



THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF INFORMATION, COMMUNICATION
AND INFORMATION TECHNOLOGY
TANZANIA COMMUNICATIONS REGULATORY
AUTHORITY



Ref. No: EB.32/160/01/63

13th June, 2023

Chief Executive Officer,
Aptus Solutions Limited,
Plot No. 759/10 N.H.C, Azikiwe Street,
P. O. Box 21456,
11101 Dar es Salaam.

DECISION ON COMPLIANCE ORDER

(Pursuant to the Compliance Order hearing on 27th March 2023 at TCRA Head Quarters)

1. INTRODUCTION

- 1.1 On 28th day of February, 2022 Tanzania Communications Regulatory Authority (hereinafter referred to as the "Authority") issued to **Aptus Solutions Limited** (hereinafter referred to as the "Licensee"), a District Network Facility License to construct, install, maintain, operate, manage and make available of Network Facilities to other licensed electronic communication providers in Ilala, Kinondoni and Temeke, in the United Republic of Tanzania.
- 1.2 Among the licence conditions, the Licensee is obliged to comply with the relevant provisions of the acts, regulations, licence conditions, Authority's directives and any other law of Tanzania.
- 1.3 Pursuant to regulation 9(2) of Electronic and Postal Communication (Licensing) Regulation 2018, a District Network Facility Licencee is allowed to construct, install, maintain, operate, manage and make available of Network Facilities to other licensed electronic communication providers within three (3) Administrative Districts only.
- 1.4 Between December 2022 to January 2023, the Authority carried out an audit and assessment of its Application Service Licensees, who provide internet services including at Aptus Solutions Limited's sites and was revealed that, the Licensee

has rolled out fiber networks in Ilala, Kinondoni, Temeke and Ubungo Districts contrary to the scope of its District Network Facility License.

2. COMPLIANCE ORDER

On 31st March, 2031 the Authority issued a Compliance Order requiring the Licensee to submit a written explanation and appear before the Authority on **27th day of March, 2023 at 10:00am at 8th Floor** to show cause as to why legal and regulatory actions should not be taken against the Licensee for breach of the Law, Regulations and Licence Conditions.

3. COMPLIANCE ORDER HEARING

In compliance to the order, the Licensee appeared before the Authority on the date and time scheduled for the hearing represented by Mr. Hussein M. Waliji and Mr. Abdul Murtaza Moledina Finance Manager and Project Manager respectively.

4. LICENSEE'S DEFENCE

- 4.1 In defence, the Licensee admitted to hold a District Network Facility License which allows to construction of their Network within three Districts in Dar es Salaam Region and that the licensee has constructed in the said three Districts as per the scope of its licence. However, the Licensee further admitted to have mistakenly expanded to Ubungo District which is out of their license scope.
- 4.2 The Licensee submitted that, despite the mistake made, Ubungo was nonetheless their area of interest and that during presentation, the Authority advised them to construct Network in Temeke area as well, which they did. When questioned if the Licensee brought evidence showing that they were interested with Ubungo but the Authority advised them otherwise, non was provided and the Licensee was silent.
- 4.3 Adding more to their defence, the Licensee pointed out and submitted that there are number of operators who have built and are maintaining fibre optic cables but have neither acquired Network Facility License like them, nor are they found

on the Authority's Tanzanite Portal, which suggests that, either the Portal isn't up to date or such operators do not possess licences. On such situations, the Licensee called on the Authority to ensure that the law applies to everyone. The Licensee was asked to confirm as to whether the Licensee had informed other Licensees that they have been summoned to appear before the Authority for the breach of licencing conditions. The Licensee responded that they had not told anyone.

- 4.4 The applicability of the law as to who needs Network Facility Licence under the current legal provision, it was the Licensee's view that the definition of Network Facility is not clear and that the license in question is not at all required for fiber or to all the operators.
- 4.5 In that respect, the Licensee invited the Authority to consider their interpretation of the existing licensing provisions that, the fiber optic that has been built by the Licensee is for the Licensee's own use with no intention to provide services to third parties. With this position, the Licensee submitted that they were not required to have the Network Facility Licence.
- 4.6 The Licensee further elaborated to the Authority that, in their understanding, the Network Facility License is intended for service providers who build network with the intention of providing capacity to other operators, whereas, the last mile construction of fiber optic is for the purpose the Licensees' customers.
- 4.7 The Licensee pointed out to the Authority that, they were cooperative when audit was being carried out last year by the Authority as they shared the map of their network which included Ubungo District, something which to them signifies compliance.
- 4.8 In conclusion, the Licensee requested to be given time to upgrade their license from District Network Facility License to Regional Network Facility License.

5 CONSIDERATION OF LICENSEE'S DEFENCE

In consideration of Aptus Solutions Limited's defence, the Authority made the following observations: -

- 5.1 The Licensees has admitted to construct network facilities in Ubungo area which is beyond the scope of Licensee District Network Facility License. The Licensee admitted to be aware of the areas that allowed to operate by their licence, namely, Ilala, Temeke and Kinondoni.
- 5.2 The Authority revisited communications between the Licensee and the Authority done in the process of applying for Network Facility Licence and realise that the scope of the licence granted was as per the Licensee's own request and the Authority did not impose in the Licensee areas that were not requested for.
- 5.3 The Authority considered the Licensee defence that, Network Facility License is to be sought by those who intend to construct Network for the purpose of leasing capacity to other operators. This is found by the Authority to be a total misconception and the Licensee would have been advised otherwise when he applied for District Network Facility License, had this been the position of the law.
- 5.4 Claims by the Licensee that, enforcement by the Authority has been conducted to the Licensee them alone and not to other operators with similar breaches, the Authority affirms that no operator is above the law and that enforcement touched every licensee, the same way that the audit and assessment did.

6 DECISION

In giving this decision, the Authority has taken consideration of the licensee's non-compliance, their defence and the fact that the Licensee is an experienced operator well aware of the requirements of law and license conditions.

Further, the Authority considered the fact that, this is a repeated breach of law as on 2nd September 2022 the Licensee was found in breach of law and license conditions by utilizing radio frequency spectrum without licence.

NOW THEREFORE by virtue of Section 48(3) of the Tanzania Communications Regulatory Authority Act (Cap 172 of Laws of Tanzania), the Authority hereby issues orders to Aptus Solutions Limited as follows:

- 6.1 To pay a fine of Five Million Tanzania Shillings Only (5,000,000/=) for having constructed fiber optic cables in Ubungo District without a license from the Authority contrary to Law, Regulations and License conditions;
- 6.2 To make an application to upgrade their license if they so desire to continue with operating network facility in Ubungo District; and
- 6.3 To comply with the above orders within thirty (30) days from the date of this decision.

TAKE NOTICE that, upon failure by Aptus Solutions Limited to implement the above orders, further legal and regulatory action will be taken against Aptus Solutions Limited without further notice.



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Dr. Jabiri K. Bakari
DIRECTOR GENERAL

Order served upon and received by **Aptus Solutions Limited** on this.....13th day of.....June.....2023.

Name:ABDUL MURTAZA MOLEDINA.....

Signature:.....

Designation:PROJECT MANAGER.....



(This Order is issued in duplicate. Sign both copies and retain your copy while the other copy is to be returned to the Authority to authenticate due service of the Order.)