



PAKISTAN TELECOMMUNICATION AUTHORITY  
HEADQUARTERS, F-5/1 ISLAMABAD

**Decision of the Authority Pursuant to Court Order dated 28<sup>th</sup> August, 2023 Passed in W.P  
No. 53394/2023 titled "M/s Al-Qaim Telecom Vs Federation of Pakistan etc."**

No. PTA/Enforcement Wireless/Mobile/M/s Al-Qaim Telecom/ 207/2023/813

Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 24<sup>th</sup> October, 2023

**Penal of hearing:**

Maj. Gen. (R) Hafeez Ur Rehman : Chairman  
Dr. Khawar Siddique Khokhar: Member (Compliance & Enforcement)  
Muhammad Naveed: Member (Finance)

**The Issue:**

**"Termination of Franchise Agreement by PMCL (Mobilink)"**

**DECISION OF THE AUTHORITY**

**1. Brief facts of the case:**

1.1 This order will dispose of the complaint dated 18<sup>th</sup> August, 2023 filed by Mr. Zaigham Mujtaba, Managing Director, Al-Qaim Telecom (the "**Complainant**") regarding termination of franchise agreement by Pakistan Mobile Communication Limited (**PMCL**) vide letter dated 9<sup>th</sup> August, 2023 (the "**impugned letter**").

1.2 Being aggrieved by the impugned letter, the Complainant filed W.P No. 53394/2023 titled Al-Qaim Telecom Vs Federation of Pakistan etc. before the Hon'ble Lahore High Court, Lahore. The Honorable High Court vide Order dated 28<sup>th</sup> August, 2023 disposed of the said petition in the following manner:

*"2. In view of above, this writ petition is disposed of with the direction to the respondent No.2 to decide the complaint of the petitioner, if pending before him, through speaking order strictly on merit and in accordance with law after hearing the petitioner and all other concerned parties expeditiously"*

1.3 In light of the court order, the matter was processed and hearing notice dated 13<sup>th</sup> October, 2023 was issued. In response, PMCL vide letter dated 19<sup>th</sup> October, 2023 provided

comments. The matter was fixed for hearing on 24<sup>th</sup> October, 2023. Mr. Zaigham, Mr. P.K Rana Advocate, Mr. Rao Saeed Aftab and Mr. Khizer Ali Advocate High Court appeared on the behalf of the Complainant whereas Mr. Jahanzaib Ali Chaudry (**Head of litigation**), Mr. Masaud Chaudry (**Stream Head Regulatory Operations**) and Mr. Momin Ali Khan (**Legal Counsel**) attended the hearing on the said date on the behalf of the PMCL. During hearing, the Complainant reiterated the same as mentioned in the complaint dated 18<sup>th</sup> August, 2023. Crux of the submissions made by the Complainant are as under:

- i. That the Complainant executed a franchise agreement with PMCL on 24-4-2014 against consideration of Rs.5,400,000/- with the name and style of M/s Al-Qaim Telecom. He further stated that after execution of the franchise agreement status of the Complainant is like as partner of the PMCL. The Complainant promoted business of the franchise and always met the targets. In this regard, the complainant was awarded prizes and rewards.
- ii. That later on 09-08-2023, the regional business head of the PMCL without mentioning any reason illegally and unlawfully issued termination notice. As per agreement 15 days have been provided for termination of contract but PMCL illegally and unlawfully terminated/stopped the franchise business and area of the Complainant was allocated to Mr. Ammar Amir Younis vide ID No.7873. Such act is against the principal of natural justice and violation of the Article 10-A of the Constitution.
- iii. That the option of resolving the matter has been bypassed by PMCL and has straight away jumped to termination of a long-standing successful business relationship. By doing so, clause 15 (ii) of the franchise agreement has been grossly violated.
- iv. That the Complainant suffered following losses due to illegal and unlawful act of PMCL:
  - a. The Complainant purchased the franchise on 24-4-2014 for Rs.5,400,000/- which is presently having worth of Rs.30,000,000/-;
  - b. The credit of the applicant in market is around Rs.30,00,000/- which will not be recovered due to illegal forced termination by PMCL;
  - c. Rs.7,00,000/- already laying with PMCL in shape of security;
  - d. Rs.5,00,000/- as Retention amount.
  - e. Rs. 30,000,000/- for reputational loss along with mental torture and agony caused due to the illegal termination.
- v. That PMCL illegal and unlawfully not returned the guarantee / surety cheques to the Complainant despite of the fact that the it has already made all payments to PMCL but PMCL *mala-fidely* retained said guarantee cheques.

- vi. That the Complainant being aggrieved from impugned act and termination letter dated 9-8-23 sent representation to Chief Ethics & Compliance Officer, PMCL –Jazz Digital Head Quarter-1, F-8 Markaz, Islamabad by the grievances of the Complainant has not been redressed till today.
- vii. That the termination notice issued by PMCL is clear violation of clause 17 of the Franchise Agreement but the Complainant has no objection at all, if this office / Chairman PTA being sole arbitrator of the parties decide the matter in accordance with law as per clause 17 of the Franchise agreement.
- viii. That in view of the above submission, Complainant prayed that PMCL may kindly be penalized with heavy cost and appropriate direction may kindly be issued for resolution of franchise agreement with Complainant and till the payment of cost and restoration of franchise agreement, license of the PMCL may very graciously be suspended.

1.4 PMCL in response to hearing notice through letter dated 19<sup>th</sup> October, 2023 submitted written reply. The main contentions of PMCL are as under:

- i. That Writ Petition No.53394/2023 filed by Al Qaim Telecom and the Complaint dated 18.08.2023 filed before the Authority are both untenable since the relationship between PMCL the Complainant is purely contractual and governed by the Franchise Agreement dated 20.01.2017.
- ii. That pursuant to clause 17 of the Agreement, any question or difference or dispute regarding the terms of the Agreement which cannot be settled amicably shall be referred to arbitration. Hence, most respectfully, PMCL objects to the jurisdiction of the Authority to adjudicate on a purely contractual/commercial dispute between the parties.
- iii. That the hon'ble Lahore High Court has not proceeded to appoint the Authority as the arbitrator to adjudicate on the dispute between the parties and has merely directed for the Complaint to be decided strictly in accordance with the law. To this end, the law does not envisage the Authority to perform the function of an arbitrator since the roles and functions of the Authority as envisaged in the Act do not provide for the Authority to act as an adjudicator in a commercial dispute between a licensee and its franchisee.
- iv. That in fact, the provisions of sections 4 and 5 of the Act make it abundantly clear that the Authority may *inter alia* investigate and adjudicate on complaints and claims made against licensees for alleged contraventions of the Act, the rules made thereunder and the terms and conditions of licenses, monitor and enforce licenses etc., however, the Authority is not vested with the power to adjudicate and act as an arbitrator in a commercial dispute arising out of a contract between a licensee and a third-party as in the issue at hand.

- v. That any indulgence in the commercial affairs of a licensee by the Authority will result in the negation of the Authority's primary role as a regulator and, instead, result in the evolution of the Authority into a dispute adjudicator, which was neither the intention or purpose of the Act.
- vi. That clause 17 of the Franchise Agreement provides that in case of any dispute or difference between the parties which cannot be resolved amicably, such dispute/difference shall be referred to arbitration to be conducted by **one arbitrator** to be appointed with the mutual consent of the parties. Should the parties fail to agree on the nomination, the court of competent jurisdiction shall appoint the arbitrator in accordance with the provisions of the Arbitration Act, 1940. Since the Agreement envisages the adjudication of a dispute by one arbitrator who shall be appointed in accordance therewith, the Authority cannot fall within the terminology of "one arbitrator", which should, as is evident, be a natural person.
- vii. That the termination notice dated 09.08.2023 however, an imputation that it was in violation of the Agreement is misconceived and patently incorrect. To this end, clause 15(ii) of the Agreement is reproduced hereunder for ease of reference:

**15. TERMINATION:**

*(ii) JAZZ may terminate this franchise Agreement "without cause" by issuing fifteen (15) days' notice in writing to the Franchisee."*

- viii. That additionally, the Complainant's assertion that business activity was stopped/terminated on 09.08.2023 is misleading. The Complainant access to the PMCL's systems was terminated only on 24.08.2023 i.e. fifteen (15) days from the date of the Termination Notice. The Complainant has concealed this aspect to gain the sympathy of the Authority. Lastly, the Agreement does not confer on the Complainant any exclusivity. To this end, clause 10 of the Agreement is reproduced hereunder:

**10. RIGHTS AND ENTITLEMENTS OF JAZZ:** *JAZZ shall have the exclusive authority and he entitled to make, amend and introduce inter alia the following, at is sole discretion:*

*(j) appointment of another franchise in the Specified Territory..."*

- ix. That the Agreement was terminated in accordance with the terms and conditions thereof which *inter alia* also provide PMCL with the unqualified right to terminate with or without cause. Needless to state, it is settled law that a contractor cannot be thrust upon an employer, which principle can be suitably deployed to draw an analogy in the present issue.

## 2. Findings of the Authority:

2.1 Matter heard and record perused. After careful examination of record and hearing the arguments advanced by the licensee, followings are the findings of the Authority:

- a. By virtue of section 4 (1) (f) of the Act, PTA is empowered to investigate and adjudicate on complaint and other claims made against the licensee arising out of alleged contravention of the provision of the Act, Rule made and licenses issued thereunder and take action. In addition, section 4 (1) (l) of the Act provides that PTA shall settle disputes between licensees. Further, section 4 (1) (m) stated that the Authority shall regulate competition in the telecommunication sector and to protect consumer rights.
- b. As far as instant matter is concerned, the Complainant is neither a licensee nor a telecom consumer. The relationship between Complainant and PMCL is a relation of contractor/franchisees, therefore, such nature of cases does not fall under the regulatory ambit of PTA for adjudication. Thus, being a regulatory body, PTA lacks jurisdiction to adjudicate upon issues related to commercial settlement between franchisee(s) and cellular mobile operators(s). The Complainant may approach appropriate forum for redressal having jurisdiction.
- c. It is also relevant to point out here that clause 17 of the Agreement provide that in case of any dispute between the parties, both agreed to resolve dispute amicably and in good faith through negotiation or through sole arbitrator appointed by PMCL for conducting arbitration. In light of this condition of the agreement, PTA has not been appointed as arbitrator thus the matter cannot be proceeded in the light of agreement.

2.2 In the instant matter since the issue has been referred by the Honorable Lahore High Court, Lahore as mentioned in Para 1.2 above of this order, PTA after affording fair opportunity of hearing to both parties and perusal of record is of the view that the agreement made between the parties expressly provided the circumstances of termination which are required to be adhered in letter and spirit by PMCL while invoking the condition 15 of the Agreement. In such circumstances, PTA could not find any substantive material on record which postulates termination of the agreement within the terms and conditions as agreed by the parties.

## 3. Order:

3.1 Without going into factual controversy on the matter as alleged by the Complainant and not contested by PMCL by rebutting the point of contention of reasonability of legitimate reasons for termination of franchise agreement as per agreed terms and conditions, PTA is of the view that clause 15 (ii) of the agreement which empowers PMCL to terminate the franchise agreement "*without cause*" needs to be reviewed in the light of natural justice. However, factual

controversies if any, may be dealt with and treated separately as per applicable law and which has no nexus with regard to findings of PTA.

3.2 Foregoing in view of the above factual and legal position, the matter is hereby disposed of in the manner as provided at para 3.1 above.

**Maj. Gen. Hafeez UR Rehman (R)**  
Chairman

**Muhammad Naveed**  
Member (Finance)

**Dr. Khawar Siddique Khokhar**  
Member (Compliance & Enforcement)

Signed on 28<sup>th</sup> day of February, 2024 and comprised (06) pages only.