



PAKISTAN TELECOMMUNICATION AUTHORITY  
HEADQUARTERS, F-5/1 ISLAMABAD

**Enforcement Order under section 23 of Pakistan Telecommunication (Re-organization)  
Act, 1996 against China Mobile Pakistan Limited (CMPak)**

No. PTA/Finance /Mobile/Paktel/5/2006/5/389

Show Cause Notice: 11<sup>th</sup> March, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 22<sup>nd</sup> January, 2025

**The Authority**

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

**The Issue:**

**“Non-payment of Late Payment Additional Fee (LPAF)”**

**Decision of the Authority**

**1. Facts of the case:**

1.1 Briefly stated facts of the case are that on 19<sup>th</sup> April, 1990 a non-exclusive license was granted to Paktel Limited which was revalidated by the Pakistan Telecommunication Authority (the "**Authority**") on 12<sup>th</sup> August, 1997 under the Pakistan Telecommunication (Re-organization) Act, 1996 (the "**Act**"). Later on, as a result of Cellular Mobile Policy 2004 issued by the Federal Government, license No. CMT-03/LL&M/PTA/2004 (the "**license**") was renewed on 23<sup>rd</sup> October, 2004. In 2007, the license was transferred to CMPak Limited Pakistan (the "**licensee**"). Since the license was granted / renewed for a period of fifteen years thus it was required to be renewed on 23<sup>rd</sup> October, 2019. Federal Government in exercise of its powers under section 8 of the Act issued a Policy Directive dated 9<sup>th</sup> May, 2019 (the "**Policy Directive**") on renewal of cellular mobile licenses wherein the license renewal fee including other terms and conditions were laid down. The licensee being aggrieved with the Policy Directive and the Authority's letter dated 17<sup>th</sup> October, 2019, filed a Writ Petition bearing W.P. No. 3626 of 2019 before the Honorable Islamabad High Court. During the course of court proceedings, the licensee, in light of court order dated 28<sup>th</sup> October, 2019, passed by the Honorable Islamabad High Court, deposited 50% of the license renewal fee (USD 238.6 Millions) in two tranches on 22<sup>nd</sup> November, 2019 amounting to Rs. 18,696,000,000 and on 28<sup>th</sup> November, 2019 amounting to Rs. 18,466,020,000. Since the license renewal fee was required to be deposited on or before 23<sup>rd</sup> October, 2019, due to delay in making payment of license renewal fee, the Authority through demand note dated 24<sup>th</sup> December, 2019 followed by a reminder dated 23<sup>rd</sup> January, 2020 required the licensee

to pay the Late Payment Additional Fee (LPAF) amounting to USD 11,770,933.

1.2 As a consequence of non-payment of LPAF amounting to USD 11,770,933, a Show Cause Notice (SCN) dated 11<sup>th</sup> March, 2020 was issued requiring the licensee to pay the same. Being aggrieved from SCN the licensee filed appeal under section 7 of the Act before the Authority. After providing an opportunity of hearing, the appeal through order dated 20<sup>th</sup> July, 2020 was disposed of in the following manner:

*“8. Keeping in view the above stated factual and legal aspects, it is concluded that the impugned Notice by its self cannot be considered as an adverse order/action unless otherwise required by law. In the instant matter, the Impugned Notice was served on the Appellant by the Director General (Law & Regulations) pursuant to the decision of the Authority. More so, the requirement to remedy the contravention as provided under sub-section 2 of section 23 of the Act, cannot be considered and treated as decision / order to be passed in accordance with sub-section (3) and (4) of the said section.*

*9. In view of what has been discussed above, the instant appeal under section 7(2) of the Act is not maintainable and devoid of merit thus hereby dismissed”.*

1.3 It would not be out of context to mention here that the licensee being aggrieved from the decision of the Authority filed F.A.O No. 77 of 2020 before the Honorable Islamabad High Court with the following prayers:

**“Prayer:**

*It is, therefore, respectfully prayed that:*

- i. the impugned order of the Respondent No.1/the Authority dated 20.7.2020 be set aside being passed and issued against the fact on record and law on the subject, and in contravention to the provision of the Pakistan Telecommunication (Re-organization) Act of 1996;*
- ii. the Appellant's appeal filed by it under sub-section (2) of section 7 of the Act of 1996, against the Respondent No.2's directions, communicated vide the SCN dated 11.3.2020, requiring the Appellant to make payment of the late payment additional fee, be declared as maintainable; and*
- iii. the Respondent No.1 be directed to decide the Appellant's aforesaid appeal on merits.*

1.4 The Honorable Islamabad High Court while deciding F.A.O No. 76 of 2020 filed by the licensee, on the issue of unauthorized use of spectrum, also decided F.A.O No. 77 of 2020 through order dated 13<sup>th</sup> August, 2020 in the following manner:

*“...Through this order, I shall decide the instant appeal along with FAO no. 77/2020, titled CMPak v. PTA etc.”*

2. Through this appeal the appellant company has assailed show cause notices issued by the Pakistan Telecommunication Authority [hereinafter referred to as the "Authority"]. In compliance with the notices, Mr. Khurram Siddiqui, Director (Law) has appeared on behalf of the Authority. He has drawn attention of this Court to sub-section (1) of section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 [hereinafter referred to as the "Act of 1996"] wherein it has been explicitly provided that the Authority may by a written notice require the licensee to show cause within thirty days as to why an enforcement order may not be issued. He has explained that the third last paragraph of the show cause notice is consonance with the statutory provision of section 23 *ibid*.

3. When confronted with the above statement, the learned counsel for the appellant company has stated that he would be satisfied if the appeals are disposed by directing the Authority to proceed strictly in accordance with law and having regard to statutory provision of the Act, 1996.

4. The appeals, are therefore, accordingly disposed of and adjudicating authority is expected to afford a reasonable opportunity of hearing to an authorized representative of the appellant company and thereafter decide the matter in accordance with law."

1.5 For a matter of record, it is also relevant to point out that the Honorable Islamabad High Court vide order dated 24<sup>th</sup> February, 2020 in Writ Petition No. 3626 of 2019 with regard to proceeding in the matter has passed the following order:

" The learned counsels have been heard at length. It appears to this Court that the prayers sought in these petitions are to be adjudicated on merits. The Federal Government, Pakistan Telecommunication Authority and Frequency Allocation Board are directed to file their respective comments in the petitions, particularly in W.P no. 34/2020.

2. The office is directed to relist the petitions on **24.03.2020**.

3. In the meanwhile, the Pakistan Telecommunication Authority shall be at liberty to proceed in the matter, but final order shall not be passed till the next date of fixed."

1.6 The licensee has filed multiple court cases i.e., W.P No. 3626/2019, W.P No. 3458/2020 and F.A.O No.133/2020 before the Honorable Islamabad High Court, entailing some common features. Thus, the Honorable Court decided all cases through a consolidated judgment dated 21<sup>st</sup> August, 2024 wherein all cases filed by the licensee were dismissed. Being aggrieved from the aforesaid consolidated judgment of the Honorable Islamabad High Court, the licensee has filed three Constitutional Petitions for Leave to Appeal (CPLAs) before the August Supreme Court of Pakistan which are pending adjudication and the August Court was pleased to pass a status quo order vide its order dated 25<sup>th</sup> September 2024, in the following manner:

*“The matter was argued at some length. After the hearing, we are inclined to direct the parties to maintain the status quo until the next date of hearing, which is subject to the petitioner signing the license offered by the PTA within seven days. We also direct the parties to engage in constructive negotiations to amicably settle their differences and submit a report thereon. To come up for the settlement negotiations report and further hearing on 22.10.2024.”*

1.7 Pursuant to the direction of the August Supreme Court of Pakistan, the licensee signed a license on 4<sup>th</sup> October, 2024 with effective date i.e. 23<sup>rd</sup> October, 2019 without any modification of terms and conditions related to payment of fee etc.

1.8 The licensee vide letter dated 10<sup>th</sup> August, 2020 replied to the SCN. For ready reference the contentions/concerns of the licensee raised in reply to SCN are reproduced below:

- a. *Rule 9 provides for a detailed process for the scrutiny of the facts and to determine the truthfulness of an alleged contravention by a licensee. This provides an opportunity to the licensee to respond to the factual allegations and the Authority is consequently required to adjudicate upon the same. The Authority upon finding a contravention is required to issue an enforcement order under Rule 9(4), after having given the licensee an opportunity of being heard, and thereupon concluded a contravention exists and pursuant to a speaking order on merits giving the licensee a time to remedy the contravention and only upon the failure of the licensee to comply the Authority can proceed under Rule 9(5), after hearing the licensee as to an alleged failure to comply with the direction to remedy, with a further enforcement order levying either a fine or other penalties subject to a minimum 30 day notice to remedy the contravention in the event of a penalty under Rule 9(6). It is under Rule 9(6) that the provisions of Section 23 of the Act come into play. Consequently, the current Notice is illegal, void and contrary to law and procedure. In view of the above, the instant Notice purporting to be under Section 23 of the Act is patently misconceived and not maintainable. The Authority is therefore, required to withdraw the same as a licensee of the Authority.*
- b. *It is submitted that the Licensee has already challenged the Policy Directive dated May 09, 2019 (the "Policy") which is pending adjudication before Islamabad High Court under Writ Petition # 3626 of 2019. It is noteworthy that under the said Policy a grace period of one (01) month was given to licensees having expiry in the month of May, 2019, thus fairness legitimate expectation demands the same treatment in case of the License renewal of the Licensee having its license expiry was in October 22, 2019 (vide clarification letter dated May 20, 2019), to ensure level field for all CMOs. It needs to be appreciated that CM Pak has impugned the vires of the Policy Directive which set the license renewal fee requirement. The license renewal fee deposited was pursuant to the order of the Honorable Islamabad High Court dated October 28, 2019 & November 25, 2019 under Writ Petition 3626/2019 (the "WP").*

The relevant part of the order dated 28.10.2019 is reproduced below:

*"The learned counsels were heard at length. With the consent of the parties the petitioner company will deposit 50% of the license renewal fee on or before 25.11.2019. The deposit would be subject to final adjudication of this petition"*

- c. *It is abundantly clear from the reading of the said order that the deposit of fee was a result of mutual consent of the Parties. Further the Hon'able Court categorically mentioned that the deposit of fee would be subject to final adjudication of petition. Therefore, the question of late payment of fee does not arise and it is beyond comprehension that on which basis the alleged late payment of additional fee is determined and calculated since the payments of Licence renewal fee were made under the direction of Honorable Islamabad High Court and with mutual consent of the Parties vide order dated October, 28, 2020. The SCN under reply should be withdrawn on this score alone.*

## **2. Hearing before the Authority**

2.1 In order to proceed further, the matter was fixed for hearing on 6<sup>th</sup> November, 2024 which was adjourned on the request of the licensee. Accordingly, the matter was re-fixed for hearing on 22<sup>nd</sup> January, 2025. Mr. Javaid Mukhtar (HoD Legal), Mr. Raja Abdul Qadir (Manager Legal), Mr. Zahid Sohail (Manager Legal) and Mr. Asad Ladha Legal Counsel attended the hearing. During the hearing, the representative stated that the license renewal fee was deposited pursuant to the Honorable Islamabad High Court order dated 28<sup>th</sup> October, 2019 passed in W.P No.3626/2019 whereby extension for license renewal fee was granted till 25<sup>th</sup> November, 2019 with the consent of all the parties. During the hearing, the licensee also submitted written submissions. Relevant paras of written submissions are reproduced below:

- a. *The basic allegation in the subject Show Cause Notice dated 11.03.2020 (Show Cause Notice), issued by the Pakistan Telecommunication Authority ("PTA") to the Respondent, CMPak Limited ("CMPak"), is that CMPak was required to pay the license renewal fee for its 2G license ("License Renewal Fee") by 22.10.2019 whereas the amount due was not paid by CMPak until 28.11.2019. Consequently, the Show Cause Notices alleges that CMPak is liable to pay Late Payment Additional Fee ("LPAF") on account of the said delay in payment of the License Renewal Fee.*
- b. *Through Writ Petition No. 3626 of 2019 filed before the Islamabad High Court, CMPak (amongst other things) challenged the Policy Directive dated 09.05.2019 as well as the amount of renewal fee payable by it for renewal of its 2G license. Reference in this regard may kindly be made to the prayer clause of Writ Petition 3626 of 2019. Reference in this regard may also kindly be made to the Demand Note dated 24.12.2019 issued by the PTA to CMPak which makes the Policy Directive the basis of the demand for LPAF.*

- c. *Through its Order dated 21.10.2019 (i.e., the day before the License Renewal Fee was due) passed in Writ Petition 3626 of 2019, the Islamabad High Court admitted the petition for hearing, issued notice to the respondents and in the meanwhile directed the status quo to be maintained. The said status quo order clearly applied to payment of the License Renewal Fee which was a subject matter of the petition. Therefore, on account of the said order, the status quo had to be maintained, which was that payment of the License Renewal Fee was yet to be made and, therefore, CMPak did not have to pay the License Renewal Fee until further orders to the contrary were passed by die Islamabad High Court.*
- d. *Through a further Order dated 23.10.2019, the status quo order dated 21.10.2019 was extended till the next date fixed. On tine next date of hearing on 28.10.2019 where the representatives of all the parties were present, the Islamabad High Court directed, with the consent of all the parties, that CMPak would deposit 50% of the license renewal fee on or before 25.11.2019. Resultantly, the time for payment of the License Renewal Fee was extended to 25.11.2019, and the same was done with the consent of all the parties, including the PTA. It is thus clear that PTA (and all other parties for the matter) itself agreed to extension of the time for payment of the License Renewal Fee.*
- e. *In its Order dated 25.11.2019 in the aforesaid Petition, the Islamabad High Court further extended the time for payment until 02.12.2019. It is undisputed that the 50% payment of the License Renewal Fee was paid in full by CMPak on 28.11.2019, which was within the time allowed by the Islamabad High Court for such payment.*
- f. *The aforesaid Orders of the Islamabad High Court passed in Writ Petition No. 3626 of 2019 clearly evidence the fact that the extension of time for payment of the License Renewal Fee by CMPak was allowed by the Islamabad High Court, with the consent of all concerned parties, including the PTA. CMPak promptly paid the 50% payment of the License Renewal Fee in accordance with the directions of the Islamabad High Court (the same is confirmed by the Order dated 02.12.2019 and as agreed by all parties, including the PTA.*

### **3. Findings of the Authority**

3.1 Matter heard and record perused. After careful examination of the record, following are the findings of the Authority:

3.1.1 At the very outset it is clarified that there is no dispute with regard to renewal of license. In addition, the matter with regard to renewal of license including fee has already been decided by the Honorable Islamabad High Court. In addition, pursuant to the order dated 25<sup>th</sup> September, 2024 passed by the August Supreme Court of Pakistan, the licensee has signed license with effect from 23<sup>rd</sup> October, 2019.

3.1.2 As far as the licensee's contention with regard to extension of time for payment of license renewal fee in light of the court order dated 28<sup>th</sup> October, 2019 passed in W.P No.3626 of 2019 is concerned, it is to clarify that the consent pertains to depositing of renewal fee which was due and already required by the licensee through letters dated 13<sup>th</sup> September, 2019 and 17<sup>th</sup> October, 2019. For ready reference court order dated 28<sup>th</sup> October, 2019 is reproduced below:

*"2. The learned counsels were heard at length. With the consent of the parties, the petitioner company will deposit 50% of the license renewal fee on or before 25-11-2019. The deposit would be subject to final adjudication of this petition."*

3.1.3 In this regard it is relevant to point out that during the course of hearing and in light of court order dated 2<sup>nd</sup> December, 2019, a demand note dated 24<sup>th</sup> December, 2019 was issued wherein the licensee was required to make payment of LPAF and due to delay in making payment SCN was issued to the licensee. Though the licensee assailed SCN as well as Authority's order dated 20<sup>th</sup> July, 2020 before the Honorable Islamabad High Court no adverse order to demanding LPAF was passed. Meaning thereby, the demand of LPAF is with consonance of the applicable legal framework. Moreover, in the consolidated judgment dated 21<sup>st</sup> August, 2024 neither observation nor any direction for non-payment of LPAF has been passed. Thus, in such circumstances, the licensee's contention with regard to extension of time for making payment on account of renewal of license is not tenable.

3.1.4 More so, in light of the order dated 25<sup>th</sup> September, 2024 passed by the August Supreme Court of Pakistan, the licensee has also signed license on 4<sup>th</sup> October, 2024 with effective date i.e. 23<sup>rd</sup> October, 2019 without any modification of license terms and conditions pertaining to timeline for payment of renewal fee. Therefore, the licensee is under an obligation to deposit LPAF due to delay in making payment on account of license renewal fee. For the purpose of clarity, the relevant license condition is reproduced below:

#### ***"4.1 Payment of Fees***

*4.1.1 The licensee shall pay the initial license Fee (ILF), as per Appendix 2 amounting to USD 477,200,000 (US Dollars four hundred seventy-seven million two hundred thousand) or its equivalent in Pak Rupees to the Authority.*

*4.1.1.1 The initial License Fee shall be paid in US Dollars or its equivalent in Pak Rupees to be converted at the National Bank of Pakistan (NBP) Telegraphic Transfer (TT) selling rate prevailing on the day preceding the date of payment.*

*The Licensee may opt for 100% payment of the initial License Fee given in clause 4.1.1 of this License as a onetime upfront*

*payment before Effective Date of this License.*

*Pay 50% payment of the Initial License Fee given in clause 4.1.1 of the License before Effective Date of this License and the remaining 50% of the Initial License Fee shall be payable in 5 years in 5 equal annual installments with cumulative mark-up calculated at the rate of one year LIBOR rate+3% for the period from the Effective Date of the License to the payment date.*

*Additionally, the Licensee may pay the remaining balance of the Initial License Fee at any time before the end of 5 years, without any prepayment penalties. However, the markup at LIBOR + 3% shall be payable on the balance amount for the period from the Effective Date of the License or payment date of the last installment, whichever is later, to the payment date.*

*In case the LIBOR rate or NBP exchange rate issuance is discontinued by the issuing authorities / organizations during payment tenor under the License, rates announced by Ministry of Finance, Pakistan or State Bank of Pakistan in replacement of said rate shall be used with effect from the of its discontinuance. ”*

3.1.5 The said license conditions, clearly spell out all situations of making fees in installment or upfront. The eventualities for making payment have been annexed with the term “**Effective Date**”. The same has been defined in the license which means 23<sup>rd</sup> October, 2019. While signing license on 4<sup>th</sup> October, 2024, neither the term “**Effective Date**” nor license condition with regard to payment of fee has been modified. In addition, the said terms and condition of license as shared with the licensee through letter dated 17<sup>th</sup> October, 2019 are the same, which conspicuously shows the intent of the Authority that payment was due and payable on 23<sup>rd</sup> October, 2019. The contention of licensee for giving consent of making payment in light of court order cannot be considered to treat it as extension of time for making payment of license renewal fee.

3.1.6 Moreover, the assertion of the licensee that the SCN is against the procedure as laid down in Rule 9 of the Pakistan Telecommunication Rules, 2000 is totally incorrect exposition of law. The said rules only regulate the powers of the Authority under section 23 of the Act by requiring the Authority to pass orders. Thus, the Authority under the applicable legal framework is well within its power to issue SCN requiring the licensee to remedy the contravention.

#### **4. Order:**

4.1 In light of above referred factual and legal position, the Authority has reached to the conclusion that the licensee is required to make payment of USD 11,770,933 on account of Late Payment Additional Fee due to delay in making payment of license renewal fee.

Dated: 12<sup>th</sup> May, 2025

4.2 The Authority hereby directs the licensee deposit LPAF in US. Dollars or equivalent Pakistan Rupees at National Bank of Pakistan TT Selling rate prevailing on the day proceeding the date of payment within seven (07) days from the receipt of this order.

4.3 In case of failure to comply with para 4.1 and 4.2 above, legal proceedings will be initiated against the licensee as per applicable law. \

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

**Muhammad Naveed**  
Member (Finance)

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

Signed on 12<sup>th</sup> day of May, 2025 and comprises of (09) pages only.