



PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1 ISLAMABAD

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

No: PTA/Enf-Wireless/3-50/(QoS-QTR-IV)/43/2020/ 04

Show Cause Notice: 31st March, 2021
Venue of Hearing: PTA HQs, Islamabad
Date of Hearing: 19th July, 2021

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 QoS standards as laid down in the license"

DECISION OF THE AUTHORITY

1. BRIEF FACTS:

1.1 Precisely stated that Pakistan Mobile Communications Limited (PMCL) (the "licensee") is engaged in the business of cellular mobile services in Pakistan pursuant to non-exclusive licenses No. MCT-05/WLL&M/PTA/2007 dated 06th July, 2007, license No. NGMS-04/WLL&M/PTA/2014 dated 21st May, 2014 and License No. NGMS-06/WLL&M/PTA/2017 dated 29th June 2017 (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 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the "Act"), the Pakistan Telecommunication Rules, 2000 (the "Rules"), the Pakistan Telecommunication Authority (Functions & Powers) Regulations, 2006 (the "Regulations") the Cellular Mobile Network Quality of Service (QoS) Regulations 2011 (the "QoS Regulations") and the terms & conditions of the license.

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1.3 The Authority so as to ensure that users of telecommunication services get such QoS standards as laid down in the license and QoS Regulations, conducted a survey in 4th quarter of 2020 from 24th November, 2020 to 11th December, 2020 at Kabir Wala, Hyderabad, Islamabad, Lahore, Karachi, Peshawar and Quetta using "SmartBenchmarker" QoS Tool. Thereafter, for removal of the shortfalls, PTA vide letter No. PTA/Enf/Enf-Wireless/3-50(QoS-QTR-IV)/2020(1) dated 28th December, 2020 forwarded the results to the licensee with the direction to submit a detailed report containing analysis of each non-compliant parameter, reasons and corrective measures taken to redress the degraded service quality issues within 30 days of the issuance of the said letter.

1.4 However, the licensee failed to comply with Authority's directions concerning removing the shortfalls communicated vide letter No. PTA/Enf/Enf-Wireless/3-50(QoS-QTR-IV)/2020(1) dated 28th December, 2020 and to submit detailed report containing analysis of each non-compliant parameter, reasons and corrective measures taken to redress the degraded service quality within the stipulated period of 30 days. The licensee after the lapse of two months and fourteen days submitted belated reply vide letter dated 11th March, 2021 in response of the aforesaid directions of the Authority, and perusal of the reply revealed that the licensee did not take any corrective measures to remove the shortfalls.

1.5 Due to failure on the part of the licensee for maintaining the required standards of quality of service as per clause 1.3 of the Appendix-3 of the license, a Show Cause Notice (SCN) under section 23 of the Act was issued to the licensee wherein the licensee was required to remedy the aforementioned contravention by bringing and maintaining the required standards of quality of service within fifteen (15) days of the issuance of the SCN and also explain in writing, within thirty 30 days of the issuance of the SCN.

2. The licensee replied to the Show Cause Notice vide its reply dated 29th April, 2021 and denied all allegations provided in the SCN. For ready reference, relevant portion of the reply is reproduced below:

- (a) *"The measurement issues, that arise solely due to moving the goalpost by an unannounced and secretive use of the new Benchmarker Tool instead of the agreed NEMO-DT Tool agreed between the Authority and the Licensee, which measurement issues do not exist when measured using NEMO-DT, and*
- (b) *The network issues at the time of the survey, that existed for valid or customary operational reasons, but which now stand resolved, per the redrive test report attached herewith, and per the technical report / logs analysis report dated 11th March, 2021 filed with the Authority.*
- (c) *The Licensee invokes its right under regulation 8(7) of the Cellular Mobile Network Quality of Service (QoS) Regulations, 2011, for repeat testing using NEMO-DT, should the Authority not agree with this submission. The logs*

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analysis report was submitted within 30 days after the logs became decipherable. Due to the abrupt and unilateral change of test tool, post processing incompatibility of the survey logs resulted when the logs were run on the NEMO-DT Tool in use of the Licensee by consensus with the Authority.

- (d) *It is implicit in Regulation 8(7) of the QoS Regulations that the inspection report will be readily decipherable by the Licensee for the 30-day timeframe to run against the Licensee; it would be illogical and unreasonable to argue otherwise, and it would also be inconsistent with the "equitable" test under Section 6(b) of the Act. It is settled law that any regulation cannot be interpreted to yield an absurd result and to argue that the 30-day timeframe should start running even against an undecipherable inspection report would not stand the legal and equitable tests. Accordingly, the 30-day timeframe only commenced once the test logs were deciphered and the Licensee submitted the analysis report to the Authority vide letter dated 11th March, 2021, that is, within 30 days after PTA shared the information required to decipher the logs generated by the new tool.*
- (e) *The reasons for the Authority sudden shift to a new tool are not transparently visible. The Authority's power to choose a tool is conditioned by an equitable obligation of the Authority and legitimate expectations of the Licensee that the need to move to a new tool must be premised on objective and valid reasons and not be the result of an arbitrary and subjective choice that tends to favour a particular brand without compliance with public procurement legislation that the choice of a new tool must not take the Licensee by surprise by departing from a decade old settled choice of a QoS tool, and must also inspire confidence that the new tool and its measurement metrics are consistent with the Licensee's system and network design that is within the knowledge of the Authority.*
- (f) *The technical and concomitant commercial issues raised in the industry letter dated 19 February, 2021 and the Authority's reply thereto dated 18th March, 2021 remain unsettled, rendering the SCN premature.*
- (g) *The Authority conveniently side-stepped the questions and concerns raised in the industry's letter dated 19th February, 2021, which was written as a genuine expression of surprise and difficulty in deciphering the new metrics. The reply dated 18th March, 2021, by the Authority however focusses only on the technical compliance of the Smart Benchmarker tool with ITU standards, but conveniently ignores the key outstanding concerns*
- (h) *Consistent with its statutory obligations and international best practices, it would have been open, equitable, consistent and transparent in terms of Section 6(b) of the Act for the Authority to have initiated a consultation process with the industry before replacing the NEMO-DT Tool with the Smart*

Benchmarker Tool and issuing the SCN on the basis of the survey carried out with the new tool to the utter surprise and detriment of the Licensee.

- (i) *The SCN is void-ab-initio to the extent the survey is conducted by a unilateral change of test tool and, consequently, the measurement metrics. The abrupt and unilateral decision of the Authority to change the test tool from the hitherto used NEMO-DT to the Smart Benchmarker from Rohde & Schwartz is in stark violation of the various provisions of the Pakistan Telecommunication (Re-organization) Act, 1996, the delegated legislation thereunder and the terms of the licenses, for, inter alia:*

i) contravening Section 6(a) for ignoring the rights of the Licensee to use testing parameters aligned with the Licensee's network, whereby:

(a) the 3G network is currently enabled with NB in line with the Licensee's obligations. It is to be noted that the Licensee is planning to sunset 3G and this will not be an issue in the future, and

(b) as per 4G/NGMS standard, both WB and NB can be used depending on operator's discretion. The new tool measures MOS for 2G/3G based on POLQA SWB basis but as SWB codecs are not enabled in the network so the new tool it gives an incorrect depiction of the network.

ii) contravening Section 6(b) for being neither open nor consistent with the previous decision taken with industry consensus to use NEMO DT, and

iii) contravening Section 6(c), for having been taken without prior consultation with the Licensee.

- (j) *It is settled law that an institutional practice followed continuously and consistently by an institution for a considerable period of time creates its own binding force (2011 SCMR 408; PLD 1990 SC 612). Change of such settled institutional practice without advance notice and consultation with the Licensee where it has penal consequences for the Licensee would necessitate a prior consultation process with a reasoned decision by the Authority instead of a unilateral decision to "move the goalpost".*

- (k) *Further, the choice of NEMO-DT Tool was a policy decision made by the Authority in consultation with the industry, the policy being to use a common tool to prevent measurement mismatches. It is settled law that once a policy decision is implemented and the regulate has acted on the said policy, the doctrines of locus poenetiae and promissory estoppel become operative and prevent the policy decision being revoked or modified unilaterally and that too*

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without due and proper consultation with the affectee (PLD1991 SC 546; 1992 SCMR 1652).

- (l) *The Licensee is in full compliance with its licensed and regulatory obligations. Rather, the SCN results from a misreading and misapplication and therefore contravention of the provisions of the Act, the Rules, the Regulations, the licenses and the Authority's own settled procedures and practices since long, deviation wherefrom is not warranted without prior consultation with the Licensee.*
- (m) *The SCN is illegal and ultra vires in that the SCN, inter alia, deprives the Licensee of its Constitutional, legal and contractual rights, in particular that the licenses, the Act, the Rules and the Regulations must be administered in accordance with their terms and that the surveys and deliberations preceding the SCN be open, equitable, consistent, and transparent with due care and attention (good-faith test)''*

3. HEARING BEFORE THE AUTHORITY:

3.1 The matter was fixed for hearing on 19th July, 2020 before the Authority. Sardar Ejaz Eshaq Khan, Advocate Supreme Court of Pakistan (Legal Counsel), Mr. Mudassir Hussain (V.P, C.R.A), Mr. Mateen Durrani (Head of QoS), Mr. M. Asif Hameed (Expert QoS) and Ms. Fariha Khan (Manager Legal) attended the hearing on behalf of the licensee. The legal Counsel reiterated the same stance as expressed through its written reply to the SCN and pointed out that the licensee is always compliant to the regulatory laws as well as the license terms and conditions in true letter and spirit.

4. FINDINGS OF THE AUTHORITY:

Matter heard and record perused. After careful examination of record and hearing the arguments advanced by the licensee, following are the findings of the Authority:

4.1 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 conditions of cellular mobile license, the provision(s) of the Act, rules, regulations and directions of the Authority issued from time to time.

4.2 Section 21(4)(g) of the Act provides that the licensee is under obligation to provide telecommunication services to particular persons or areas to meet minimum standards for quality and grade of services requirement. With regard to monitoring and enforcing the license condition, clause 23.7 of part 6 of the Rules, QoS Regulations, the Authority with or without notice conducts its own

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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.

4.3 As per License condition 6.5.1, the licensee is required all the time to meet or exceed the Quality of Service standards described in Appendix-III of the license and QoS Regulations. However, as per the aforesaid QoS survey, the services of the licensee were found non-compliant to the QoS parameters laid down in the license and the QoS Regulations. It would be pertinent to mention here that as per clause 3.1.1 of the license, the license is subject to the terms and conditions contained in the license and to the provisions of Act, rules and regulations made thereunder by the Authority.

4.4 The contention of the licensee that QoS issues arose and are to be attributed due to a change in the QoS Monitoring and Benchmark Tool (i.e. "SMARTBENCHMARKER") rather than NEMO tool on the premise that such QoS issues do not exist when measured through latter, is not based on facts. Pursuant to license terms and conditions, the licensee is under an obligation to meet and exceed the QoS Standards as set out in the license, at all times. More so, there is no bar on the Authority to use a specific QoS tool for measuring the benchmarks as claimed by the licensee. In this regard it is relevant to point out that the functions of the "SMARTBENCHMARKER" are in full compliance with relevant ITU and ETSI standards i.e. ITU-T P.863 (POLQA Voice), ETSI TS 102 250 (i.e. speech and multimedia transmission quality QoS aspects for popular services in mobile networks) being followed globally. Furthermore, "SMARTBENCHMARKER" is capable to measure GSM, UMTS / HSPA+ and LTE technologies currently deployed in Pakistan and adhere to other variants such as VoLTE being deployed by the licensee. Thus, both "NEMO" and "SMARTBENCHMARKER" are ITU and ETSI compliant tools which are used for the measurement of QoS parameters.

4.5 Furthermore, under Appendix-III "Quality of Service" of the license, the licensee is solely responsible for meeting all PTA's regulations on QoS and relevant international standardization forums i.e. ITU, 3GPP and ETSI etc. Moreover, it is categorically mentioned in Appendix-III of the license against Mean Opinion Score (MOS) that, "as recommended by ITU-T and recommendations P.862.2 (PESQ), P.862.3 (POLQA) or latest ITU- T/relevant forum recommendations". POLQA is the global standard for benchmarking voice quality of fixed, mobile and IP based networks, standardized by the ITU-T as per Recommendation P.863 in 2011 and can be applied for voice quality analysis of VoIP, HD Voice, 3G, 4G/VoLTE and 5G networks. In the 4th Quarter 2020 QoS Survey, the MOS was measured using POLQA version 2.4 i.e. Super Wide Band. It is pertinent to mention here that Super Wide Band also measures the values of the speech spectrum left over by narrow band above 3400 Hz contrary to the claim of licensee that it deteriorates the quality. The issue lies with the licensee's network that needs to be upgraded. Different codecs both narrow band and wide band are used by licensee, which are required to be enhanced and optimized.

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4.6. As far as the licensee's contention regarding replacement of QoS Tool for carrying out QoS Surveys is concerned, it is clarified that similar points were raised through a joint industry letter dated 19th February, 2021. The same were thoroughly analyzed and a comprehensive reply was sent to CMOs vide PTA Letter No. PTA/Enf/Enf-Wireless/3-50(QoS-QTR-IV)/2021 dated 18th March 2021. Moreover, a special joint QoS Survey with licensee has also been carried out in Peshawar on 19th November 2021, to compare the performance of both "SMARTBENCHMARKER" and "NEMO" QoS Tools. During the survey, both the QoS Tools traversed the same route at the same time in a sequential manner. The survey revealed that "SMARTBENCHMARKER" QoS Tool procured by the Authority is calculating the QoS KPIs accurately.

5. ORDER:

5.1 Keeping in view the above-mentioned facts coupled with the available record, the Authority has reached to the conclusion that the licensee i.e. Pakistan Mobile Communication Limited (PMCL) has failed to comply with the Quality of Services **KPIs** in 4th Quarter 2020 survey in seven cities. More so, as a result of re-verification survey to ascertain the compliance of KPIs for QoS as conducted in two cities, the licensee has also been found non-compliant with regard to observing parameters of QoS. Thus considering the persistent contravention of license terms and conditions, a fine to the tune of **30 Million** in Pak Rupees is hereby imposed with the direction to pay the same within a period of one month from the date of receipt of this enforcement order.

5.2 The licensee is further directed to improve the quality of services of licensed services so as to meet or exceed the target value of QoS parameters as per the license standards and QoS Regulations.

5.3 In case of failure to comply with para 5.1 above, legal proceeding will be initiated against the licensee as per applicable law.

Maj. Gen. Amir Azeem Bajwa (R)

Chairman

Muhammad Naveed

Member (Finance)

Dr. Khawar Siddique Khokhar

Member (Compliance & Enforcement)

Signed on 14th day of January, 2022 and comprises of (7) pages only.