3G/4G/LTE and advanced generations”.
- xi. Mobile communication services are simply defined in clause 13.2 of the license as a wireless-based telecommunication services where terminal equipment may be connected to the telecommunication system by wireless means and used while in motion.

xii. A combine reading of the above definitions clearly tells that the licensed services essentially telecommunication services. In this regard, clause 13.2 of the license also carries definition of the term "Telecommunication Services" contained in clause (v) of section 2 of PTR 1996. No deviation from the definition in parent statute i.e. PTR 1996 was in any case possible in the terms and conditions of the license. Needless to state that under PTR 1996, the Authority can only license and regulate a service if it constitutes a "telecommunication services".

xiii. A telecommunication service is simply defined in both the License and PTR 1996 as a service consisting in the emission, conveyance, switching or reception of any intelligence.

xiv. In light of the above, any "service incidental to NGMS" as envisaged regarding Optional Services by clause 1.1.3 of the license would strictly mean a telecommunication service that naturally appertains to NGMS as a minor accompaniment thereto.

xv. As such, unless the Mobile Financial Services clearly fall within the purview of the licensed services under the licensee's license, the revenue therefrom cannot be considered part of Gross Revenue from the "licensed services" as envisaged by the explanation provided in regulation 23 of the F&P Regulations and clause 4.1.2 of the license reproduced above.

xvi. Since 2012 Waseela/ Mobile Microfinance Bank Limited, a licensee of the State Bank of Pakistan, has been providing branchless banking services through a commercial agreement with the licensee to its customer by utilizing the facilities and portfolio of the licensee.

xvii. MFS is part of an arrangement of branchless banking services regulated by the SBP as a regulator under the branchless banking regulations, 2008, which were upheld in 2016 (BBR) and Regulation for Mobile Banking Interoperability, 2016(RMBI) issued and updated by the SBP from time to time. While PTA has also come up with its own set of regulations under section 5(2)(o) of PTR 1996, namely, Regulations for technical implementation of Mobile Banking, 2016 (RTIMB), the same are redundant being merely a reproduction of SBP's RMBI with a few cosmetic changes. In fact, the PTA has recently advertised and sought consultancy services to carry out study of MFS model in Pakistan covering technical, legal, financial and other aspects *viz a viz* international best practices in implementation of MFS models, and applicability of regulatory dues on mobile financial services. The Authority has yet to ascertain and finalize if it has a regulatory role to perform the same regarding MFS. As such, there is no legal sanction behind the impugned PDNs for charging ARD on the revenue from MFS in the absence of a clear, reasoned and valid regulatory framework for MFS



enabling the Authority to discharge its mandatory statutory responsibility under section 6 of PTAA 1996.

xviii. MFS is offered/provided as a branchless banking service by the licensee in collaboration with and as an agent of an SBP-authorized financial institution (AFI) using the licensee's vast physical network/ footprint of facilities/ outlets and man powered employed therein together with the mobile banking platform solution to electronically facilitate branchless banking transaction, either directly by the customer or through the licensee's outlets. The mobile banking platform is duly licensed to the AFI which has control and administrative rights over the same at all times.

xix. The branchless banking transactions carried out over the mobile banking platform inter alia include money transfer, utility bill payments, inter-bank transfers etc. these services can also be provided by any entity like Post Offices, Petrol Pumps etc. having a vast channel footprint in the country by entering into a similar commercial arrangement with AFIs and no PTA license is required for provision of these services. In essence, the licensee's arrangements for the provision of MFS with the AFI is an agreement in the nature of outlet sharing.

xx. By its very nature, services comprised in MFS are neither directly a part of NGMS and the mandatory services forming part of the licensed services under clause 1.1.2 of the license. Nor could MFS be termed as service "incidental to NGMS" to be treated as an optional service forming part of the licensed services under clause 1.1.3 read with clause 13.2 of the license.

xxi. Moreover, MFS cannot be and, in fact, has not been treated as a category of licensed services envisaged under clause 1.1.8 of the license. Nor any on the provisions of clause 6.2.1 of the license relating to discontinuation of any category of the licensed services are applicable to MFS. Cognizant of this fact and in acknowledgment thereof, the Authority itself decided to treat MFS as an altogether different service outside the domain of the licensed services by formulating a distinct set of regulations, through howsoever, redundant as submitted above, namely the RTIBM (Regulation for technical implementation of Mobile banking, 2016). While acknowledging the need for a separate license, regulation 3(1) of RTIBM specifically exempts all telecom operators from obtaining a separate license for providing MFS.

xxii. The license granted to the licensee itself clearly admits of the possibility of the licensee's revenue being generated from source other than the licensed services as in the case of revenue from MFS. Clause 4.3.1 of the license makes provision for excluding such other revenue from Annual Gross Revenue (AGR). It clearly distinguishes between licensed services and non-licensed services and provides that "notes to the financial statements of the licensee should be drawn up in



sufficient detail so as to disclose separately the Annual Gross Revenue between the licensed and non-licensed services. The licensee has been regularly showing the MFS revenue separately from the revenue of licensed services.

xxiii. Without prejudice to the foregoing, fundamentally speaking, the totality of deliverables comprised in the provision of MFS by the licensee as an agent for an AFI offering branchless banking cannot simply be termed or treated as an “emission, conveyance, switching or reception of any intelligence” and as such MFS cannot be equated with “telecommunication services” as defined in section 2(v) of PTFA 1996 and adopted in clause 13.2 of the license.

xxiv. It is therefore clear that MFS does not fall within the purview of licensed services under the license granted to the licensee and the licensee’s revenue from MFS cannot be legitimately included in AGR for calculating the ARDs.”

1.4 Matter heard and record perused. As a matter of record, it is relevant to point out that pursuant to PTA’s letter 29<sup>th</sup> 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. Mudassar Hussain VP Public Policy & Regulatory Affairs for consultation with the committee. The representative(s) of the licensee attended various meetings, provided relevant documents/ agreements and responded to 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."*

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

- a. Super Agency Agreement for Branchless Banking dated 5<sup>th</sup> May, 2020 (*along with service level agreement dated 7<sup>th</sup> November, 2019*) made between Mobilink Microfinance Bank Limited (*formerly known as Waseela Microfinance Bank Limited*) and PMCL.
- b. Service Level Agreement dated 5<sup>th</sup> May, 2020 made between Mobilink Microfinance Bank Limited (*formerly known as Waseela Microfinance Bank Limited*) and PMCL.

1.6 Perusal of Super Agency Agreement transpires that as per clause 2.2.2 (*scope of agreement*) PMCL shall act as super-agent of MMBL in order to enable the provision of Branchless Services by the parties to the customer through the Agent Network. It is clarified that technical and operational matters relating, *inter alia*, to the Branchless Banking platform, Mobile Money Transfer, M-payments and other matters concerning Branchless Banking operations may be set forth in any Operating Procedure Developed by the Parties by mutual consultation.

1.7 In addition, clause 2.2.3 of the Super Agency Agreement further provides that notwithstanding anything contained in the agreement (including any Schedule), it is specifically agreed that in accordance with the bank /financial institution led model of Branchless Banking (as required by SBP), MMBL shall be responsible for (i) any and all regulatory requirements /compliance with Applicable Laws with respect to the Branchless Banking services; and (ii) the Branchless Banking program undertaken by MMBL. The Parties agree that PMCL's role under this Agreement will be restricted to the provisions of the Agreement, provided that PMCL shall provide MMBL with the necessary support, to the extent required under the Applicable Laws and said Agreement. As per Schedule A to the agreement provides obligations/ role and responsibilities of PMCL along with the details of the Product and Service. With regard to relevancy of the issue in hand, clause 4 of the said schedule prescribes technical services to be provided by PMCL. For ready reference clause 4 of the Schedule A to the agreement is reproduced below:

“4. *Technical*

- (i) *PMCL shall, in order to effectuate its responsibilities under this Agreement, provide to and share with MMBL, the relevant*

*information relating to PMCL's information technology system, the PMCL Network, Access Channel and any other platform and technologies incidental and related thereto in order for MMBL to facilitate the effective and efficient provision, operations and maintenance of the Branchless Banking Transactions.*

1.8 On the other hand, as per Services Level Agreement (SLA) dated 5<sup>th</sup> May, 2020 the scope of SLA has been provided in clause 2.1 which states that subject to terms and condition of this Agreement, MMBL hereby appoints and authorizes PMCL to provide the Services, as set out in "Schedule 1" attached hereto in the manner and as per timeframe stipulated therein. PMCL agreed to such appointment and further agreed that the Service shall be provided in accordance with (a) Prudent industry Practices (b) Applicable law; and (c) as per terms and conditions contained in the SLA. For ready reference, detail of technical service utilizing the PMCL network as provided in Schedule 1 of SLA are as under:

**"1. Technical Services**

- (i) *PMCL shall provide the technical platform/ set up that facilitates end to end connectivity and system integration for mobile banking services (including transaction channeling, routing and switching).*
- (ii) *PMCL shall provide technical services for mobile banking through Short Messaging Service (SMS), Unstructured Supplementary Service Data (USSD), Wireless Application Protocol (WAP), interactive Voice Response (IVR) HSM for PIN management of M-Wallet, SIM Application Toolkit (STK) and other protocols as allowed by PTA or allowed under the Branches Banking Regulations. To this end, PMCL shall obtain short codes from the PTA.*
- (iii) *PMCL shall make security and encryption arrangements in its network to ensure the integrity of technical transaction data during transmission and end-to-end delivery to the user's mobile phone device.*
- (iv) *PMCL shall ensure that its hardware and software systems remain up to date and shall upgrade such systems when necessary in order to ensure confidentiality of MMBL's end user data and technical transaction related data during transport or in any form stored within PMCL's network.*
- (v) *PMCL shall meet the quality of service benchmarks issued by PTA from time to time, regarding network availability, resource availability, reliability priority SMS, message delivery and security standards for protecting consumer data.*
- (vi) *PMCL shall maintain detailed technical transaction logs to enable processing of audit trails required to be reconstructed in the event of any dispute or supervisory concerns of PTA or SBP, without compromising the confidentiality of data.*
- (vii) *With regard to processing integrity, PMCL shall ensure that its system processing is complete, accurate, timely and authorized at all times.*



(viii) *PMCL shall provide such other additional Services as may be agreed by the Parties in Operating Procedures.*

## 2. Telecom Regulatory framework

2.1 The Authority issued various mobile cellular licenses for the provision of "Mobile Communications Service". License Condition No. 1.1 provides the scope of the 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.

2.2 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.

2.3 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.”

3. 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.



**4. Order:**

4.1 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.

4.2 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.


4.3 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 to MFS amounting to Rs. 1,829,508,000, Rs. 1,191,350,000, Rs. 2,994,549,000 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.

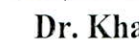
4.4 In view of the above, the licensee is directed to submit detail of all Technical Transactions made through connectivity services/technical support/Technical Services extended to the financial institutions along with corresponding revenue not previously offered for application of ARDs in separate 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 31<sup>st</sup> day of December, 2022 and comprised of (11) pages only.