



Enforcement order under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 in the case of CMPAK Zong

File No. PTA/Enf-Wireless/Complaints/4/2020/587

Date of Issuance of Show Cause Notice: 20th July, 2020
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 22nd 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 CMPAK Zong (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 23rd October 2004 (Renewal of License under process) and No. NGMS-01/WLL&M/PTA/2014 dated 21st May 2014 (the "licensee") 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 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 requires. In addition, Appendix 3 of the license prescribes the quality of service standards in detail manner and requires the licensee to take all reasonable and prudent measures to ensure that its 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, the licensee is under obligation to observe the provisions of the Act, the Rules, the Regulations, orders, determinations, directions and decisions of the Authority.

1.7 The Authority upon the receipts of complaints from the Honorable Parliamentarians and subsequent directions from the Public Account Committee with regard to degraded service quality and in order to ensure that users of telecommunication services get QoS standards as laid down in the license, conducted two surveys dated 19th and 20th July, 2019 and 6th and 7th August 2019 respectively in the vicinity of the Red Zone and Parliament Lodges, Islamabad.

1.8 Since, the above said QoS results were not within the parameters of the license terms and conditions and QoS Regulations and due to non-provision of the licensed services and non-maintaining the required standards of QoS KPIs, a Show Cause Notice (SCN) under section 23 of the Act on 20th 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 and to explain in writing within thirty (30) days of the issuance of this notice as to why the license should not be suspended, terminated or any other enforcement order should not be passed against the licensee under section 23 of the Act.

2. The licensee replied to the SCN vide letter dated 07.08.2020 and denied allegations as levelled in the SCN. Relevant contentions of the licensee as made in the SCN are 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 Annexure A of the QoS Regulations and also at variance with terms of license governing the QoS parameters. Further, that the voice

and data KPIs in the second Survey are completely compliant with the QoS parameters and no violation whatsoever has been made out with respect to said Survey.

2.2. The QoS Regulations only envisage measurement of KPI values for an entire city, rather than targeted testing in only one particular area/zone within a city. The QoS parameters prescribed under the terms of the License and the QoS Regulations, relate to an overall assessment of the relevant KPIs in the entire city and alleged contraventions of KPIs within subdivisions/areas within a city are not within the scope of the QoS Regulations. The SCN relates to alleged contraventions of QoS parameters within the Red Zone, Islamabad which is clearly not subject to inspection separately from the Islamabad city as a whole under the scheme of QoS Regulations. The Authority, by singling out the Red Zone to the exclusion of the rest of the City and measuring the QoS parameters in that area against the QoS parameters defined for the City under the relevant Regulations, has clearly acted without lawful authority.

2.3. A detail response to the survey report was submitted after 1st survey whereby Zong addressed the alleged shortcomings by conducting an inhouse testing on same routes as PTA's and the allegedly deficient in the First Survey, were not just satisfied but were above the required threshold and the same were shared with PTA Authority.

2.4. The licensee has taken remedial measures in response to the first survey conducted by PTA and once such remedial measures are taken to remove alleged shortfalls no further actions under Clause 8(7) of the QoS Regulations is envisaged.

2.5. 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

2.6. The SCN has been issued in violation of article 10 A 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 providing the right of hearing to the licensee.

2.7. 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.

2.8. 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

3. HEARING BEFORE THE AUTHORITY.

3.1 In order to proceed further the instant matter was fixed for hearing on 22nd September, 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 that same as submitted in reply to the SCN.

4. FINDINGS OF THE AUTHORITY:

4.1 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:

4.1.1 The Authority under the Act is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. 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.

4.1.2 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 provides that 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.

4.1.3 The licensee instead of taking tangible measures, submitted the detailed reply vide letter dated 22nd September, 2020 and denied allegations as levelled in the SCN. The licensee vide its reply objected on the methodology and procedure of survey conducted by PTA claiming that 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.

4.1.4 During hearing, on a verbal undertaking the licensee was granted an opportunity to submit a compliance report with respect to any shortfalls identified through the SCN dated 22nd September, 2020 and the same was submitted by the licensee company through an email dated 1st October, 2020 stating that the shortfalls in QoS parameters identified in the SCN have been removed and updated readings in line with the drive test methodology prescribed by the PTA have been highlighted.

Dated: 23rd September, 2021

4.1.5 Further the licensee vide email dated, 15th October, 2020 attached the site plan for installation of BTS towers in the Red Zone area and assured the Authority of its commitment to comply with the attached site plan. Pursuant to this email, a site was successfully aired on Parliament Lodges on 31st, December, 2020 and the Authority was informed the same through an email dated 1st January, 2021.

5. ORDER

5.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority hereby decided as under:

- a. Since the licensee has remedied the contravention by Optimization/On-Air Completion of the site bearing No. ID 50814, on 31st December, 2020 in Red Zone, therefore, the said Show Cause Notice stands disposed of accordingly.
- b. The licensee is hereby warned not to repeat such contravention in future, otherwise legal action will be taken as per applicable law.

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 23rd day of September, 2021 and comprises of (05) pages only.