



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

No. PTA/Enforcement Wireless/Mobile QoS/Quarterly QoS Survey/18/2020/495

Date of Show Cause Notice: 7<sup>th</sup> July, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 3<sup>rd</sup> December, 2020

**Panel of Hearing:**

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

**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 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 non-exclusive license No. CMT-03/LL&M/PTA/2004 dated 23<sup>rd</sup> October 2004 (Renewal of License under process) and No. 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 licensed system and to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license.

1.2 The licensee i.e. CMPAK is required to comply with the provisions of the prevailing regulatory laws comprising of 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 Networks Quality of Service Regulations, 2011 (the "QoS Regulations") and the terms and conditions of the license.

1.3 Under clause (d) of section 4 of the Act, to promote the availability of wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan is one of the functions of the Authority. In accordance with clause (g) of sub-section (4) of section 21 of the Act, the licensee is under 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 regulation 8 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, regulations, and/or KPIs.

1.5 Clause 6.5.1 of the license obliges the licensee at all times to meet or exceed the quality of service standards described in Appendix-3 and such other quality or service standards as the Authority may by regulations, require. In addition, Appendix 3 of the license prescribed the quality of service standards in detail manner and requires the licensee to take all reasonable and prudent measures to ensure that its Telecommunication and the Licensed Services are available and operate properly at all times and during each calendar month it shall meet or exceed the quality of services standards mentioned in clause 1.3 of Appendix-3 of the license.

1.6 Sub-section (f) of section 6 of the Act provides that the Authority shall ensure that the interest of users of telecommunication services are duly protected. 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 obliged the licensee to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.7 The Authority in order to ensure that users of telecommunication services get QoS standards as laid down in the license, conducted a joint survey alongwith licensee in 1<sup>st</sup> quarter of 2020 at Sheikhpura, Gujar Khan and Mansehra. Results of QoS parameters were found to be in violations of the licensed threshold values.

1.8 Since, the above said QoS results were not within the parameters of the license conditions and QoS Regulation and due to non-provision of the licensed services and non-maintaining the required standards of quality of service KPIs amounts to serious violations and contravention of the prevailing regulatory laws and directions of the Authority. As consequence thereof, a Show Cause Notice (SCN) under section 23 of the Act on 7<sup>th</sup> July, 2020 was issued whereby the licensee was required to remedy the contraventions 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.

2. The licensee replied to the SCN vide letter dated 07<sup>th</sup> August, 2020 and denied allegations as mentioned in the SCN. Relevant contentions of the licensee are provided as under:

2.1 The licensee vide its reply objected on the survey methodology on the ground that it is in contravention of the survey methodology provided under Annex A of the QoS Regulations and also at variance with terms of license governing the QoS parameters. Further, the survey methodology has completely altered the earlier methodology, by specifying that drive tests may be conducted by dividing the city into two areas i.e. rural and urban, whereas, earlier methodology only related to the overall KPIs values within the entire city.

2.2 The licensee has challenged the legality of the letter dated 2<sup>nd</sup> February, 2020 on the basis whereof the said survey was conducted and the SCN before the Hon’ble Islamabad High Court in W.P No. 2087/2020. The Hon’ble Islamabad High Court vide its order dated 6.8.2020 has restrained the Authority from passing any Final order in the titled SCN.

2.3 The SCN has been issued without lawful authority as the SCN has been purportedly issued by the Director General (Law & Regulations) upon instruction, approval and on the behalf of the Authority. DG Law is not acting in his independent capacity as a director empowered under section 23 to issue the same rather a hybrid mechanism has been deployed for issuance of SCN.

2.4 The SCN has been issued in violation of Article 10A of the Constitution and section 6(1) (d) of the Act which guarantees a fair trial and due process in determination of any civil rights and obligation, however, the same has been issued without according the right of hearing to the licensee.

2.5 The directions issued by DG Law regarding remedy the contravention mentioned in the SCN, amounts to passing of an enforcement order within the meaning of Rule 9 of the telecom Rules as the rule 9 of the telecom Rules explicate the steps that need to be taken prior to the issuance of an enforcement order.

2.6 The revised methodology also fails to take into account the network roll-out obligations imposed on the licensee under its license. As per clause 3.2 of the terms of the license, the licensee is obligated to provide coverage as per the network roll-out plan as provided in Appendix I of the license. The said network roll out obligation applicable to the licensee extend to certain percentage of Tehsil HQs, rather than extending to all areas including rural areas within the tehsils.

2.7 The section 23(3)(b) of the Act refers to an “alleged contravention”, however, by issuing an order/direction in the guise of SCN, the DG Law has violated the settled jurisprudence relating to the nature and purpose of SCN. The purpose of SCN 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.”

2.8 In order to proceed further the instant matter was fixed for hearing on 3<sup>rd</sup> December, 2020 before the Authority. Mr. Muhammad Aamer Majeed, Ms. Nida Aftab (legal counsel), Mr. Shehryar Riaz (legal counsel) and Mr. Javaid Mukhtar (SM legal Zong) attended the hearing on behalf of the licensee. The learned counsels of the licensee reiterated the same as submitted in reply to the SCN.

### **3 FINDINGS OF THE AUTHORITY:**

Matter heard and record perused. After careful examination of record and arguments advanced by the legal counsel as well as written reply of SCN filed by the licensee, the Authority reaches at the following findings:

3.1 The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. The Authority under section 5 read with section 21 of the Act, grants licenses for telecommunication system and services. 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 provide the licensed services in accordance with terms and condition of cellular mobile license, the provision(s) of the Act, rules, regulations and directions of the Authority issued by the Authority from time to time.

3.2 Section 21(4)(g) of the Act provides that the licensee is under obligation to provide telecommunication services to particular person or areas to meet minimum standards for quality and

grade of services requirement. With regard to monitor and enforce the license condition, clause 23.7 of part 6 of the Rules, regulation 10 of the Regulations and regulation 8 of the QoS Regulations, the Authority with or without notice conduct its own surveys and test 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.

3.3 The licensee instead of taking tangible measures, submitted the detailed reply vide letter dated 7<sup>th</sup> August, 2020 and denied the allegation as levelled in the SCN. The licensee vide its reply objected on the sample size on which the survey was conducted. It is pertinent to mention here that QoS regulations does not define any sample size for any particular city. The main aspect of Annex-A "Drive Test Methodology" are 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 the coverage boundaries and the same has been followed.

3.4 The licensee claimed that it has challenged the legality of the letter dated 14<sup>th</sup> February, 2020 on the basis whereof the said survey was conducted and the SCN before the Hon'ble Islamabad High Court in W.P No. 2087/2020. The Hon'ble Islamabad High Court disposed of the matter vide order dated 19<sup>th</sup> August, 2020 by referring the matter to the Authority. The operative part of the order is reproduce as under:

*"However, this Court expects that Pakistan Telecommunication Authority, while deciding the show cause notice will, inter alia, take into consideration the grounds which have been raised or may be raised by the petitioner company during the proceedings, particularly the legal status of letter, dated 14-02-2020. In case the adjudicating authority finds the issuance of the letter in conflict with the notified rules, then in such an eventuality it will not be influenced with the contents thereof and decide the show cause notice through a speaking order."*

3.5 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. Furthermore, the Annex-A does not restrict from taking drive test sample in Urban and Rural/Suburb Areas of the particular city.

#### **4. ORDER:**

4.1 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 a consequence of non-observing KPIs for Quality of Services, consumers are suffering with low grade 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 conditions, 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.

4.2 Considering the nature of contravention and violation on the part of licensee, the Authority hereby imposes a fine to the tune of Rs. 250,000/- (Rupees two hundred fifty thousand only) with the direction to pay the same within thirty (30) days from the date of receipt of this order and submit a compliance report.

4.3 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 (5) pages only.