

**FEDERAL COURT**

B E T W E E N :

MOBILE TELESYSTEMS PUBLIC JOINT STOCK COMPANY

- and -

THE ATTORNEY GENERAL OF CANADA

Respondent

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	Aug. 18, 2023 18 août 2023	
	Applicant Josephine Chan	
	Toronto, ON	1

**NOTICE OF APPLICATION**

**Application for Judicial Review under Section 18.1 of the *Federal Courts Act***

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Toronto, Ontario, M5V 3L6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES,  
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL  
AID OFFICE.

Date: August 18, 2023

Issued by "Alice Prodan Gil"  
Local registrar

Address of 180 Queen St. W, Toronto,  
court office ON M5V 3L6

**TO:** **ATTORNEY GENERAL OF CANADA**  
Office of the Deputy Attorney General of Canada  
284 Wellington Street  
Ottawa ON K1A 0H8

## **APPLICATION**

**THIS IS AN APPLICATION** for judicial review of the decision (the “Decision”) of the Governor General in Council (the “GIC”), on the recommendation of the Minister of Foreign Affairs (the “Minister”), made on July 19, 2023 (and announced publicly on July 20, 2023), to add the Applicant, Mobile TeleSystems Public Joint Stock Company (“MTS PJSC”), to Schedule 1 of the *Special Economic Measures (Russia) Regulations*, SOR/2014-58 (the “Russia Regulations” or the “Regulations”), pursuant to the *Regulations Amending the Special Economic Measures (Russia) Regulations*, SOR/2023-163 (hereinafter referred to as the “July Amendments”, as defined in paragraph 8 below).

### **THE APPLICANT MAKES APPLICATION FOR:**

- a. an order quashing the Decision to add it to Schedule 1 of the Russia Regulations;
- b. an order directing the GIC and the Minister to immediately remove its name from Schedule 1 of the Russia Regulations;
- c. a declaration that the Decision is deficient, unreasonable and does not comply with the principles of natural justice and procedural fairness;
- d. an order that the Russia Regulations, insofar as they concern the Applicant, are *ultra vires* the *Special Economic Measures Act*, S.C. 1992, c. 17 (the “SEMA”), the Russia Regulations, and Canada’s sanctions regime;

- e. an order compelling the GIC and the Minister to disclose to the Applicant all documents and information considered by the GIC and the Minister leading to and resulting in the Decision;
- f. an order that the Applicant be given an opportunity to respond to the disclosures and productions ordered to be made pursuant to subparagraph (e) above;
- g. an order extending the time provided by Rule 306 of the *Federal Courts Rules* (the “Rules”), to the extent necessary, by affording the Applicant a period of 30 days following the release of the disclosures and productions ordered to be made pursuant to subparagraph (e) above within which to serve and file any supporting affidavits and documentary exhibits;
- h. an interim order under s. 18.2 of the *Federal Courts Act* (the “Act”), including staying the effect of the Decision pending final determination of this application;
- i. an order assigning a case management judge pursuant to Rule 384 of the Rules;
- j. a hearing of this matter on an expedited basis;
- k. the costs of this application, plus all applicable taxes, on a full indemnity basis;  
and
- l. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE APPLICATION ARE:**

***The Parties***

1. MTS PJSC is Russia's largest civil mobile and fixed telecom operator. It offers a wide range of telecommunications services both inside and outside of Russia, including telephone services (both fixed line and cell phone), local voice services, broadband services and wireless services. Millions of civil subscribers use the mobile communication services delivered by MTS PJSC on a daily basis.
2. The Attorney General of Canada represents the GIC, who, on the recommendation of the Minister, made the Decision to add MTS PJSC to Schedule 1 of the Russia Regulations on or about July 19, 2023.

***Background to the Russia Regulations***

3. The Russia Regulations were imposed under the SEMA. They came into force in March 2014 as a response to political and diplomatic developments between the governments of Russia and Ukraine. Among other things, the Regulations impose an asset freeze and dealings prohibition on all designated individuals and entities listed in Schedule 1 (referred to as "Designated Persons" in the Regulations).
4. Pursuant to the Regulations, individuals and entities located in Canada and Canadian individuals and entities located or operating outside of Canada are strictly prohibited from engaging in any of the following activities with any Designated Person:
  - a. dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a Designated Person;

- b. entering into or facilitating, directly or indirectly, any transaction relating to such a dealing;
- c. providing any financial or other related services in respect of such a dealing;
- d. making available any goods, wherever situated, to a Designated Person; or
- e. providing any financial or related services to, or for the benefit of, a Designated Person.

***Amendments to the Russia Regulations in Response to the February 2022 Military Actions in Ukraine***

- 5. On or about February 21, 2022, Russia signed a decree recognizing the independence and sovereignty of two regions in Eastern Ukraine. The next day, Russia deployed military forces into the regions.
- 6. Canada responded by releasing a statement condemning Russia's "brazen violation of Ukraine's sovereignty, territorial integrity and independence" and announcing a wide-ranging expansion of its sanctions regime, including, among other things, the addition of new individuals and entities to Schedule 1 of the Regulations.
- 7. Schedule 1 has been expanded more than 30 times since February 2022. On each occasion, the Regulations have been further amended to add new individuals and entities to the list.

***The July 2023 Amendments to the Russia Regulations***

8. On July 19, 2023, the Russia Regulations were amended (the “July Amendments”) by, among other things, adding a further 64 individuals and entities to Schedule 1, including:
  - a. 20 individuals and 21 entities purportedly connected to Russia’s “military-industrial complex”; and
  - b. 19 individuals and 4 entities in the Russian cultural and education sectors.
9. The Applicant was included among the 21 entities purportedly “connected to Russia’s military-industrial complex”.

***The Purported Justification for the July Amendments***

10. The July Amendments were announced publicly on July 20, 2023. In its news release reporting on the July Amendments (the “News Release”), Global Affairs Canada (“GAC”) stated that the purpose of the Amendments was to add individuals and entities to Schedule 1 who are, in its view, “complicit in Russia’s ongoing violation of Ukraine’s sovereignty and territorial integrity”, including: (i) Russian individuals and entities connected to private military companies; (ii) so-called volunteer organizations that support Russia’s war of aggression against Ukraine; and (iii) leaders in Russia’s nuclear sector. The News Release made no reference to the Applicant.
11. On August 2, 2023, GAC published the Regulatory Impact Analysis Statement (the “RIAS”) for the July Amendments. According to the RIAS, the objective of the July

Amendments was to target individuals and entities that directly or indirectly provide support to Russia's military actions in Ukraine, including:

- a. Russia's military-industrial complex, private military companies and their affiliates, and supply chains which continue to support Russia's actions in Ukraine via funding, recruitment and logistical support; and
- b. Russia's nuclear industry which provides revenues to the Russian state budget and is used to finance Russia's military actions in Ukraine.

12. In describing the 20 individuals and 21 entities (including MTS PJSC) allegedly "connected to Russia's military-industrial complex", the RIAS referred to, among others, "Private Military Company Wagner, the paramilitary sector, and the Orlan drone supply chain."

13. Like the News Release, the RIAS made no reference to MTS PJSC.

***No Explanation or Justification for the Decision to Add the Applicant to the Schedule***

14. There is no justification for the Decision to add MTS PJSC to Schedule 1 of the Russia Regulations.

15. MTS PJSC is a civil mobile operator that fulfills an important humanitarian mission to provide telecom and connectivity services to tens of millions of civil subscribers both in Russia and abroad. It does not have any infrastructure, nor does it operate at any conflicted territories in Ukraine. Accordingly, MTS PJSC is not now, nor has it ever been, "complicit in Russia's ongoing violation of Ukraine's sovereignty and



territorial integrity”, nor has it ever provided support, directly or indirectly, to Russia’s military invasion of Ukraine. Furthermore, MTS PJSC is not now, nor has it ever been:

- a. a part of Russia’s military-industrial complex;
- b. a private military company or its affiliate; or
- c. a part of Russia’s nuclear industry.

16. There is no reasonable explanation for the Decision to add MTS PJSC to Schedule 1 of the Regulations and the July Amendments fail to provide any information to justify or substantiate the Decision. Instead, the July Amendments make blanket allegations against MTS PJSC and the other individuals and entities added to Schedule 1 of the Regulations without any specification whatsoever.

17. Neither the July Amendments (nor the News Release and/or the RIAS), allow MTS PJSC to fairly appreciate the case against it. There are no allegations specific to MTS PJSC, nor is there any information to substantiate the vague and ambiguous claims that it is allegedly “connected to Russia’s military-industrial complex” (it is not), or that it is “complicit in Russia’s ongoing violation of Ukraine’s sovereignty and territorial integrity” (it is not).

***No Advance Notice Provided to MTS PJSC***

18. MTS PJSC was not provided a hearing or any opportunity to respond, participate or intervene before the Decision was made to add its name to Schedule 1 of the Russia Regulations.

19. MTS PJSC was not provided any advance notice or warning that it was at risk of having its name added to Schedule 1 of the Russia Regulations.

20. The Decision to add MTS PJSC's name to Schedule 1 of the Russia Regulations was not communicated to it at any time and was only discovered after the July Amendments were announced publicly on or about July 20, 2023.

***Denial of Natural Justice***

21. In making the Decision to add MTS PJSC to Schedule 1 of the Russia Regulations, the GIC and the Minister failed to provide procedural fairness to MTS PJSC and failed to observe the principles of natural justice by, among other things:

- a. failing to ensure that MTS PJSC was afforded an opportunity to present its case before an independent and unbiased decision maker;
- b. failing to provide a hearing to MTS PJSC, which MTS PJSC had a reasonable expectation of;
- c. failing in their duty to provide appropriate (or any) information to MTS PJSC about the evidence that was required from it and/or the evidence that resulted in the Decision being made;
- d. failing to sufficiently articulate a justification for the Decision;
- e. failing to consider all relevant (or any) evidence provided by MTS PJSC;

- f. failing to provide MTS PJSC a fair and meaningful (or any) opportunity to respond to the allegations made against it (which remain unknown) before making the Decision to add it to Schedule 1 of the Regulations;
- g. failing to advise MTS PJSC of any significant facts or evidence that was likely to affect the outcome of the Decision to add it to Schedule 1 of the Regulations, and failing to give it a reasonable (or any) opportunity to respond; and/or
- h. basing the Decision on irrelevant considerations.

***Decision to Add MTS PJSC to Schedule 1 of the Regulations is Unreasonable***

22. Furthermore, in rendering the Decision, the GIC and the Minister made errors of law and/or mixed fact and law and based the Decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before them.

23. As noted above, MTS PJSC is not now, nor has it ever been, “complicit in Russia’s ongoing violation of Ukraine’s sovereignty and territorial integrity”. There is no credible or compelling evidence to suggest otherwise. Furthermore, MTS PJSC is not now, nor has it ever been a:

- a. part of Russia’s military-industrial complex;
- b. private military company or its affiliate;
- c. part of the “supply chain which continues to support Russia’s invasion of Ukraine via funding, recruitment and logistical support”; or

- d. part of Russia's nuclear industry which provides revenues to the Russian state budget and is used to finance the ongoing violation of Ukraine's sovereignty and territorial integrity.

24. There is no credible and compelling evidence (or any evidence for that matter) to substantiate any of these claims.

25. As there are no "reasonable grounds" to justify the Decision to add MTS PJSC to Schedule 1 of the Regulations, the Decision is:

- a. based on erroneous findings of fact;
- b. not supported by a sufficient (or any) evidentiary foundation;
- c. not justified or intelligible;
- d. based on nothing more than speculation, conjecture, suspicion and apprehension;
- e. overlooks and/or otherwise ignores credible and relevant information;
- f. is not based on a rational chain of analysis; and
- g. is unreasonably based on facts and/or allegations not elaborated in the Decision and not known to MTS PJSC and/or the public.

***Decision to Add MTS PJSC to Schedule 1 of the Regulations is Ultra Vires***

26. As with any exercise of statutory authority, the July Amendments must be consistent with the scope and purpose of the statutory mandate and must meet the requirements of the enabling legislation. They do not.
27. The Russia Regulations contains specific preconditions for the designation of an individual or entity under Schedule 1. In particular, s. 2 of the Regulations provides that “a person whose name is listed in Schedule 1 is a person in respect of whom the GIC, on the recommendation of the Minister, is satisfied that there are “reasonable grounds” to believe”:
- a. is engaged in activities that directly or indirectly facilitate, support, provide funding for or contribute to a violation or attempted violation of the sovereignty or territorial integrity of Ukraine or that obstruct the work of international organizations in Ukraine;
  - b. has participated in gross and systematic human rights violations in Russia;
  - c. is a former or current senior official of the Government of Russia;
  - d. is an associate of a person referred to in any of subparagraphs (a) to (c) above;
  - e. is a family member of a person referred to in any of subparagraphs (a) to (d) above and (h) below;

- f. is an entity owned, held or controlled, directly or indirectly, by a person referred to in any of subparagraphs (a) to (e) above or acting on behalf of or at the direction of such a person;
- g. is an entity owned, held or controlled, directly or indirectly, by Russia or acting on behalf of or at the direction of Russia; or
- h. is a senior official of an entity referred to in paragraph (f) or (g) above.

28. None of these statutory preconditions have been met with respect to MTS PJSC.

29. Furthermore, there is no direct link (or any link for that matter) between MTS PJSC, a civil telecommunications provider that fulfills an important humanitarian mission to provide telecom and connectivity services to tens of millions of civil subscribers both in Russia and abroad, and the express objective of the July Amendments, which is to target individuals and entities that directly or indirectly provide support to Russia's military actions in Ukraine.

30. In light of the above, the Decision to add MTS PJSC to Schedule 1 of the Regulations is *ultra vires*. It is not authorized by SEMA, the Russia Regulations or Canada's sanctions regime. The GIC acted beyond its lawful jurisdiction.

31. As a result of the deficiency of the Decision, including its lack of justiciability and reasonableness, as well as the significant breaches of MTS PJSC's right to natural justice and procedural fairness, the only proper and appropriate outcome in this case is to quash the Decision and remove MTS PJSC from Schedule 1 of the Regulations on an immediate basis.

32. MTS PJSC requests that this application be heard on an expedited basis given the significant damage to its business dealings and reputation resulting from the Decision. For instance, on or about August 15, 2023, MTS PJSC received notification from Rogers Communications (“Rogers”) that as a result of its inclusion in Schedule 1 of the Regulations, all bilateral roaming services between Rogers and MTS shall be suspended effective as of August 23, 2023. This suspension will have significant ramifications for millions of civil subscribers.

***Rule 317 Request***

33. Pursuant to Rule 317 of the *Rules*, MTS PJSC requests a certified copy of the following material that is not in its possession, but is in the possession of the GIC and/or the Minister:

- a. any and all records relied upon by the GIC and/or the Minister or in any way used, referred to, reviewed, considered or created, prior to, at the point of or following the Decision to add it to the Schedule, including all internal documentation and communications pertaining or relevant to the Decision.

***Statutes and Regulations Relied on***

34. Sections 18.1 and 18.2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

35. Rules 3, 8, 55, 302, 317 and 318 of the *Federal Courts Rules*.

36. Such other grounds as counsel may advise and this Honourable Court may permit.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

37. The affidavits of one or more individuals to be filed;
38. The GIC and Minister's record of decision, including the materials received pursuant to Rule 317; and
39. Such further and other evidence as counsel may advise and this Honourable Court may permit.

August 18, 2023



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Greg Kanargelidis/Ryder Gilliland/Corey Groper

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