



PAKISTAN TELECOMMUNICATION AUTHORITY  
Headquarters, F-5/1, Islamabad

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

No: PTA/Wireless Lic/CMPAK/102/2020

Date of Show Cause Notice: 11<sup>th</sup> March, 2020  
Venue of Hearing: PTA HQs, Islamabad  
Date of Hearing: 20<sup>th</sup> November, 2020  
2<sup>nd</sup> December, 2020

**Panel of Hearing**

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

**DECISION OF THE AUTHORITY**

This enforcement order seeks to dispose of Show Cause Notice dated 11<sup>th</sup> March, 2020 (the “SCN”) issued to China Mobile Pak Limited for unauthorized and illegal use of Radio Frequency Spectrum in 1800 MHz band ranging from 1755.7-1762.3 /1850.7-1857.3 MHz (6.6 + 6.6 MHz) after 22<sup>nd</sup> October, 2019.

1. **Facts of the Case:**

1.1 Precisely, the relevant facts for disposal of the instant SCN are that the Pakistan Telecommunication Authority (the “**Authority**”) renewed the non-exclusive license (originally granted by Government of Pakistan on 19<sup>th</sup> April, 1990 and revalidated by the Authority on 12<sup>th</sup> August, 1997) of Paktel Limited, which was subsequently renamed as China Mobile Pak Limited (the “**CMPak Ltd**”) in year 2007, vide license No. CMT-03/LL&M/PTA/2004 dated 23<sup>rd</sup> October, 2004 (the “**license**”) for a period of fifteen (15) years under the Mobile Cellular Policy, 2004 (the “**2004 Policy**”) to provide licensed cellular mobile services in Pakistan on the terms & conditions contained in the license. The license was associated with 2 x 13.6 MHz of Radio Frequency Spectrum in 900MHz and 1800MHz bands in the following manner:

- a. 882.5 - 890.1 MHz / 927.5-935.1 MHz (7.6 + 7.6 MHz)
- b. 1739.7 – 1745.7 MHz / 1834.7 – 1840.7 MHz (6 + 6 MHz)

1.2 In year 2007, CMPak Ltd reported interference in its 900 MHz EGSM band at multiple border areas/locations in Punjab and Sindh provinces. Soon after reporting of the issue of interference by CMPak Ltd, the matter was referred to the Frequency Allocation Board (“FAB”). It was found by the FAB that the interference experienced by CMPak Ltd was due to the Indian CDMA (Code Division Multiplexing Access) network services in 850 MHz band operational across the eastern border of Pakistan. Moreover, it was also identified that the interference was intermittent and weather related and mostly due to tropospheric ducting effect.

1.3 Since CMPak Ltd had been receiving interference from the Indian CDMA networks and no cooperation was received from the Indian Administration, therefore, it was decided vide 30<sup>th</sup> meeting of FAB dated 08<sup>th</sup> September, 2007 to assign temporary additional spectrum of 6.6 + 6.6 MHz in 1800 MHz band to CMPak Ltd to be used only within the affected areas of Punjab and Sindh. The assignment of additional spectrum to CMPak Ltd by FAB was initially for one year and then it was extended for 03 years vide 33<sup>rd</sup> FAB’s meeting dated 29<sup>th</sup> February, 2008. Subsequent, it was extended with the same frequency as under till 2016.

- a. Sindh (interference affected Karachi & Hyderabad area)  
1760.1 – 1766.7 (Uplink)  
1855.1 – 1861.7 (Downlink)
- b. Punjab (interference affected border areas)  
1769.3– 1775.9 (Uplink)  
1864.3 – 1870.9 (Downlink)

1.4 In 2016, through 42<sup>nd</sup> meeting of FAB dated 19<sup>th</sup> February, 2016, the previous temporary additional assignment i.e. 1760.1 – 1766.7/1855.1 – 1861.7 for interference affected Karachi & Hyderabad areas and 1769.3 - 1775.9/1864.3 – 1870.9 for interference affected border areas of Punjab was cancelled/withdrawn and new frequency spectrum ranging from 1755.7-1762.3/1850.7-1857.3 MHz (6.6 + 6.6 MHz) was assigned for utilization only in the areas affected by cross border interference due to Indian CDMA signals in Punjab and Sindh, *inter alia*, with a condition that additional assignment will be till expiry of CMPak Ltd’s 2G (GSM) license i.e., October, 2019 or elimination of cross border interference whichever is earlier. The relevant decision of 42<sup>nd</sup> meeting of FAB about assignment of additional spectrum was communicated to CMPak Ltd vide FAB’s letter dated 11<sup>th</sup> March, 2016. For ease of reference, the relevant portion of FAB’s letter dated 11<sup>th</sup> March, 2016 is reproduced below:

- a. *M/s CMPAK will re-tune their previous temporary assignments to 1755.7-1762.3 / 1850.7-1857.3 MHz (6.6 + 6.6 MHz) with immediate effect. The temporary additional assignments will be utilized by M/s CMPAK in areas affected by cross border interference due to Indian CDMA signals in Punjab and Sindh till the expiry of 2 (GSM) license i.e. Oct 2019 or elimination of cross border interference whichever is earlier.*

- b. *M/s CMPAK will use the said frequencies for cellular services within the provisions of license issued by the PTA.*
- c. *M/s CMPAK will not deploy any non-tuneable equipment in the DCS (1800 MHz) Band and should re-tune their temporary additional assignments in future if so required.*

In furtherance to FAB's letter dated 11<sup>th</sup> March, 2016 and in compliance with 42<sup>nd</sup> meeting of FAB, the Authority vide letter dated 3<sup>rd</sup> May, 2016 also informed CMPak Ltd that ***“renewal of 2G license (on 22<sup>nd</sup> October, 2019) will be only offered with un-interfered portion of 900 MHz band if available.”***

1.5 As evident from the above facts, the assignment of additional spectrum in 1800 MHz to CMPak Ltd was only to be remained available till 22<sup>nd</sup> October, 2019. However, CMPak Ltd continued to use/utilize the temporary additional spectrum of 6.6 MHz (i.e. 1755.7-1762.3 / 1850.7 - 1857.3 MHz (6.6 + 6.6 MHz) in 1800 MHz bands unauthorizedly and illegally. As a result of unauthorized use of radio frequency spectrum, the Authority finally issued SCN under section 23 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the **“PTR Act”**) to CMPak Ltd whereby CMPak Ltd was required to remedy the aforementioned contravention by closing usage of temporary additional spectrum i.e., 1755.7 - 1762.3/ 1850.7 - 1857.3 MHz (6.6 + 6.6 MHz) forthwith and submit a compliance report within three days of the receipt of the SCN and also to explain in writing, within thirty (30) days of the issuance of the SCN as to why CMPak Ltd's license should not be suspended, terminated or any other enforcement order be passed against CMPak Ltd under section 23 of the PTR Act.

1.6 CMPak Ltd replied to the SCN on 10<sup>th</sup> August, 2020 and denied allegation(s) levelled in the SCN. For ready reference, relevant paragraphs of reply of CMPak Ltd to the SCN are reproduced below:

*1. That, 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.*

2. *That, the subject matter of the Notice is sub-judice since Licensee has already assailed it in a Writ Petition 3626 of 2019 (the "WP"), thereby the instant Notice stands violative and against the content of the injunctive orders of the hon'ble Islamabad High court, Islamabad, (the "High Court") dated 21.10.2019, 23.10.2019, 25.11.2019, 02.12.2019, 27.01.2020 and 24.02.2020, wherein the Pakistan Telecommunication Authority has been arrayed as a respondent, henceforth the instant Notice stands contemptuous, void and illegal.*

3. *That the Authority can only issue SCN on account of violation of Act (rules and regulations made thereunder and terms and conditions of license. The SCN under reply fails to disclose any violation of Act and terms and conditions of license as is required to be dismissed on this score alone.*

4. *That the Answering Respondent has a legitimate expectancy use the additional assignment since the original spectrum allocated was interfered and the Authority/ FAB has failed to perform their statutory duty to eradicate interference. The allocation of additional assignment did not compensate for the losses suffered by the Answering Respondent and therefore any decision to withdraw the additional assignment will be un-just and will render the Answering Respondent as uncompetitive.*

5. *That the Authority is obligated by the Act to promote fair competition in the market. The SCN and the directions contained therein have placed the Answering Respondent at a disadvantage and is aimed at distorting the market equilibrium. Therefore the SCN is merely a colorful exercise of Authority aimed at giving advantage to other telecom operators without addressing the root cause i.e. interference in the spectrum allocated to Answering Respondent.*

6. *That for sake of brevity the contentions, arguments, facts and objections agitated by the answering Respondent in W.P are hereby by reiterated and incorporated by reference.*

7. *It is noteworthy that since the very inception of the grant of License in 2004 to the then PAKTEL, there was persistent cross border interference in the use of E-GSM (Extension –Global System for Mobile) band in Punjab and Sindh utilizing the radio frequency / spectrum 900 MHz (882.5MHz – 890.1 MHz uplink and 927.5 MHz -935.1 MHz downlink) (the "Interfered Spectrum"), whereas, fairness and obligation demand the clean, unfettered spectrum for all competitors to ensure level field without discrimination, It is ignored that millions of US dollar was paid for uninterrupted / unfettered / non-interfered use of allocation in the 900 MHz band. This very fact of interference was accepted by PTA and Frequency Allocation Board (The "FAB") and the Licensee was granted additional compensatory spectrum to counter the operational as well as quality of service issues. Apart from the mandatory requirement and conditions placed upon the Licensee by Clause 1.2 of the License, the Licensee was also required "to all time meet or exceed the*

*quality of service described in Appendix 3 and such other quality of service standards as the Authority may, by regulation require". Needless to mention that Licensee had put in a heavy investment for the utilization of additional spectrum which could be avoided if the allotted spectrum was clean.*

8. *The Licensee is a law abiding company and neither the Licensee has contravened any term and condition of its license nor failed to comply with any provision of Act, Rules, regulations and / or SOPs neither a Show Cause Notice could be issued to a licensee, including the company, for contravention, if any, of the Regulations and / or SOPs. There is also no legal justification for issuing the instant Notice since the matter is sub judice. The Licensee's license No.CMT-03/LL&M/PTA/2004, dated 23.10.2004 expired on 22.10.2019 and it is on the basis of the High Court's earlier interim orders that the Licensee continues to provide licensed services to its consumers and is occupying and utilizing the "Interfered Spectrum", and also the temporary additional spectrum;*

9. *Temporary additional spectrum by the Licensee cannot be differentiated and separated from each other for the initiation of any legal action against the Licensee. Hence without prejudice, either the Licensee is using and occupying both the spectrums against the law, unauthorized and without legal justification or no action can be initiated against the Licensee by the Authority or by any of the officers of the Authority with respect to usage of any of the spectrums;*

10. *The Notice is therefore, contemptuous in nature, and has been issued against the facts on the record and law on the subject.*

11. *As of today the long outdated issue of interference still persists which has yet not been resolved and this very fact that temporary additional assignments to the Licensee due to cross border interference from India was reiterated by FAB in its communication dated 11.3.2016, while in PTA letter dated 3.5.2016, it was conveyed that renewal of 2G License (on 22.10.2019) will only be offered with un-interfered portion of 900 MHz band, turned out to be purely hypothetical as interference is still going on and licensee despite of interference showed the gesture of magnanimity and paid the 50% upfront of License fee.*

12. *Further, FAB in its letter dated 14.2.2019, acknowledged that the Licensee had been assigned "temporary additional assignment of 2x 6.6 MHz in 1800 MHz band in lieu of its interfered spectrum in 900MHz band in the affected areas of Punjab and Sindh" and highlighted that "the source of interference was across border from India (copies of the letters enclosed) and could not be resolved despite all efforts on several fronts". It was further communicated that the "installation of LTE systems by India, operating in Band -5 are likely to continue interference in 900 MHz (E-GSM) band of Licensee in future as well and that the said phenomenon was likely to worsen with further deployments by Indian Cellular operators."*

13. *As rest of the CMOs are assigned and enjoying the availability of interference free spectrum in 900 MHz Band, the Licensee, if is required to continue with the Interfered Spectrum only, without assigning it the compensatory temporary*

*additional spectrum, the Licensee's ability and capacity to compete with the rest of the CMOs will be highly and openly compromised for no wrong of the Licensee.*

14. *The Licensee's entitlement to the temporary additional spectrum or otherwise is sub-judice in W.P. No.3626/2019 before Islamabad High Court and the High Court has not only maintained the status quo through orders but also restrained PTA from passing any final order in this regard and no enforcement order can be passed by the Authority against the Licensee for the reasons explained in the foregoing paras of the instant reply to the Notice, Secondly, without prejudice to the above, a license can be suspended or terminated, under the provisions of section 23 of the Act, only if the alleged contravention is grave or persistent while the allegation contained in the Notice does not fall within the ambit of a grave or persistent contravention. Hence, reference to sub-clause (ii) of clause (c) of sub-section (3) of section 23 of the Act, in the Notice, is out of the context and is misplaced.*

15. *As the Notice is based on misconception and wrong understanding of the facts and the relevant laws, the Authority or the officer issuing the Notice is left with no justification or reason to pass any of the enforcement orders.*

1.7 It is noteworthy that issuance of SCN and its final adjudication thereof were halted due to certain litigation, which may be relevant to mention here. As a matter of fact, before expiry of license on 22<sup>nd</sup> October, 2019, CMPak Ltd filed W.P. No. 3626 /2019 titled "CMPak Ltd Vs FoP etc." before the Hon'ble Islamabad High Court, Islamabad praying therein, *inter alia*, that "PTA be directed to refrain from disturbing the additional compensatory spectrum utilized by the Petitioner on account of interference in 900 Band and allocated to it as far back as 2007, or charging any additional cost/amount for its continued use, utilization or in lieu of the same". While adjudicating on the application for interim relief in the aforesaid writ petition, the Hon'ble Islamabad High Court vide its interim order dated 21<sup>st</sup> October, 2019 directed to maintain status quo. Thereafter vide order dated 28<sup>th</sup> October, 2019, the Hon'ble Islamabad High Court directed that "till the next date fixed there will be no interference with the present arrangement and facilities already extended in favour of the Petitioner Company". However, later on, vide order dated 27<sup>th</sup> January, 2020, the Hon'ble Islamabad High Court allowed the Authority to proceed in accordance with law and to issue a show cause notice regarding vacation of spectrum but subsequently vide order dated 24<sup>th</sup> February, 2020, the Hon'ble Islamabad High Court restrained the Authority from passing final order in the show cause notice. Upon issuance of SCN, CMPak Ltd instead of filing reply to the SCN, initiated litigation firstly before the Authority and thereafter, before the Hon'ble Islamabad High Court in the form of FAO No. 76/2020. Upon disposal of aforesaid litigation, CMPak Ltd ultimately filed reply to SCN on 10<sup>th</sup> August, 2020. Thereafter, the Hon'ble Islamabad High Court vide its order dated 20<sup>th</sup> October, 2020 recalled its earlier injunctive order in W.P No, 3626.2019 and observed that FAB and the Authority would be at liberty to implement the Policy Directive dated 09<sup>th</sup> May, 2019.

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

2.1 In light of Court order dated 20<sup>th</sup> October, 2020, the Authority scheduled the hearing in the SCN on 13<sup>th</sup> November, 2020, however, upon the request of the legal counsel for CMPak Ltd, the hearing was adjourned for 20<sup>th</sup> November, 2020. On 20<sup>th</sup> November, 2020, Mian Muhammad Shafaqat Jan, Advocate Supreme Court of Pakistan (Legal Counsel for CMPak Ltd), Maria Ali Khan, Advocate/Associate, Mr. Ahmad Ibrahim (Director Legal) and Mr. Javaid Mokhtar (Senior - Manager Legal) of CMPak Ltd attended the hearing.

2.2 On 30<sup>th</sup> November, 2020, Mr. Salman Akram Raja, Advocate Supreme Court of Pakistan (legal Counsel for CMPak Ltd), during the course of hearing of W.P No. 3458/2020 titled “CMPak Ltd Vs FoP etc.” before the Hon’ble Islamabad High Court, requested to provide another opportunity of hearing before the Authority in connection with the SCN, which was acceded to on behalf of the Authority in the interest of justice and fair play. Accordingly, second hearing in the SCN was scheduled on 2<sup>nd</sup> December, 2020 in term of order dated 30<sup>th</sup> November, 2020 passed by the Honorable Islamabad High Court in W.P No. 3458/2020. On 2<sup>nd</sup> December, 2020, Mr. Salman Akram Raja, Advocate Supreme Court of Pakistan (Counsel for CMPak Ltd), Mr. Asad Ladha, Advocate, Mr. Farooq Raza, Director NP, Mr. Ahmad Ibrahim (Director Legal), Mr. Shoaib Niaz, Deputy Director EZE, Mr. Asif Razzaq, AM NP and Mr. Zhang Jun, DD NP, of CMPak Ltd attended the hearing.

2.3 On the first date of hearing, i.e. 20<sup>th</sup> November, 2020, Mr. Mian Muhammad Shafaqat Jan, Advocate Supreme Court of Pakistan argued by reiterating the stance mentioned in the reply to SCN. The thrust of his arguments was that SCN is premature and contemptuous in view of pending litigation in the form of W.P No. 3626/2019; the SCN is illegal and void as the same does not disclose any violation of Act, Rules and terms and conditions of license; the SCN is against procedure as laid down in Rule 9 of Telecom Rules, 2000; CMPak Ltd has legitimate expectation to use the additional assignment and withdrawal thereof would be anti-competitive and place CMPak Ltd in a disadvantage position *vis-à-vis* other operator in the market. On conclusion of arguments, the Director Legal, CMPak Ltd requested the Authority not to pass any order in the SCN till the receipt of written order dated 20<sup>th</sup> November, 2020 passed by the Hon’ble Islamabad High Court in W.P No. 3626/2019 and W.P No. 3458/2020.

2.4 On the second date of hearing, i.e. 2<sup>nd</sup> December, 2020, Mr. Salman Akram Raja Advocate Supreme Court of Pakistan made oral submissions in support of CMPak Ltd’s stance. After conclusion of submissions, Mr. Salman Akram Raja, ASC requested for some time to submit written submissions and the same was allowed till 7<sup>th</sup> December, 2020. Accordingly, the written submissions on behalf of CMPak Ltd, were received in PTA on 7<sup>th</sup> December, 2020. In the written submissions, certain aspects have been raised beyond the assertions made in reply to the SCN, however, in the interest of justice same have also been examined.

2.5 Briefly, the oral and written submissions by Mr. Salman Akram Raja, ASC are that the portion of 900MHz band assigned to CMPak Ltd is affected with interference; it is duty of FAB

and PTA to make available interference free spectrum, which they have failed; CMPak Ltd has legitimate expectation that its license would simply be renewed on the existing terms and conditions; FAB has failed to perform its duty/mandate regarding making options in terms of Policy Directive dated 9<sup>th</sup> May, 2019 to CMPak Ltd in lieu of cross border interfered spectrum in 900MHz band in true letter and spirit; options offered by PTA/FAB were without considering any financial or operational aspects of CMPak Ltd business, including but not limited to, sunk costs and investment loss, customer churn, service loss, additional investment required for upgradation of networks etc. Mr. Salman Akram Raja, ASC has further made reference to FAB's letter dated 3<sup>rd</sup> September, 2019 and submitted the proposals forwarded by FAB could not amount to concrete options and the same was even withdrawn due to lack of consensus between the PTA and FAB and argued that no concrete option has been given to CMPak Ltd in term of clause "viii" of Policy Directive dated 9<sup>th</sup> May, 2019; that Government of Pakistan shall give assurance that new proposed spectrum band is and shall remain free from interference and guarantee be given in the form of undertaking that compensation be given in case of breach; raised the issue of propagation characteristic of 900MHz band as compared to 1800MHz band; stated that networks built using 1800 MHz will require many more sites to provide a specified level of coverage than those built using 900 MHz, resulting in substantially higher initial costs; made reference to the decision of Authority dated 22<sup>nd</sup> July 2019 regarding renewal of mobile cellular license wherein the classification of bands have been addressed as Coverage Bands (below 1000 MHz) frequency bands e.g. 700, 800, 850 and 900 MHz and Capacity Bands (1800, 2100, 3500, etc.).

2.6 Since the Hon'ble Islamabad High Court vide its order dated 20<sup>th</sup> November, 2020 passed in W.P No. 3458/2020 titled "CMPak Ltd Vs FoP etc." directed the Authority to seek expert advice from FAB in connection with adjudication/disposal of the issue, therefore, FAB was requested to depute its representative to attend the hearing before the Authority. Accordingly, the representative of FAB namely Mr. Imran Zahoor, Director (SP&M-II), FAB attended both hearings held on 20<sup>th</sup> November, 2020 and 2<sup>nd</sup> December, 2020. Thereafter, FAB has been requested by Authority vide letter dated 9<sup>th</sup> November, 2020 for expert advice. Accordingly, FAB has been pleased to give its expert opinion vide its letter dated 11<sup>th</sup> December, 2020. The conclusion of FAB's advice is as under:

*"The Board has completed its tasks assigned to it through Policy Directive of the Federal Government (09th May 2019). Upon regret of CMPak and its desire to renew its licensed spectrum (2 x 13.6 MHz), the Board re-affirmed its decision of 42<sup>nd</sup> Meeting, in line with provision viii of the Policy Directive, by withdrawing the temporary additional assignments upon expiry of CMPak license i.e. 22<sup>nd</sup> October 2019."*

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

3.1 After careful examination of the contents of the SCN, CMPak Ltd's reply to the SCN including oral submission made on behalf of CMPak Ltd during both hearings on 20<sup>th</sup> November, 2020 and 2<sup>nd</sup> December, 2020 and considering the written submissions dated 7<sup>th</sup> December, 2020 in the light of relevant provisions of law and having scrutinized the entire record, findings of the Authority are as under:

3.1.1 At the very outset, it is apt to firstly deal with the argument that there is no violation of provisions of PTR Act, Rules and terms of license on the part of CMPak Ltd justifying the issuance of the SCN. In this respect, reference is made to section 31(1)(n) of PTR Act which provides that "*making unauthorized use of the radio frequency spectrum where authorization from the Board is required*" is an offence. Further, section 21(4)(a) of the PTR Act, clause 8.1 of the Appendix B of the Telecom Rules, 2000 provides that the licensee shall observe the provisions of the license, the Act and Rules and Regulations. The clause 3.1.3 of the license provides that "*...The Licensee shall comply with all orders, determinations, directives and decisions of the Authority*". It is matter of record that there were clear directions of the Authority that additional spectrum in 1800 MHz band is to be utilized till 22<sup>nd</sup> October, 2019 and thereafter it has to be vacated. CMPak Ltd, by continued utilizing/using the additional spectrum beyond 22<sup>nd</sup> October, 2019, has not only violated the provisions of PTR Act, but also the terms of its license. Radio frequency spectrum is a scarce resource, which cannot be used/utilized without authorization. Hence, the Authority was well within its power to issue the SCN. Further, the assertion that the SCN is premature and contemptuous in view of pending litigation in the form of W.P No. 3626/2019 is totally misconceived as the Hon'ble Islamabad High Court vide its order dated 20<sup>th</sup> October, 2020 has recalled its injunctive order and allowed the Authority to proceed in accordance with law. Moreover, the assertion that the SCN is against procedure as laid down in Rule 9 of Telecom Rules, 2000 is totally incorrect exposition of law. The said Rule only regulates the powers of the Authority under section 23 of the PTR Act by requiring the Authority to pass order(s). Thus, the Authority under the applicable legal framework is well within its power to issue SCN requiring CMPak Ltd to remedy the contravention.

3.1.2 Regarding the assertion that no proper options had been made to CMPak Ltd, it is stated that considering the fact that assignment of additional spectrum in 1800 MHz to CMPak Ltd was to be remained available till 22<sup>nd</sup> October, 2019, certain options were offered to CMPak Ltd in lieu of its affected portion of 900 MHz band by FAB and the Authority considering all relevant aspects. In this respect, it is to be noted that initially a meeting of relevant officials of the Authority and FAB with CMPak Ltd was held on 8<sup>th</sup> February, 2019, the minutes of meeting whereof were circulated vide FAB's letter No. FAB/U-4/2018 dated 14<sup>th</sup> February, 2019. In the said meeting, three proposals were presented to CMPak Ltd for resolution of subject matter. After the issuance of Policy Directive dated 9<sup>th</sup> May, 2019, the Authority vide its letter dated 29<sup>th</sup> August, 2019 while making reference to previous

correspondences on this matter, made it clear to CMPak Ltd that *“either of the option has to be accepted but no compensation for additional spectrum can be granted as conveyed through Board decision and GoP Policy Directive”*. The Authority vide its letter No. PTA/Licensing/CMOs/Renewal/30/2018 dated 2<sup>nd</sup> October, 2019 circulated the options shared with CMPak Ltd and it was specifically stated therein that ***“In this regard options shared during meeting held at PTA on 1<sup>st</sup> Oct 2019 are also attached for consideration and timely conclusion in the light of Policy Directive and Board decision”***. However, CMPak Ltd did not opt for any of the offered options and insisted on retention of its original spectrum holdings in 900 MHz band (7.6MHz) and 1800 MHz band (6MHz) making a total of 13.6 MHz and also the temporary additional band in 1800 MHz (2 x 6.6 MHz) as evident from CMPak Ltd’s letters dated 11<sup>th</sup> December, 2018, 14<sup>th</sup> February, 2019 (both addressed to FAB) and Authority’s letter No. PTA/Licensing/CMOs/ Renewal/30/2018/283 dated 17<sup>th</sup> October, 2019 wherein it has been stated that ***“Mr. Kamran Ali, Chief Legal and Regulatory affairs CMPak, appreciated the role of PTA and FAB HQs for continuously engaging on the issue. However, he reiterated that CMPak intend to keep the status quo i.e: existing assignments including compensation spectrum”***. Ultimately, the matter was taken up before the 44<sup>th</sup> meeting of FAB dated 21<sup>st</sup> October, 2020 with single agenda item regarding renewal of cellular mobile spectrum of CMPak Ltd -2019 to 2034. The 44<sup>th</sup> meeting of FAB re-affirmed the decision of 42<sup>nd</sup> meeting of FAB regarding non-assignment of additional spectrum in 1800 MHz band as compensation for interference. The relevant portion of 44<sup>th</sup> meeting of FAB is as under:

*“M/s CMPak to be offered 2 x 7.6 MHz of their original licensed spectrum in 900 MHz band (882.5 – 890.1 /927.5 – 935.1 MHz) in light of para viii of Policy Directive of the Federal Government No. 2-4/2018-DT Dated 09<sup>th</sup> May 2019 and Para (4 (v)(d) of the Minutes of the Meeting of 42<sup>nd</sup> FAB issued vide No. FAB/U-I/2016 Dated 23<sup>rd</sup> February 2016 as M/s CMPak has confirmed their intentions to PTA to retain the said spectrum despite presence of some cross border interference from India in area of Punjab and Sindh (Karachi and Hyderabad)*

It was further decided in 44<sup>th</sup> meeting of FAB that *“the temporary frequency spectrum of 2 x 6.6 MHz (1755.7-1762.3 / 1850.7-1857.3 ) additionally assigned by the Board, its 42<sup>nd</sup> Meeting till the expiry of their license (22<sup>nd</sup> October 2019) to M/s CMPak shall stand withdrawn on the expiry of the license and the same shall be auctioned as provisions of Pakistan Telecommunication Re-Organization Act*

*1996 and in line with the Telecom Policy 2015 and Policy Directive of the Government at the relevant time”*

As a matter of record, it is relevant to point out that decision of 44<sup>th</sup> meeting of FAB was duly conveyed to CMPak Ltd by PTA vide its letter No. PTA/Licensing /CMOs/Renewal/30/2018/361 dated 2<sup>nd</sup> January, 2020. Despite all, CMPak Ltd remained adamant to use the additional frequency spectrum continuously without any authorization. It is evident from the conduct of the CMPak Ltd that it does not want to vacate 900 MHz band that is why all options made before and after the issuance of Policy Directive dated 9<sup>th</sup> May, 2019 have not been accepted by CMPak Ltd.

3.1.3 With regard to the assertion of having legitimate expectation by CMPak Ltd that assignment of additional spectrum would not be withdrawn, it is stated that the same is completely devoid of any substance. It was made crystal clear in 42<sup>nd</sup> meeting of FAB that assignment of additional spectrum was till expiry of GSM license i.e. 22<sup>nd</sup> October, 2019. The said decision was duly communicated to CMPak Ltd by FAB and PTA on 11<sup>th</sup> March, 2016 and 3<sup>rd</sup> May, 2016 respectively. In these circumstances, the issue of legitimate expectation does not arise at all. Further, CMPak Ltd did not challenge the decision of 42<sup>nd</sup> meeting of FAB before any court of law, meaning thereby that CMPak Ltd showed acquiescence to the decision taken in 42<sup>nd</sup> meeting of FAB. It is worthy to note that in written submissions, CMPak Ltd has alternatively sought a prayer that additional compensation spectrum be allotted for a period of three years. It is to note that through 42<sup>nd</sup> meeting of FAB, a period of about three years and seven months was granted. However, CMPak Ltd has failed to utilize the said period for making alternative arrangements. It has also been asserted that CMPak Ltd has legitimate expectation that its licence would simply be renewed on the same terms and conditions. The said submission has no force. The license of CMPak Ltd is being renewed within the assigned radio spectrum frequency (890.1 MHz / 927.5-935.1 MHz (7.6 + 7.6 MHz) and 1739.7 – 1745.7 MHz / 1834.7 – 1840.7 MHz (6 + 6 MHz) associated with its license in pursuance of 42<sup>nd</sup> and 44<sup>th</sup> meetings of FAB as CMPak Ltd declined to vacate its spectrum from 900MHz band.

3.1.4 Regarding the assertion that it is duty of FAB and PTA to make available interference free spectrum, it is stated that it is an established fact that portion of 900 MHz band is affected due to Indian CDMA signals within limited borders areas only. FAB has taken up matter with International Telecommunication Union (ITU) as well as Indian authorities, but of no avail. Thus, technically it is not possible to make the portion of 900MHz band completely interference free due to non-cooperation from India. As a result of non-cooperation on the part of Indian authorities, FAB offered additional spectrum to CMPak Ltd for the remaining period of license. Now at the time of renewal of license for another term of fifteen (15) years, it is fair and in fitness

of things that a clean and interference free spectrum be provided so as to resolve issue once for all unless the CMPak Ltd desires to keep the portion of interfered spectrum for a renewed period of license. With the continuous interaction / correspondences/ meetings and deliberations with all the concerned stakeholders including CMPak Ltd, it was made clear to CMPak Ltd about three years and seven months before the expiry of the license regarding withdrawal of the additional assignment of radio frequency spectrum. Hence, direction of withdrawal of spectrum was neither sudden not alien to CMPak Ltd.

3.1.5 Regarding the cost incurred and claim of compensation by CMPak Ltd on withdrawal of assigned additional spectrum, it is stated that at the time of assignment of additional spectrum for the first time in year 2007, it was clarified in PTA's letter dated 10<sup>th</sup> August, 2007 that "**on the decision of withdrawal of 1800 MHz additional spectrum there will be no cost implication.**" Further through 42<sup>nd</sup> meeting of FAB, it has been mentioned that "**If Zong opt to keep its original 2G assignments of 900 and 1800 MHz (2 x 13.6 MHz) at the time of renewal then Zong will not claim compensation in terms of additional assignments.**" (both these decisions have been referred in para 17 of the written submissions on behalf of CMPak Ltd).

3.1.6 Regarding the assertions of propagation characteristic of 900MHz band as compared to 1800MHz band, it is pertinent to mention here that one of the options offered to CMPak contains assignment of frequency spectrum in 850MHz band. It is an established fact that propagation characteristic of 850MHz band, such as coverage patterns, link budget, propagation loss and signal to noise ratio etc, are similar to that of 900MHz band. In the given facts and circumstances where spectrum for provision of cellular mobile services relating to the license of CMPak Ltd in Pakistan is only available in 850MHz band or in 1800MHz band, then FAB/Authority was constrained to offer spectrum in both bands to CMPak Ltd but CMPak Ltd did not show inclination to accept any of offered options.

3.1.7 The radio frequency spectrum is scarce resource and belongs to the people of Pakistan. The frequency spectrum is always assigned against some consideration. Since CMPak Ltd has been using/utilizing Frequency Spectrum in 1800 MHz band ranging from 1755.7-1762.3 / 1850.7-1857.3 MHz (6.6 + 6.6 MHz) unauthorizedly and illegally from 23<sup>rd</sup> October, 2019 onwards, therefore, CMPak Ltd is under an obligation to make payment for the period of unauthorized use of the aforesaid spectrum. The payment of said period is to be calculated at the rate of USD 29.5 Million per MHz for fifteen (15) years as fixed in the Policy Directive dated 9<sup>th</sup> May, 2019.

#### 4. **Decision of the Authority:**

In light of the foregoing discussion and findings, the Authority hereby concludes and decides as under:

4.1 The use/utilization of radio frequency spectrum by CMPak Ltd in 1800 MHz band ranging from 1755.7-1762.3 / 1850.7-1857.3 MHz (6.6 + 6.6 MHz) since 23<sup>rd</sup> October, 2019 onwards is unauthorized and illegal.

4.2 CMPak Ltd is hereby directed to vacate the Frequency Spectrum in 1800 MHz band ranging from 1755.7-1762.3 / 1850.7-1857.3 MHz (6.6 + 6.6 MHz) at the earliest but not later than seven (7) days from the date of receipt of this order and submit a compliance report thereof.

4.3 CMPak Ltd is liable to make payments for the period of unauthorized use of 6.6 MHz in 1800 MHz band at the rate of USD 29.5 Million per MHz for fifteen (15) years as fixed in the Policy Directive dated 9<sup>th</sup> May, 2019 including late payment additional fee as per applicable law.

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**Maj. Gen. Amir Azeem Bajwa (R)**  
Chairman

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**Muhammad Naveed**  
Member (Finance)

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

Signed on 14<sup>th</sup> day of December, 2020 and comprises of (13) pages only.