



PAKISTAN TELECOMMUNICATION AUTHORITY
Headquarters, F-5/1, Islamabad
<http://www.pta.gov.pk>

Enforcement Order under Section 23 of the Pakistan Telecommunication (Re-Organization) Act, 1996 ("Act") against Telenor Pakistan (Pvt.) Limited

No: PTA/219/2020/Numbering/PTA/235

Date of Show Cause Notice:	10 th September, 2020
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	24 th November, 2020

Panel of Hearing

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

The Issue:

"Non-Dissemination of SMS on Kashmir Cause"

DECISION OF THE AUTHORITY

1. BRIEF FACTS

1.1 Precisely stated Telenor Pakistan (Pvt.) Ltd. (the "licensee") is a private limited company incorporated under the erstwhile Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license bearing No. MCT-01/RBS/PTA/2004 dated 26th May, 2004, license bearing No. NGMS-02/WLL&M/PTA/2014 dated 21st May, 2014, license bearing No. NGMS-05/WLL&M/PTA/2016 dated 14th July, 2016 (the "license") issued by the Authority to establish, maintain and operate licensed system and to provide license cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 The licensee is obliged to comply with the provisions of prevailing regulatory laws comprising of the Act, the Pakistan Telecommunication Rules, 2000 (the "Rules") the Pakistan Telecommunication Authority (Functions & Powers) Regulation, 2006 (the "Regulations"), the Numbering Allocation & Administration Regulations, 2018 (the "NAAR Regulations"), the Protection from SPAM, Unsolicited, Fraudulent & Obnoxious Communication Regulations 2009

(the "SPAM Regulations") as amended from time to time and the terms and conditions of the license.

1.3 By the virtue clause (a) of sub-section (4) of section 21 of the Act, clause 8.1 of the Appendix B of the Rules and condition 3.1 of the license is under an obligation to observe the provisions of the Act, rules, regulations, orders, determinations, directions and decisions of the Authority made or issued by the Authority.

1.4 As per section 4(1)(c) of the Act, the Authority is mandated to promote and protect the interests of users of telecommunication services in Pakistan. Section 6 (f) of the Act further provides that the Authority shall ensure the interests of users of telecommunication services are duly safeguarded and protected.

1.5 Pursuant to sub-clause 3.1.3 of the license *"the Licensee shall at all times co-operate with the Authority and its authorized representatives in the exercise of the functions assigned to the Authority under the Act. The Licensee shall comply with all orders, determinations, directives and decisions of the Authority."*

1.6 Regulation 32 of the NAAR Regulations requires *"All directives, instructions, orders and clarifications issued by the Authority on and before notification of these regulations shall be binding on the licensees and persons as the case may be."*

1.7 The licensee vide PTA's letter dated 3rd August, 2020, 29th January, 2020, 24th October, 2019, 15th January, 2019, 19th October, 2018, 30th October, 2018, 20th October, 2017, 1st February, 2017 etc. was directed to disseminate SMS on the issue of Kashmir Cause to its subscribers through means of bulk messaging service. However, the licensee failed to comply with aforementioned directives of the Authority, hence, a Show Cause Notice (the "SCN") was issued to the licensee pursuant to sub-section (1) of section 23 of the Act on 10th September, 2020 requiring an explanation in writing within 30 days of issuance of the aforesaid SCN, as to why an enforcement order should not be passed against the licensee under section 23 of the Act. In response to the aforesaid SCN, the licensee vide letter No. nil dated 9th October, 2020, submitted its detailed written reply. The relevant part of the reply put forth by the licensee are reproduced hereinunder:-

(a) *The Pakistan Telecommunication Authority ("Authority/PTA") issued a show cause notice (Show Cause Notice") to Telenor on September 10, 2020 under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 ("1996 Act"). The Authority stated that it had issued letters to Cellular Mobile Operators ("CMOs"), including Telenor, directing them to "disseminate SMS on the issue of Kashmir cause to its subscribers through the means of bulk messaging service". The Show Cause Notice further states that the issue in hand is "one of the most pivotal national causes and closely tied to the sentiments of the 'Pakistani and the*

Kashmiri people” and yet Telenor ‘failed to disseminate the SMS about Kashmir issue on all occasions”

- (b) *One of the PTA’s letters directing the CMOs to send bulk messages to its subscribers was issued on August 3, 2020. The letter stated that all CMOs are “requested’ to transmit a message to all of their subscribers “at their own cost on August 5, 2020, that the day marks as “Youm-e-Istehsal” and “Pakistan stands shoulder to shoulder with Kashmiri brothers and sisters”. The message that the Authority had requested to be disseminated was also required to contain the sentence: “The day is not far when their struggle will bear fruit. Telenor replied to the Authority on August 4, 2020, informing the Authority of its inability to disseminate the SMS on the subject matter. The Authority was apprised that Telenor, being an international company, operating in multiple international jurisdictions, had developed certain norms for itself that it strictly abided by. As a matter of principle, performing its role as a socially responsible corporate entity, Telenor disseminates only such messages to its subscribers on regulator’s instructions that pertain to imminent public health and/or safety issues. But otherwise, Telenor restrained from engaging in any compelled speech, irrespective of whether the compelled speech is meritorious or not.*
- (c) *Telenor, like the other CMOs, has played a significant role in spreading awareness regarding Covid-19. Telenor, alone, during the period of March 1, 2020 to September 30, 2020, disseminated an approximate number of 1.32 billion, with a commercial value of PKR 264 million.*
- (d) *In a letter addressed to the Chairman of the Authority by the entire telecom industry on May 22, 2020, the Authority was informed that, among other things, the CMOs had spent PKR 400 million in just spreading awareness among its subscribers. By then, the CMOs had complied with more than 60 requests from the Authority, in disseminating bulk messages to subscribers, without any cost. The purpose of the letter was to bring to the attention of the Chairman Authority, that the telecom industry, as a whole, was committed to battling the Covid-19 pandemic in unison with the Authority. The welfare of its subscribers and the people at large especially during this unprecedented global pandemic remained a central ideal for the entire industry. However, the Authority at the behest of other state institutions such as the State Bank of Pakistan, Ministry of Health, National Disaster Management Authority, Ministry of Interior, Benazir Income Support Program, Election Commission Pakistan and Pakistan Television, has been directing the CMOs to send bulk messages to their subscribers, thereby requiring the CMOs to perform services for the state institutions, without receiving any compensation for those services. In the letter, therefore, it was brought to the attention of the Authority that while some of these requests legitimately pertain to issues of law and order, security and health concerns, but others are commercial in nature. The CMOs, collectively, informed the Authority that the marketing campaigns of the Government of Pakistan, including those of its various executive institution, needed to be negotiated with the CMOs on commercial terms. In essence, the letter*

communicated that the Authority by exercising its regulatory power ought not rope in private businesses, making private businesses an extension of the State.

(e) On July 3, 2020, the Authority replied to the industry letter from the CMOs dated May 22, 2020. The Authority asserted that it draws its authority from section 4(1)(c) (mistakenly mentioned 4(2)(c)) and section 6(f) of the Act. Moreover, the Authority made reference to sub regulation 32 of the Numbering Allocation & Administrative Regulations, 2018 ("NAAR Regulations"), along with clause 3.1.1 of the licenses issued to the CMOs. However, none of these provisions read singly or together grant the Authority the power to compel a licensee, such as Telenor, to render speech on "pivotal national causes". In fact, this remains an amorphous area of law, which the legislature and the Authority, with the assistance and consultation of the CMOs, are best placed to streamline. In the absence of any provision in the Act, Rules or Regulations that compel a CMO, such as Telenor, to disseminate bulk messages to subscribers at large, the Authority and the CMOs can possibly chart out a mechanism to avoid possible ambiguities and misplaced expectations in future.

- A. Forcing a private business to engage in compelled speech is violative of Telenor's right to freedom of speech enshrined under Article 19 and right to liberty under Article 9 of the Constitution.*
- B. Obligating a private business, Telenor, to provide a service to the Government of Pakistan or the regulator without compensation is in violation of Article 18's freedom of trade, business or profession, since it amounts to regulatory taking.*
- C. Requiring a private business, Telenor, to send bulk messages at the behest of state institutions is tantamount to state exercising its eminent domain powers, without providing just compensation in violation of Article 4 and Article 24 of the Constitution.*
- D. The Authority has not been provided the mandate under its governing statute, the 1996 Act and has not been required, under law, to adorn the role of other state institutions.*
- E. The Authority does not have the power under the Act, Rules, Regulations, or terms of the licenses issued to Telenor to compel Telenor to send bulk messages with respect issues not within the mandate of the Authority, and hence the issuance of the Show Cause Notice is in violation of Article 4 of the Constitution..."*

2. HEARING BEFORE THE AUTHORITY:

With this background of the case, hearing was convened in PTA HQ's, Islamabad, on 24th November, 2020. The licensee was represented by Mr. Haseeb Sheikh, Manager Interconnect, Mr. Ali Aamer Khan, Manager Regulatory, Mr. Ali Raza, Head of Privacy, Mr. Jahanzeb Ali Choudhry, Manager Legal, Mr. Adeel Walid, Advocate and Ms. Zainab Janjua, Advocate High Court. During the hearing, the licensee reiterated the submissions already made through its written reply to the SCN. In furtherance to its submission, the legal counsel appearing on behalf of licensee namely, Ms. Zainab Janjua Advocate High Court, categorically intimated and conveyed that the licensee is ready to disseminate such messages as when required by the Authority in future and thereafter the same has also been submitted through letter dated 8th January, 2021.

3. FINDINGS OF THE AUTHORITY

Matter heard and record perused. After careful examination of record, arguments and written reply of SCN filed by the licensee, Findings of the Authority are as under:

3.1 At the very outset, the license issued to the licensee is subject to the provisions of the Act, Rules, Regulations and license terms and conditions. As per license condition 3.1 of the license, the licensee is under an obligation to abide by directions of the Authority. *Per se*, the point of contention of the licensee with regard to non-compliance of dissemination evolve around that parameters laid down in Article 4 and Article 24 of the Constitution of Pakistan, 1973 (the "Constitution"). The licensee's contention that messages at the behest of state institutions is tantamount to state exercising its eminent domain powers, without providing just compensation. More so, the licensee further asserted that the Authority does not have the power under the Act, Rules, Regulations, or terms of the licenses to compel Telenor to send bulk messages with respect to issues not within the mandate of the Authority, and hence the issuance of the Show Cause Notice is in violation of Article 4 of the Constitution.

3.2 While examining the matter minutely, it has been found that the licensee has misconceived in understanding the parameter / threshold laid down in the afore-referred Article of the Constitution. By any means whatsoever, the Authority has not created any hindrance in terms of provision of licensed services in accordance with terms and condition of license. In addition, the licensee has not been deprived from any fundamental right to do his private business within the applicable legal framework for the time being in force. The matter in hand relates to dissemination of bulk messages to its subscriber for "Kashmir Cause". The licensee being juristic person having its legal and legitimate right within the territorial jurisdiction of the Pakistan is under an obligation to abide by directions/ instructions regarding taking all measures to protect the vision of Government of Pakistan which directly or indirectly relates to a national cause and sentiments of the citizens of Pakistan with specific reference to "Kashmir Cause".

3.3 The contention of the licensee, mere on technical grounds cannot be considered an excuse or exemption from non-compliance of the direction in question. Moreover, dissemination of messages in the manner as required is not a regular feature or a requirement on a daily basis. This exercise of dissemination of bulk messages is being carried out on a particular day.

4. ORDER

4.1 What has been discussed above, it is concluded that non-adherence of directions of the Authority tantamount to a serious violation on the part of the licensee which is persistent. Though the licensee vide letter dated 8th January, 2021 has provided a commitment to abide by the directions of the Authority for dissemination of bulk messages on Kashmir issue, the Authority considering the assurance to disseminate the same in future, very compassionately hereby imposes a fine to the tune of One Million Rupees to be paid within seven working days from the date of receipt of this order.

4.2 The licensee is further directed to avoid violation of directions of the Authority with regard to dissemination of messages, as intimated from time to time.

4.3 For the purpose of intimating and conveying the direction for dissemination of the messages, Director (Numbering), PTA would be the focal person in this regard.

~~Maj. Gen. Amir Azeem Bajwa (R)~~
Chairman

~~Muhammad Naveed~~
Member (Finance)

~~Df. Khawar Siddique Khokhar~~
Member (Compliance & Enforcement)

Signed on 27th day of January, 2021 and comprises of (06) pages only.