



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 against China Mobile Pakistan Limited (CMPAK)

Date of Issuance of Show Cause Notice: 17th January, 2022
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 20th April, 2022

PTA/Enf-Wireless/Mobile QoS/Warsak & Charsadda Road/ 109/2021/169.

The Issue:

“Failure to meet or exceed QoS standards as laid down in the license and KPIs”

Decision of the Authority

1. Brief facts of the case

1.1 China Mobile Pakistan Limited (the “**licensee**”) is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive license No. MCT-03/WLL&M/PTA/2004 dated 23rd October, 2004 and license No. NGMS-01/WLL&M/PTA/2014 dated 21st May, 2014 (the “**license**”) issued by the Pakistan Telecommunication Authority (the “**Authority**”) to establish, maintain and operate licensed system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 The licensee is required to comply with the provisions of the prevailing regulatory laws comprising the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”), the Pakistan Telecommunication Rules, 2000 (the “**Rules**”) the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006 (the “**Regulations**”), the Cellular Mobile Network Quality of Service (QoS) Regulations, 2021 (the “**QoS Regulations**”) and the terms and conditions of the license.

1.3 Under clause (d) of section 4 of the Act, one of the functions of the Authority is to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan. In accordance with clause (g) of sub-section (4) of section 21 of the Act, the licensee is also under an obligation to provide telecommunication services to particular persons or areas to meet the minimum standards for quality and grade of service requirements.

1.4 As per clause 23.7 of Part 6 of the Rules read with regulation 10 of the Regulations and sub-regulation (1) of regulation 6 of the QoS Regulations, the Authority is empowered to conduct, with or without notice, its own surveys and tests or make surprise checks through its designated officers or conduct performance audit of the quality of service of the licensee from time to time as to ensure that users of telecommunication services get such quality of service as laid down in the license and regulations.

1.5 In accordance with the provisions of clause (a) of sub-section (4) of section 21 of the Act, clause 8.1 of the Appendix B of the Rules and conditions 3.1 of the license, the licensee under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.6 License condition No.6.5.1 of the license requires that the licensee at all times to meet or exceed the quality of service standards described in Appendix-III and such other quality or service standards as the Authority may by regulations, require. In addition, Appendix-III of the license prescribed the quality of service standards and requires the licensee to take all reasonable and prudent measures to ensure that its Licensed System and the Licensed Services are available as per the network roll out obligations and operate as per QoS Key Performance Indicators (KPIs) at all times. In addition, as per clause A1.3 of the Appendix-III of the license further provides that PTA's Regulations on QoS and 3GPP latest Version/ Release of Cellular Mobile (3G/4G/LTE) shall be followed. The Authority may carry out tests on the quality of the licensed services and licensed system and the licensee shall extend full co-operation and assistance for the purpose of including provision of test instruments and equipment.

1.7 Further clause A 1.5 of Appendix-III of the license provides that during each calendar month, license shall meet or exceed the quality of service standards.

1.8 In order to measure the QoS performance of the licensee, a joint survey was carried out from 26th October, 2020 to 27th October 2020 at Warsak & Charsadda Roads, Peshawar. During the survey, it was revealed that 4G/LTE Signal Strength at Charsadda Road and 4G/LTE Signal Strength as well as Call Connection Time at Warsak Road were observed below the license standards. Accordingly, the survey results were shared with the licensee vide letter dated 29th October, 2020 with direction to improve the services up to the licensed standards and include the area in 4G/LTE future rollout plan and the licensee was required to submit compliance report by 20th November, 2020. However, in light of response received from the licensee, an independent survey, *from 4th October to 27th October, 2021*, was carried out by PTA at the said areas whereby it was observed that contrary to the claim of the licensee, some of the QoS KPIs are persistently below the standards as stipulated in the license.

1.9 Since, the above said QoS results were not within the parameters of the license conditions and QoS Regulations, therefore, a Show Cause Notice (SCN) under section 23 of the Act on 17th January, 2022 was issued wherein the licensee was required to remedy the contravention by bringing and maintaining the required standards of quality of service at with clause 1.3 of Appendix-III of the license and the QoS Regulations within fifteen (15) days and also to explain in writing within thirty days of the issuance of the issuance of SCN.

1.10 In response to the SCN, the licensee vide letter dated 1st February, 2022 submitted that it is compliant with the licensed KIPs. The licensee also filed a summary of the compliance report for Warsak & Charsadda Road. The licensee intimated that it was substantially in compliance with the quality of service parameters as provided in the license despite the fact that it has no obligation to rollout sites as per the terms of the license in the surveyed areas.

1.11 In addition to the letter dated 1st February, 2022, the licensee vide letter dated 16th February, 2022 submitted a reply to the SCN. Crux of the relevant contentions / submissions of the licensee are as under:

- i. A unilateral survey was conducted by the PTA's team during 4th October 2021 to 27th October 2021 in the said areas and a synopsis of reports comparison i.e. current survey (2021) with the previous joint survey(s) [26th & 27th October, 2020] is provided with the instant Notice.
- ii. A compliance report dated 1st February, 2022 as required under the Notice which substantiates that Licensee is compliant with the applicable legal framework and meets the QoS KPI in the said areas.
- iii. Show cause notice is premised on a convoluted understanding of the concept of rollout obligations, universal service obligations, and Quality of Service obligations. It needs to be understood that any cellular mobile operator (the "CMO") operating under a license doesn't have a universal service obligation and neither is a service supplier of last resort. Under the existing legal framework, the QoS parameters and rollout obligations are explicitly mentioned in the license. The area surveyed doesn't fall under the rollout obligations of the licensee, hence, it is illogical to assume that any condition of license to this effect has been violated. Furthermore, since the Notice is silent about the log reports, therefore, the veracity of the allegations cannot be confirmed. Having said that, the licensee in a *bonafide* manner complied with the requirements of PTA and has submitted a detailed compliance report along with all evidence.
- iv. Notice has been issued in non-compliance of the procedure provided in QoS Regulations 6 (5) and 6(6) of the Cellular Mobile Network Quality of Services (QoS) Regulations, 2021.
- v. The procedure laid down in Rule 9 of Telecom Rules is also not complied with as the direction issued by the DG Law / Issuing Officer regarding remedying the contravention mentioned in the Notice, amounts to passing of an enforcement order within the meaning of Rule 9 of the Telecom Rules, 2000.
- vi. Comments/concerns through its letter of 28th January 2021 on the amended/ revised arbitrary "QoS Regulations" were provided and response of the Authority thereon is still awaited; proprietary demands that Authority should not proceed further in issuing the Show Cause Notice where Licensee is already in engagement on the same or connected cause.
- vii. The Authority adopted the QoS parameters / scope of the "QoS Regulations" on which industry is having serious concerns that amendments made thereto tend to modify the license of the licensees. This amounts to set aside / surpass the QoS parameters / scope defined in the License and further such amendments also attempt to enhance Rollout Obligations of the Licensee (without amending the

licensees). Therefore, the QoS Survey conducted in purview of QoS Regulations and thereafter instant Notice is in sheer violation and in contradiction of the terms of the License and thus the instant Notice is null and void.

- viii. The unilaterally amended "QoS Regulations" neither repeal the quality of service KPIs of the License nor have overriding effect unless same is mutually agreed in the License Agreement. Therefore, we are of the considered view that in case of any contradiction / conflict between License and regulations of the Authority the terms and conditions of License will have precedence.
- ix. Appendix-III of the License applies only in the areas where Licensee is obligated to carry out the rollout or expansion of its network under the relevant provisions/rollout obligation in the License Agreement (the "License"), meaning thereby, that the QoS survey should only be restricted to the areas where Licensee is required to install its network. It also appears relevant to apprise the Issuing Authority that neither highways nor intercity roads fall in rollout obligations nor there is any precedent to require to meet or exceed quality of service as regular KPIs on such roads and Appendix-III of the License Agreement purports the same.
- x. The direction to remedy the contravention mentioned in the Notice, amounts to passing an adverse finding/order against the Licensee without adverting to due process of law. It is a settled law involving regulatory authorities in Pakistan that any enforcement action comprising the issuance of a show cause notice to a licensee must be preceded by a participatory adjudication process wherein the Licensee is given an opportunity to explain its position before a violation of law is framed against it.

1.12 In order to proceed further, the matter was fixed for hearing on 20th April, 2022 before the Authority. Mr. Javaid Mukhtar (Sr. Manager Legal), Mr. Shoaib Niaz (DD Technical), Mr. Asad Javed (E2E), Mr. Shahid Razzaque (Dir Regulatory) and Mr. Taimoor Aslam Khan Advocate High Court (Legal Counsel) attended the hearing on the behalf of the licensee. The learned counsels of the licensee reiterated that same as submitted in reply to the SCN.

2. Findings of the Authority

2.1 Matter heard and record perused. After careful examination of record following are the findings of the Authority.

2.1.1. The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. In addition, the Authority under section 5(2)(b) of the Act is also empowered to enforce and monitor the licenses. Pursuant to the license granted by the Authority, the licensee is required to meet the requirement of quality of service standards as provided in the license and regulations.

2.1.2 For the purpose of enforcing and monitoring the license, the Authority is empowered to carry out QoS survey so as to ascertain the compliance of KPIs for QoS standard as provided in the license and applicable regulation. In accordance with clause 23.7 of part 6 of the Rules, regulation 10 of the regulation and sub-regulation (1) of regulation 6 of the QoS Regulations, the Authority with or without notice conduct its own surveys and tests or makes surprise checks through its designated officers or conducts performance audit of quality of service of the licensee from time to time as to ensure that the user(s) of telecommunication services get such quality of services as laid down in the license, regulations and/or KPIs. For ready reference regulation 6(1) of the QoS Regulation is reproduced below:

"The Authority shall conduct inspection, surveys, test or carry out surprise check as specified in Annex A through its designated officers or conduct performance audit for Quality of Service of the Licensee from time to time to ensure that users of telecommunication service get such Quality of Service Standards as laid down in these Regulations and the license."

2.1.3 With regard to licensee's contention of carrying out unilateral survey, it is clarified that in the instant matter, a joint survey was carried out and as per survey report short falls were shared with the licensee. The licensee was required to improve the services up to the license standard and include the areas in 4G /LTE future roll out plan. The licensee replied that it has improved and observing QoS standards as per required KPIs. In order to verify the claim of the licensee the Authority carried an independent survey. As a result of independent survey report, it has been found that QoS standards were below the required KPIs. For the purpose record and clarity, it also relevant to point out that as per license condition No. 6.5.1, the licensee is required at all time to meet or exceed the Quality of Service standards described in Appendix-III of the license and QoS Regulations.

2.1.4 As far as licensee's assertion with regard to issuance of notice contrary to procedure as laid down regulations No. 6(5) and 6(6) of the QoS Regulations, the Authority is of view that all procedural requirements were observed on the ground that as a result of joint survey, shortfalls were shared with the licensee and required to improve the same within thirty days. However, for the purpose verification of compliance and independent survey was carried out. For ready reference regulations 6(5) and 6(6) of the QoS Regulations are reproduced below:

"6 (5) The inspecting officer shall prepare an inspection report of the quality of service inspection, also comprising the shortfalls, observed during such inspection."

6 (6) This report shall be provided to the licensee in the format as specified in these regulations as Annex B.

2.1.5 In this instant matter, after carrying out joint survey, results were shared with the licensee with the direction to take all remedial measure to remove the shortfalls identified in the inspection report. More so, after carrying out an independent survey by the Authority results were also shared with the licensee through SCN.

2.16 The licensee is also of the view that unilaterally amendment / modification in the regulations neither repeal the quality of service KPI of the license nor have overriding effect unless same is mutually agreed in the license Agreement. In this regard, it is clarified that after carrying out consultation with all stake-holders amendment were made in the regulation. The said regulations are not inconsistent with applicable legal regulatory framework. It would not be out of context to mention here that as per license terms and condition, the licensee is under an obligation to abide the regulations pertaining the QoS. The license condition No. 6.5.1 of the license expressly provides that the licensee is bound to comply with regulation. The license condition states as under:

“6.5.1 The license requires that the licensee at all times to meet or exceed the quality of service standards described in Appendix-III and such other quality or service standards as the Authority may by regulations, require. The license shall maintain records of its performance in meeting these quality of service standards, and shall submit them to the Authority on a quarterly basis in such format as the Authority may require. The license shall maintain supporting records for inspection and technical audit as and when required by the Authority. The licensee shall maintain all such records for a period of three years.”

2.1.7 The said license condition clearly states that the licensee at all the time is required to meet the quality of service standards described in Appendix-III and such other quality or services standard as the Authority may by regulations require.

2.1.8 In reply to the SCN, the licensee also asserted that neither highways nor intercity roads fall in rollout obligations nor there is any precedent to require to meet or exceed quality of service as regular KPIs on such roads and Appendix-III of the License Agreement. Moreover, to demand / expect that Licensee shall either meet or exceed the Quality of Service in the area which is not mandated in the rollout obligations seems contrary to the relevant provisions of the License, therefore, the reference to Appendix-III is clearly a case of misreading and non-reading at the part of surveyor / Issuing Authority. In this regard it is clarified that the licensee is erred in understanding on the premise that as per terms and condition of the licensee, where the license is providing is licensed services, it is an obligation upon the licensee to meet the standard of QoS. Since the licensee is providing the licensed service in the survey areas and also charging consumer against services therefore, the license has to meet the QoS for provision of licensed service. The licensee acknowledged that its network is available in the survey areas therefore, the licensee's contention to exclude high and road from not observing the parameter of QoS is untenable. The licensee in accordance with terms and condition of licensee is required to meet at all the time QoS standard as provided in the license and applicable regulations.

2.1.9 It is also pointed out that after providing fair opportunity of hearing, the Authority again carried an independent re-verification QoS at Warsak and Charasadda Roads, Peshawar on 26th April, 2022. During the survey, it was observed that Voice and Data services of the licensee were satisfactory at Warsak Road except SMS Success Rate, whereas, Voice and Data services were identified low graded at Charsadda Road.

3. Order

3.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority, it is concluded that despite extended all possible timeframe to improve QoS of licensed services in accordance with the applicable legal regulatory framework, the KPIs of voice and data services were identified low graded at Charsadda Road, Peshawar therefore, due to non-adhering the required standards a fine to the tune of Rs. 200,000 (Rupees Two Hundred Thousand) is hereby imposed on the licensee with the direction to pay the same within one week from the date of receipt of this order.

3.2 In case of failure to comply with para 3.1 above, legal proceedings will be initiated against the licensee as per applicable law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 13th day of June, 2022 and comprises of () pages only.