



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. 39461/2020 titled M/s Telenor Pakistan (Pvt.) Limited Vs FOP etc

File No: PTA/Enforcement Wireless/Complaints/60/2021/528

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)

The 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 Telenor Pakistan (Pvt.) Ltd. (the "licensee") filed a Writ Petition No. 39461 of 2020 before the Lahore High Court, Lahore, impugning therein: i) *letters dated 25th June, 2020 and 21st August, 2020* (the "impugned letters"); 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. Ali Aamer Khan (Manager Regulatory), Mr. Qasim Khan (Director) Mr. Raza Zulfiqar Naqvi (VP Regulatory), Mr. Haider Latif Sandhu (Head of Legal) and Mr. Ahsan (Senior Manager, Sales) appeared on the said date and made arguments at length on the subject matter. The Crux of the arguments are as under:

- i. Policy directive dated 7th April, 2015 was issued for re-verification of already issued SIM cards to mobile subscribers and verification of newly issued SIM cards through Biometric verification system (BVS).
- ii. In furtherance of the Policy directive, Subscriber Antecedent Verification Regulations, 2015 was issued as to verify each and every mobile subscriber as per NADRA record in real time on sale of SIM card to such a subscriber.
- iii. In order to streamline the sale of SIMs, the SOP was also issued on sale of SIMs and Activation through Biometric verification.
- iv. Clause 5 (q) of the SOP states that Door to Door/Kiosk activities shall be carried out only after approval of the PTA on case to case basis.
- v. In non-compliance of clause 5(q) of the SOP, PTA issued letter dated 29th May, 2020 to the licensee stating that the licensee is carrying out Kiosk activity without approval of the Authority and required the licensee to explain its position.
- vi. Thereafter, a letter dated 25th June, 2020 was issued addressing to all CMOs that the Authority's instruction regarding stall activities with prior permission are not being followed in letter and spirit and some operators are not adherent to the SOPs, hence, the CMOs were directed to stop all the activities with immediate effect.
- vii. To proceed further, the Authority vide letter dated 21st August, 2020 asked the licensee to refrain from carrying out all stall activities and non-compliance would result in penal action.
- viii. Once the instructions issued by the PTA are being followed and substantially complied with and the SIM cards are being sold after proper biometric verification, any condition which curtails the licensee's right to conduct its lawful trade being not mentioned in the PTA Act itself amounts to transgression of the licensee's right to conduct its lawful

trade, hence the impugned letters along with clause 5(q) of 2019 SOPs being a curtailment of licensee's fundamental rights to carry out its lawful trade.

- ix. The licensee submitted that it has been taking prior permission of PTA in the past and has also applied to PTA time and again through various applications. However, PTA has not paid any heed to the application submitted by it whereby permission to carry out kiosk activities was sought. The inaction on part of the PTA to grant approval to the licensee on its pending applications itself amounts to implied approval on part of the PTA on its application seeking such approval, hence, the impugned letters are liable to be set aside.
- x. The licensee is of the view that PTA has no power to prohibit the sale of SIMs through any retail means until and unless the SIM is being sold in violation of the law. As aforementioned the SIMs are being sold through retailer's temporary outlets/kiosks after following all the rules, regulations and SOPs issued by PTA, hence there is no occasion with the PTA to prohibit the sale of SIMs and impose an unreasonable, irrational condition unilaterally without taking the licensee on board in this respect.
- xi. The licensee further asserted that the impugned letters have imposed a prohibition on the licensee without even providing an opportunity of being heard. Neither any reason has been mentioned while passing the impugned letters whereby the blanket ban has been imposed on the Kiosk activities of the licensee. The licensee portrayed that impugned letter being violative of Section 24-A of the General Clauses Act, 1824 is liable to be set aside on this ground.

1.4 In light of the aforementioned, the licensee contended that the impugned letters dated 25th June, 2020 and 21st August, 2020 may kindly be set aside being illegal and unreasonable. It is further prayed that impugned clause 5 (q) of the SOPs may kindly be declared ultra vires the PTA Act and Article 18 of the Constitution.

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 for the purposes of conducting Kiosk/door to door sale activities. On account of persistent violation of the clause 5(q) of the SOP, a 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 of 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 of Kiosk/stall/ door to door sale/activities 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 licensee 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 the 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

Dated: 31st August, 2021

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 thus 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 (-5-) pages only.