



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD
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Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against, Pakistan Telecommunication Company Limited

Date of Issuance of Show Cause Notice: 5th July, 2011
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 22nd Sep., 2011

The Authority present:

Dr. Mohammad Yaseen: (Chairman)
Dr. Khawar Siddique Khokhar: Member (Technical)

The Issue:

“Failure to seek prior approval of the Authority before launching a tariff packages by PTCL”

DECISION OF THE AUTHORITY

Brief facts of the case:

1. Briefly stated facts of the case are that Pakistan Telecommunication Company Limited (the “licensee”) pursuant to its terms and conditions of license bearing No. No.PTA/M(T)-014/A dated 15th April, 1997 as modified on 13th June, 2005 (the “license”) is obliged to comply with the provisions of prevailing laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996, the Pakistan Telecommunication Rules, 2000 (the “Rules”) ,the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and Fixed Line Tariff Regulations, 2004.
2. In accordance with license condition 23.1 of the license read with clause 8.1 of Appendix-B of the Rules, the licensee i.e., PTCL is obliged to comply with any applicable Rules, Regulations, orders, directions, determinations and decision of the Authority made and issued by it.

3. The Authority under section 4(1)(m) of the Act is mandated to regulate the competition in telecommunication sector and protect the right of consumers. Further, section 5 (2)(e) of the Act empowers the Authority to establish modify accounting procedure for licenses and regulate tariff for telecommunication services in accordance with sections 25 and 26 of the Act. By virtue of the of power conferred upon it, the Authority, time and again, through various letters dated 6th December, 2007, 18th Jan., 2011 and 1st Feb., 2011 required the licensee to seek prior approval before launching/announcing any promotion or traffic package and submit complete detail of such packages at least ten days in advance. However, despite Authority's direction the licensee has failed to comply with the same and without seeking prior approval of the Authority, has introduced and implemented tariff package i.e., Pakistan Package vide letter dated 17th March, 2011 and as a consequence thereof a SCN was issued to the licensee i.e., PTCL.
4. It would be pertinent to mention here that as per clause 2.3 of Part-1 of schedule 2 and clauses (2),(3) and (4) of rule 22 of the Rules the licensee is required to meet all obligation with respect to notification of price or any change therein including explanation and calculations demonstrating the proposed prices change. In addition, sub-regulation (1) of regulation 6 of the Fixed Line Tariff Regulations, 2004 (the "Regulations") provides that the license is, within the restrictions imposed under these Regulations, to change the prices of respective Basket Services at any date and any frequency provided that they shall inform the Authority about their proposed tariffs thirty (30) days before the applicability of new tariffs. But the same has not been complied by the licensee.
5. Under clause 15 of part 2 of schedule 2 of the license, the licensee is required to comply with all requirements regarding publication of prices, terms and conditions, notifications and display of information, as established by the Authority from time to time in accordance with the Rules.
6. The aforementioned provisions of the prevailing laws require the licensee to meet all the requirements in terms of launching/announcing tariff but due to non-compliance of the same and directions of the Authority i.e., failure to seek prior approval of the Authority for launching a tariff packages, a Show Cause Notice (SCN) under section 23 of the Act

on 5th July, 2011 was issued whereby the licensee was required to explain in writing within 30 days of the issuance of SCN as to why the license should not be suspended, terminated or any other enforcement order as referred above may not be passed against the licensee under section 23 of the Act.

7. The licensee vide letter No.RA/P&S/SCN/Aug/01 dated 3rd August, 2011 replied the SCN and denied all allegations leveled in the SCN. However, due to unsatisfactory reply the matter was fixed for hearing before the Authority on 22nd September, 2011. Mr. Sikanadar Naqi (SEVP), Mr. Amer Shafique (GM Reg. Affairs), Mr. Azziz-ur-Rehman (SM Reg. Affairs), Mr. Ghulam Mustafa (GM-Legal), Mr. Zakir H. Satti (GM Rev. Accounts) on behalf of the licensee attended the hearing on the said date. The representative(s) of the licensee reiterated the same as replied. The main arguments in reply of the licensee, *inter alia*, relates to: i.) jurisdiction of the Authority to regulate tariff; ii) no requirement for seeking prior approval of the Authority; iii.) SMP issue is pending adjudication in High Court; iv.) Pakistan Package has been revised which is not a new package; and v.) Pakistan Package has no competition or consumer implication etc. Detail discussions on the allegation leveled in the SCN were made during the hearing held on 22nd September, 2011. However, the licensee further stated that it never intended to disregard the Authority's direction and always tried its level best to comply with the directions of the Authority. On this assertion, the Authority required the licensee to submit revised reply of the SCN for re-evaluation of the matter.
8. Pursuant to the hearing, the licensee submitted revised reply wherein it asserted and ensured its willingness to adhere the directive of the Authority as stated during the hearing. However, the Authority has taken a serious notice of the revised response with regard to dismissal of SCN. It would be worth noting to clarify that the licensee was asked to submit revised response of the SCN for examination and evaluation of the matter on the ground of its verbal commitment made by the representative(s) of the licensee during the hearing with regard to seeking prior approval of the Authority and not otherwise as stated in the revised response.

9. The Authority while examining the SCN(s) reply dated 3rd August, 2011 and revised reply dated 21st October, 2011 has concluded that there are mainly two issues i.e., SMP determination and approval of tariff. As far as SMP determination is concerned, the Authority understands that the matter is *sub-judice* in Lahore High Court, Rawalpindi Bench (presently in Islamabad High Court). The Honorable High Court vide order dated 20th August, 2010 has suspended the order of the Authority with regard to SMP determination therefore, till disposal of the case or vacation of stay order from the Honorable High Court, the Authority expresses no comments on the issue of SMP determination.

10. In addition, the Authority under section 5 (2)(e) of the Act is empowered to establish modify accounting procedure for licenses and regulate tariff for telecommunication services in accordance with sections 25 and 26 of the Act. As per Black Law Dictionary, sixth edition the term regulation has been defined as to fix, establish and control therefore, the Authority having jurisdiction on the subject matter can fix and set the tariff of telecommunication services. Moreover, the Honorable Supreme Court of Pakistan has interpreted the word “regulate” in the case reported Messrs Gadoon Textile Mills and 814 others (1997 SCMR 641) by holding that the word “regulate” *inter alia* connotes control, subject to guideline. Reference is also made to the judgment reported in the case of Pakistan Burma Shell Ltd Vs Central Labour Commissioner and 5 others (PLD 1982 Karachi 33) wherein while dealing with the Essential Service (Maintenance) Act (LIII of 1952) the learned full bench of the Singh High Court, Karachi interpreted the word “regulate” which means, power to regulate includes power to fix, to establish, to control, to direct, to adjust, to order, to dispose of, to arrange, which includes power to dispose of, to arrange and includes power to dispose of, settle and fix.).

11. In view of the aforementioned interpretation the Authority is of the view that it can control over the fixation and setting over the tariff. In order to manage and control the tariff for telecommunication services, the Authority under section 5(2)(o) has promulgated the Regulation. According to these Regulations, tariffs for fixed line telephony are being regulated, control and managed. As per regulation 6 of the Regulation the licensee is required to inform the Authority about their proposed tariff thirty (30) days before the

applicability of new tariff. However, the licensee could not meet the time line as mentioned herein above and introduced and implemented the Pakistan Package without approval of the Authority.

12. For the purpose of managing, controlling and approval of tariff of telecommunication services, clauses (2),(3) and (4) of rule 22 of the Rules further provide that the Company (i.e., the licensee) shall notify to the Authority in -writing of its intention to add or replace a telecommunication service in respect of the Basket Services pursuant to sub-rule (1) together with the proposed basis on which the Price Control Formula shall apply to that telecommunication service not later than thirty days in advance of the Price Control Period in which it proposes to implement that change to the Basket Services, (ii) For the avoidance of doubt, it is clarified that the Company shall be free to introduce any number of different packages of prices for packages of existing telecommunications services that it wishes, provided that all such Prices comply with these rides, and (iii) The Authority may, in its absolute discretion, accept or reject the proposed basis on which the Price Control Formula shall apply to that telecommunication service. The Authority shall inform the Company in writing of its acceptance or rejection of the changes to the Basket Services proposed by the Company pursuant to sub-rule (1) within one month from being notified in accordance with sub-rule (2). Further clause 2.3 of Part-1 of schedule 2 of the Rules provides that the licensee shall notify the Authority of any changes to the prices for telecommunication services to which the rules relevant to tariff contained in part IV of the Pakistan Telecommunication Rules, 2000, apply not less than thirty days in advance of the day on which the change to the prices shall take effect. The Licensee shall include in that notification explanations and calculations demonstrating that the proposed price change complies with the rules relating to tariff. In this instant matter the licensee has not complied with the time line and procedures for notifying to and seeking approval of the Authority.
13. In addition to rules and regulation, the matter has also been analyzed in light of terms and condition of the license issued to the licensee. As per license condition No. 23.1 of the license, the licensee is obliged to abide by all provisions of the Act, rules,

regulations and directions of the Authority. It is noted that the licensee not only disobeyed the direction of the Authority with regard to seeking prior approval of tariff which directly and indirectly effect the consumer as well as other licensees but also failed to comply with the license condition. Clause 11 of Schedule 2, Part 2 of the license provides that except as otherwise provided in this license or as required by law, the licensee is free to set prices for the licensed services as it may deem fit. The said clause restricts the licensee to abide by law i.e., rules and regulation while introducing and implementing tariff for telecommunication services.

14. The licensee without seeking prior approval of the Authority vide letter dated 17th March, 2011 has informed the Authority about its revised charges of the Pakistan Package as applicable from 1st April, 2011 which should have to be provided to the Authority thirty (30) days before the applicability of new tariff. The applications of the revised charges without approval of the Authority While applying these charges the licensee has failed to adhere the time line given in the Pakistan Telecom Rules, the Regulations as well as directions of the Authority issued vide PTA's letter dated 18th Jan, 2011 and Feb, 2011.
15. In view of the aforesaid discussion and record, it is found that though through revised respond vide letter dated 21st October, 2011 of SCN, the licensee has re-ensured to build harmonize working relationship with the Authority with regard to comply with the direction of the Authority which it ought to have complied with otherwise, however, in the same letter it is transpired that revision of Pakistan Package as intimated to the Authority vide dated 17th March, 2011 as applicable from 1st April, 2011 was on account of urgency by bypassing regulatory requirements. The same cannot validate the introduction and implementation of the Pakistan Package of the licensee as intimated to the Authority vide 17th March, 2011.
16. Having consider the matter from all angles in light of the Rule, Regulations, license terms and conditions and direction of the Authority, the Authority is clear to determine that the licensee's conduct, with regard to launching and introducing the subject Pakistan Package without seeking prior approval of the Authority, and not adhering procedures as laid down

in the prevailing laws, is non-serious and despite various directions of the Authority the licensee has failed to observe the regulatory obligation in true letter and spirit.

17. Based upon the aforementioned, the Authority in exercise of powers under sub-rule 4 of rule 9 of the Rules hereby directs the licensee to revert the Pakistan Package to the terms and conditions that existed prior to 1st April 2011 with an advance notice of at least seven days to all relevant subscribers as required under the Telecom Consumer Protection Regulations, 2009. The licensee is further directed to serve the said notice to the subscribers within seven days of the receipt of this enforcement order. In case of non-compliance, further proceeding under sub-rule 5 of rule 9 of the Rules will be initiated.

(Dr. Khawar Siddique Khokhar)
Member (Technical)

(Dr. Mohammed Yaseen)
Chairman

This determination signed on 09-05-2012 and comprises 07 pages.