



Government of Pakistan  
PAKISTAN TELECOMMUNICATION AUTHORITY  
HEADQUARTERS, F-5/1 ISLAMABAD  
[www.pta.gov.pk](http://www.pta.gov.pk)

**Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization) Act, 1996 against CMPAK (Pvt.) Limited (Pakistan)**

No: PTA/Enf-Wireless/Mobile/Independent QoS Survey Plan/6/2020/490

Show Cause Notice: 26<sup>th</sup> June, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 22<sup>nd</sup> September, 2020

**Panel of Hearing:**

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

**The Issue:**

**"Failure to meet or exceed QoS standards as laid down in the license and KPIs"**

**DECISION OF THE AUTHORITY**

**1. BRIEF FACTS:**

1.1 Brief facts of the case are that China Mobile Pakistan Limited "CMPAK" (the "licensee") is a public Limited Company incorporated under the Companies Ordinance, 1984 and is engaged in the business of cellular mobile services in Pakistan pursuant to the non-exclusive license Nos. CMT- 03/LL&M/PTA/2004 dated 23<sup>rd</sup> October 2004, NGMS-01/WLL&M/PTA/2014 dated 21<sup>st</sup> May 2014 (the "license"), issued by the Pakistan Telecommunication Authority (the "Authority") to establish, maintain and operate telecommunication system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 As a licensee of the Authority, the licensee is required to comply with the provisions of the prevailing regulatory laws comprising of the Act, the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 and the terms and conditions of the license. In accordance with 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 obliged the licensee to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.3 The Authority has to ensure that users of telecommunication services get such QoS standard as laid down in the license, conducted a survey in 3<sup>rd</sup> and 4<sup>th</sup> quarter 2019 at

Abbottabad, Charsadda, Swabi, Thatta, Sukkur, Tando Allah Yar, Gujranwala, Sargodha, Murree, Taxila and Sibbi. As a consequence of result it was found that the licensee has failed to meet the threshold / KPIs for QoS Standard. Due to contravention of the license terms and conditions, the Authority under section 23 of the Act issued Show Cause Notice wherein the licensee was required to remedy the aforementioned contravention by bringing and maintaining the required standards of quality of service at par with clause 1.3 of the Appendix-3 of the license within fifteen (15) days of issuance of Show Cause Notice and also to explain in writing, within thirty (30) days of the issuance of the SCN.

1.4 The licensee replied to the SCN and denied all allegation levelled in the SCN for ready reference relevant paras of the reply are reproduced below:

i. *That the Notice has been issued without lawful authority. It is abundantly clear from the provisions of the Act and the Rules framed thereunder that the power to issue Show Cause Notice under Section 23 of the Act, vests in the Authority or an Officer of the Authority not below the rank of director. The instant Notice/Impugned Order has been purportedly issued by the Director General (Law & Regulations) "upon instruction approval and on behalf of the Authority". Evidently, the DG Law is not acting in his independent capacity as a Director empowered under Section 23 to issue such Notice. It is clear from a reading of Section 9 of the Act read with Section 23, that the Authority can only exercise its functions and powers in two ways; either it can act on its own or through delegation of its powers to its members/officials.*

ii. *That the direction issued by the Issuing Authority regarding remedying the contravention mentioned in the Notice, amounts to passing an adverse finding/order against the Company without adverting to due process of law. Article 10A of the Constitution of the Islamic Republic of Pakistan (the "Constitution"), guarantees a fair trial and due process in the determination of any civil rights and obligations or in any criminal charge against a person. The law in this respect is now firmly settled that no person can be condemned unheard as regards any matter in which he has any interest.*

iii. *That in addition to the constitutionally guaranteed right of hearing under Article 10A of the Constitution, the right of hearing of the Company is further bolstered by a reading of Section 6(1)(d) of the Act. Section 6(1)(d) obligated the PTA to ensure that those affected by its decisions or determinations are given a due notice thereof and provided with an opportunity of being heard. In the instant matter, a bare perusal of the contents of the Notice, make it abundantly clear that the Company has already been judged to be guilty of a contravention prior to being given any notice, hearing or opportunity to explain its stance in a brazen violation of Section 6(1) (d) of the Act.*

iv. That the direction issued by the DG Law 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 in the guise of a show cause notice. This has been done without adverting to the procedure clearly laid down in Rule 9 of the Telecom Rules, the relevant part of which is reproduced below for the sake of clarity and convenience:

**"9. Monitoring of license, enforcement and early termination,-.**

- 1) If the Authority considers, whether or not as a result of any complaint or made by another person as a result of monitor ins by the Authority, that the licensee has contravened any condition of the license, the Authority may serve a written notice requiring the licensee to show cause, within thirty days after the date of the notice, as to why an enforcement order should not be issued.
- 2) If the licensee appears before the Authority to give an explanation, or submits a written explanation to the Authority, within the period specified in sub-rule 12), to the satisfaction of the Authority, the enforcement order shall not be issued.
- 3) If the licensee fails to respond to (he notice referred to in sub-rule (2) or satisfy the Authority in respect of the alleged contravention in accordance with sub-rule (3). the Authority may issue an enforcement order requiring the licensee to remedy the contravention within such period, which shall be less than thirty days from the date of service of the enforcement order, as the Authority may reasonably consider appropriate.
- 4) If th licensee fails to comply with the enforcement order served under sub-rule (4), the Authority may, by further enforcement order in writing hereinafter referred to as "final order"
  - (a) levy a fine which may extend to three hundred and fifty million rupees; or
  - (b) in the case of a grave or persistent contravention of its license, require the licensee to cease that contravention within such further period of time, not being less than thirty days from the date of service of the final order, as the Authority may reasonably consider appropriate, failing which the Authority may take action under sub-rule (6) in respect of such contravention.

v. *That the jurisprudence is settled on the point that a show cause notice is a serious business and is not a casual correspondence. Its purpose is to put the person on notice about the allegations for which the Authority intends to proceed against him and to give him an opportunity to explain his position. This principle is rooted in the principles of natural justice and fair trial. This view is also fortified by a reading of Section 23(3)(b) which refers to an "alleged contravention". By issuing an order/direction/finding in the guise of a show cause notice, the DG Law has violated the settled jurisprudence relating to the nature and purpose of a show cause notice. This defect goes to the very root of the matter and it is trite that a superstructure cannot be built on such a faulty foundation/premise.*

vi. *From the above, it becomes clear that an adverse finding has been rendered against the Company without adverting to the procedure laid down in the Rules and the terms of license of the Appellant. The treatment meted out to the Company finds no basis in the law. The Notice is also liable to be withdrawn on account of being vague, cursory and also violative of the clear provisions stated in the Act, the Rules and the QoS Regulations.*

vii. *That the Notice is liable to be withdrawn on the grounds enumerated above. A seriatim reply to the Notice is as under with the respectful caveat that unless specifically admitted, each and every allegation, direct or indirect, is denied and the Issuing Authority is put to strict proof thereof.*

viii. *That pursuant to its powers under Section 5(2)(o) of the Act, the Authority has issued the QoS Regulations for the purpose of prescribing the minimum quality of service standards and associated measurement, reporting and record keeping tasks. The power of the Authority to conduct its own surveys/tests is circumscribed by Clause 8 of the QoS Regulations which provides the clear methodology for conducting drive tests.*

ix. *Denied as laid for the following reasons: Results of QoS parameters as attached with the Notice as Annex A, Annex B and Annex C for overall, Urban and Rural Areas of the specified cities indicate multiple issues with the QoS Survey. The Survey has been conducted in blatant violation of Clause 8 of the QoS Regulations. Clause 8 of the aforesaid Regulations specifies that the Authority may conduct inspections, surveys or tests as specified in Annexure A of the QoS Regulations to conduct performance audit for quality of service of licensee from time to time. Clause 8(5) of the QoS Regulations specifies that such a Quality of Service Inspection Report shall be prepared by the Inspecting Officer and further Clause 8(6) mandates the Officer to provide such report to the Licensee in the format as specified in Annexure B of the QoS Regulations. In pursuance thereof, Clause 8(7) provides that the Licensee shall take all remedial steps to remove any shortfalls indicated in the inspection report and submit a compliance report within a period*

*of 30 days of the issuance of the inspection report. It is crucial to note that the Company was not provided with the inspection report as mandated under Clause 8(6) above. Instead, the Authority, via a press release, announced that the inspection reports are available on the website of the PTA. The inspection reports published on the website were not in the format specified under Clause 8(6) of the QoS Regulations. Further, the so-called results of the QoS parameters as attached in the form of Annexures A, B & C of the Notice are also not in the format specified in Clause 8(6) of the QoS Regulations. It is important to note that the Company was not provided with the opportunity to take any remedial measures to remove shortfalls, if any, as mandated by Clause 8(7) of the QoS Regulations. By not affording the Company an opportunity to take remedial measures, if required, as envisaged by Clause 8(7) of the QoS Regulations, the said Clause has been rendered redundant by the pre-mature issuance of the Notice. The hasty and haphazard manner in which the entire exercise of inspection has been carried out is violative of the provisions of the QoS Regulations.*

x. *That similar to Clause 8 of the QoS Regulations, Clause 10 of Pakistan Telecommunication Authority (Functions and Powers) Regulations, 2006 (the "PTA Regulations"), stipulates that the Inspecting Officer shall prepare an inspection report of such quality of service inspections which shall be furnished to the licensee. The Licensee shall immediately take all remedial measures to remove the shortfalls identified in the report. The Issuing Authority has issued the Notice without ensuring compliance with prior steps that had to be taken in accordance with the mandatory provisions listed hereinabove.*

xi. *That a perusal of Annex B & C attached with the Notice indicate that the quality of service performance indicators in the specified cities, are categorized on the basis of urban and rural division. As has already been detailed above, Clause 8 mandates that any drive test/survey by the Authority shall be conducted in accordance with the methodology specified in Annex A of the QoS Regulations. Annexure A of the said Regulations does not recognize/envisage any rural-urban distinction while conducting such a survey. This renders the measurements as provided in Annex B & C of the Notice as unsustainable in light of Clause 8 read with Annexure A of the QoS Regulations. The PTA has clearly traveled beyond its mandate while conducting said Survey.*

xii. *The Revised Methodology that has been employed by the PTA to conduct the Survey is not recognized by the QoS Regulations. Further, it is important to note that the PTA has unilaterally revised the methodology without amending the QoS Regulations suitably. It is submitted that the methodology for drive tests could not be unilaterally altered overnight without amending the applicable regulations and that too in a surprise test conducted for the first time with this revised methodology.*

*Needless to say, the CMOs were not duly notified prior to change in methodology which is not envisaged by the relevant Law.*

*xiii. That it is important to refer to Letter dated 26.12.2018, which detailed the quarterly quality of service plan for 2019. Said letter was accompanied by attachments that detailed inter alia, the survey methodology, the survey schedule and the form in which results were to be reported. It is abundantly clear upon a bare perusal of the aforesaid Letter that the survey methodology that was specified, did not disclose any change in methodology for the year 2019. That PTA, while conducting the surprise inspection in the 3<sup>rd</sup> & 4<sup>th</sup> quarter of 2020, has taken a complete somersault on its own express plan of conducting surveys in accordance with its own prescribed methodology. The legitimate expectation of the Company stands frustrated by the unlawful, unauthorized and unannounced change in methodology of carrying out QoS Survey.*

*xiv. That Clause 9 of the QoS Regulations states that the PTA may publish the survey results relating to quality of service for the information of general public on its website. Clause 9(2)(e) specifies that the reported measurements published by the Authority shall include any explanatory remarks by the licensee, if accepted by the Authority. This Clause has also been bypassed as neither the report was provided to the Company prior to its publication on the website, nor was the Company provided with a chance to give any explanation regarding any alleged shortcoming. This is again a testament to the hasty exercise of powers by the Issuing Authority.*

*xv. That the terms of license clearly stipulate that quality of service parameters are to be calculated on the basis of a nation-wide average. This is in stark contradiction to the methodology adopted by the PTA in the Survey, Reference is made to Appendix III of the License.*

*xvi. The methodology used to conduct the Survey is not clear and no information about the configuration that has been opted for drive test has been mentioned in the Notice. The time of conducting drive test plays a critical role in the evaluation of performance. No such details regarding drive tests have been provided in the Notice. The drive test has been conducted without prior intimation to the Operators. As a standard practice, PTA informs operators prior to performing any drive tests in order to ensure transparency of results that may be acceptable to both the Regulator and the Operator.*

*xvii. Log files are essential to verify the alleged gaps reported in the Inspection Report shared by the PTA through the Notice. Moreover, log file analysis is mandatory for error free results. The Company was not provided with the log files until 9.07.2020 after repeated requests and after issuance of Notice under reply. Upon an analysis of the log files, it is evident that the complete methodology of*

*conducting drive tests has been changed by the PTA. For the purpose of the Survey, Cities have been sub-divided into rural and urban categories, prescribing an arbitrary weightage formula i.e. urban (75%) and rural (25%), instead of the previous methodology, which was free from any such categorization and division of cities.*

*xviii. The definition of urban and rural boundary is not clearly provided in the Notice and further no visibility of route is mentioned regarding the percentage of samples/calls conducted in the rural and urban areas respectively. It has not been mentioned as to how has the overall value been calculated”.*

1.5 In order to proceed further, the matter was fixed for hearing on 22<sup>nd</sup> Spetember,2020 before the Authority. Barrister Shahyar Riaz Advocate High Court, Ms Nida Aftab Advocate High Court, Mr. Mian Ahmed Ibrahim Director (Legal), Mr. Ahmed Faisal (Dy Director Reg), M. Amer Majeed Technical Engg. Mr. Asad Javed Technical and Mr. Waqas Raja G.M Reg attended hearing on the said date. Legal counsel reiterated the same as submitted in reply to the SCN and pointed out that the licensee is always complying the regulatory laws and license terms and condition in true letter and spirit. It was further highlighted that the licensee assure that all possible remedial steps to remedy the short falls if any and compliance report will be submitted to the Authority. ”

## **2. FINDINGS OF THE AUTHORITY:**

2.1 Matter heard and record perused. After careful examination of the record and hearing the argument of legal counsel made during hearing, following are the finding of the Authority:

2.1.1 Admittedly, there is no dispute with regard to provision of telecommunication services in accordance with licensee terms and condition. The licensee is under obligation to meet all requirements of QoS as provided in the license. By virtue of provision of the Act, the Authority in accordance with section clause (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly safeguarded and protected. In this regard it is the responsibility of the Authority to ensure the licensee are meeting the requirements of QoS.

2.1.2 In accordance with 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 obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority. By virtue of clause (d) of section 4 of the Act, the Authority is under obligation to promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan.

2.1.3 The license granted by the Authority under the Act contains clause (g) of sub-section (4) of section 21 of the Act regarding obligations to provide telecommunication service to particular persons or areas to meet minimum standards for quality and grade of services requirements.

2.1.4 As far as carrying out independent survey is concerned, it pointed out that as per para 23.7 of Part 6 of the Rules and regulation 10 of the Regulations empowers the Authority 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 to ensure that users of telecommunication services get such quality of service as laid down in the license, regulations, and/or KPIs. The license condition 6.5.1 of the license obliged the licensee at all times to meet or exceed the Quality of Service (QoS) standards described in Appendix-3 and such other quality of service standards as the Authority may by regulation, require. The term "all the time" required the licensee to ensure that its network and provision of telecommunication services must be met with the KPIs irrespective of any methodology applied or time at which the survey was conducted to check the parameters or threshold prescribed in Appendix 3 of the license.

2.1.5 The licensee also expressed that the survey methodology in Annex-A has not been followed, in particular, the coverage area ignored by making test calls beyond the claimed coverage area. The licensee also objected on Urban/rural disaggregation of the survey results adopted as not warranted by Annexes. It is relevant to mention here that the main aspect of Annex-A is Voice Calls, SMS, Percentage of ON-Net, Off-Net Calls/SMS, B-Party (terminating number) moving, Call Window including pause between Calls, conduct of survey within coverage boundaries and the same has been followed.

2.1.6 Furthermore, the licensee has also not provided any detail of corrective measures and subsequent technical steps undertaken i.e. installation/up-gradation of sites, enhancement in transmission media, changes in network planning etc., which may results in improvement of services in the surveyed cities.

### **3. ORDER:**

3.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority has reached to the conclusion that the licensee i.e. CMPAK, the license has failed to meet the requirement of KPIs as provided in the license. As consequences of non-observing KPIs for Quality of Services, consumers are suffering with low grading telecommunication services. It is the responsibility of the licensee to ensure provision of licensed services should be in accordance with parameters as laid down in the license condition, applicable regulations, Standing Operating Procedure and directions issued by the Authority from time to time. Having gone through the survey report and perusal of record, it is found that despite providing opportunity to remedy the contravention within certain time the licensee has failed to remedy



the contravention with regard to remedy the contraventions for maintaining the quality of licensed services in the manner as provided in the license.

3.2 Considering the nature of contravention and violation on the part of licensee, ~~a fine to the tune of Rs. 1,900,000/-~~ the Authority hereby imposes a fine to the tune of Rs. 1,900,000/- (Rupees one million nine hundred thousand only) is hereby imposed with the direction to pay the same within thirty (30) days from the date of receipt of this order and submit a compliance report.

3.3 In case of failure to comply with the same further legal proceeding as per applicable law will be initiated without any further notice.

Maj. Gen. Amir Azeem Bajwa (R)  
Chairman

Muhammad Naveed  
Member (Finance)

Dr. Khawar Siddique Khokhar  
Member (Compliance & Enforcement)

Signed on 29<sup>th</sup> day of June, 2021 and comprises of (9) pages only.