



PAKISTAN TELECOMMUNICATION AUTHORITY

Headquarters F-5/1, Islamabad

Phone: 051-9225315; Fax: 051-2878133; E-mail: arif@pta.gov.pk

<http://www.pta.gov.pk>

F. No. PTA/CA/CA-DTE/155/1/15-46/2021

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21 May 2021

Subject: Determination on Significant Market Power (SMP) Operators in Retail Fixed Broadband Market in AJ&K and GB

This is with reference to the Authority Hearing held on 23rd February 2021 on the subject matter and subsequent circulation of draft determination with the operators for their comments vide PTA's letter of even number dated 12th April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Retail Fixed Broadband Market in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB)". The same is enclosed for information, record and compliance (copy attached).
3. This letter is issued with the approval of the Authority.

Muhammad Arif Sargana
Director General (Commercial Affairs)

To:
Regulatory Heads of all Fixed-line Operators including SCO

Copy for information to:

1. DG (L&R), PTA
2. Director to Chairman, PTA
3. SO to Member (C&E), PTA
4. PS to Member (Finance), PTA



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21st May 2021

Determination of Significant Market Power (SMP) Operators in Retail Fixed Broadband Market in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB)

1. Background

- 1.1. Pakistan Telecommunication Authority (the “Authority”) under section 4 (1)(d), section 4(1)(m) and section 6(e) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”), the Azad Jammu & Kashmir Council Adaptation of Pakistan Telecommunication (Re-organization) Act, 2005 and the Northern Areas Telecommunication (Re-organization) (Adaptation and Enforcement) Order, 2006 (including amendment made from time to time) is mandated, *inter alia*, to; i) regulate competition in the telecom sector; ii) promote the availability of competitive telecommunication services; and iii) encourage fair competition in the telecommunication sector throughout Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB).
- 1.2. In order to regulate the matters related to competition, Rule 17 (1) of the Pakistan Telecommunication Rules, 2000 (the “Rules”) provides that an operator shall be presumed to have significant market power when it has a share of more than twenty-five percent (25%) of a particular telecommunication market. The relevant market for these purposes shall be based on sectoral revenues.
- 1.3. Rule 17 (2) further provides that the Authority, notwithstanding sub-rule (1) of the Rules, may determine that an operator with a market share of less than twenty-five percent of the relevant market has significant market power”. It may also determine that an operator with a market share of more than twenty-five percent of the relevant market does not have significant market power. In each case, the Authority shall take into account the operator’s ability to influence market conditions, its turnover relative to the size of the relevant market, its control of the means of access to customers, its access to financial resources and its experience in providing telecommunication services and products in the relevant market.
- 1.4. In line with the above-referred legal framework, the Authority initiated consultation with stakeholders and after detailed review, PTA vide its letter No. 15-46/16(CA)/PTA/155/2006 dated 3rd October 2016, issued Determination on Relevant Markets and declared Significant Market Power (SMP) Operators in Azad Jammu &

Kashmir (AJ&K) and Gilgit Baltistan (GB). In the said Determination, SCO was declared as SMP operator in Retail Fixed Broadband Market in AJ&K and GB.

1.5. The said SMP determination was challenged by Pakistan Mobile Communications Limited (PMCL) (Jazz) and Telenor Pakistan vide F.A.Os No. 111 of 2016 and No. 114 of 2016 respectively at the Honorable Islamabad High Court while PTCL challenged through Miscellaneous Appeal No. 46 of 2016 at Sindh High Court, Karachi. The Honorable Islamabad High Court vide its order dated 26th January 2018 remitted the matter to the Authority with a direction to decide the same after taking into consideration the procedural and statutory irregularities intimated by the appellants vis-à-vis Rules 17 and 26 of Pakistan Telecommunication Rules, 2000.

1.6. The Honorable Sindh High Court vide its order dated 21st February 2020 also disposed of PTCL's appeal and stated that:

“This Misc. Appeal has become infructuous because a new determination of SMP is in the process. The purpose of this appeal is achieved during four years of suspension of impugned order, therefore, it is dismissed having become infructuous along with listed application”.

2. Consultation Paper on SMP Review:

2.1. PTA issued a Consultation Paper (the “paper”) on identification of Relevant Markets and Significant Market Power (SMP) operators on 16th October 2019 and requested the stakeholders to furnish data, for the period covering from 1st January 2017 to 31st December 2017 and 1st January 2018 to 31st December 2018 in the prescribed formats given in the paper, so that total market size and market share of individual operators could be assessed for identification of relevant markets. Later on, the Authority also sought data for the period starting from 1st January 2019 to 31st December 2019. The paper proposed following products / services as well as geographic markets for the purpose of declaring as relevant markets:

S. No.	Relevant Markets	
	Product / Service Market	Geographical Market
Retail Level Markets:		
1.	Local Loop Fixed-line Telecom Market	3 Telecom Regions of AJ&K and GB
2.	LDI Fixed-line Telecom Market	AJ&K and GB
3.	Mobile Telecom Market	AJ&K and GB
4.	Retail Fixed Broadband Market	AJ&K and GB
Wholesale Level Markets:		
5.	Domestic Leased Lines Market	AJ&K and GB
6.	Call Transit Service Market	AJ&K and GB
7.	Broadband Access Market	AJ&K and GB
8.	IP Bandwidth Market	AJ&K and GB
9.	Individual Fixed Interconnection Market	AJ&K and GB
10.	Individual Mobile Interconnection Market	AJ&K and GB

2.2. Retail Fixed Broadband Market:

2.2.1. The Authority in its consultation paper proposed Retail Fixed Broadband Market as a relevant market and defined the market as provision of always-on internet connection through fixed line. In this market, broadband services are provided to end-users by means of various technologies like DSL, Cable, and Fiber etc.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in Fixed Broadband Market, the monthly rental revenues from the licensed services to subscribers, bandwidth capacity charges etc. are taken into account. For clarification purpose, revenues from sales of consumer premises equipment and installation charges (if applicable) are not included in the total revenue base.

3. Hearing held on 23rd February 2021:

3.1. PTA vide its letter No. 15-46/14(CA)/PTA dated 12th February 2021 issued Hearing Notice to all Local Loop (LL), Long Distance and International (LDI), and Cellular Mobile Operators (CMOs) to finalize "Determination on Relevant Markets and Significant Market Power (SMP) Operators in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB)". In order to proceed further, the matter was fixed for hearing before the Authority on 23rd February 2021. The representatives of Local Loop (LL), Long Distance and International (LDI), SCO, and Cellular Mobile Operators (CMOs) attended the hearing on the said date.

3.2. It is relevant to point out that despite sharing the draft determination, no response/comments have been received from the concerned operators within the stipulated time. In such circumstances and in light of available record, relevant market and SMP operators are being declared/determined in the Retail Fixed Broadband Market in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB).

4. The Operators' responses on Retail fixed Broadband Market and the Authority's Findings:

4.1. Although no comments from operators have been received, however, the Authority in line with the provisions of the Telecom Rules, 2000 has identified relevant markets including Retail Fixed Broadband Market for the purpose of determining and declaring SMP operator. Regulatory authorities of major countries i.e. Malaysia, Kingdom of Saudi Arabia, Qatar, and Thailand have identified separate markets for Retail Mobile Broadband and Retail Fixed Broadband due to significantly different characteristics and no substitutability based on the following grounds:

- mobile broadband services permit users to retrieve data while on the move and in

different locations, which is a fundamental deviation from fixed-line services that are only available at a particular location;

- fixed broadband services are generally considered to be more reliable and offer higher data transmission speeds than mobile equivalents;
- different pricing strategies are used by fixed and mobile broadband providers (e.g. higher data caps for fixed services etc.); and
- different cost structures underline fixed and mobile broadband provision

It is also pertinent to highlight that fixed broadband is provided through use of copper/DSL, FTTH, optical fiber etc. which is more reliable and secure along with internet speed and unlimited download facility. On the contrary, mobile broadband service is provided through use of spectrum which is scarce resource. Limited data packages are offered and internet speed is un-reliable in case of mobile broadband. Resultantly, fixed broadband cannot be termed as substitutable of mobile broadband.

5. The Relevant Market and SMP Operator:

5.1. Retail Fixed Broadband Market

5.1.1. For the purpose of declaring SMP Operators, the entire telecom market of AJ&K and GB is divided into different relevant markets on the basis of (i) geographical area and (ii) products / services offered in that particular market segment. Geographical market is based on the area where an operator is authorized to operate under its respective licenses.

5.1.2. Fixed Broadband services involve the provision of always-on internet connection with a download speed of at least 128/256 kbps connectivity. The broadband services are provided to end-users by means of various technologies like DSL, Cable, and Fiber etc. Although, the most common technology in AJ&K and GB is DSL, which makes use of the fixed telephone network but SCO is also deploying FTTH / GPON technology for broadband services. However, deployment of FTTH / GPON technology is confined to limited areas only.

5.1.3. Fixed Broadband technology i.e. DSL, FTTH etc. has inherited following differences than wireless based Mobile Broadband services.

Description	Fixed Broadband Features	Mobile Broadband Features
Technology	GPON, FTTH, DSL, Cable	3G / 4G LTE / VoLTE
Service	Reliable, being fixed	Insecure as signal varies from place to place
Download /Upload Speed	Consistent	Inconsistent

5.1.4. It has been observed that despite entrance of 3 new broadband operators i.e. Sky Telecom, Ittefaq Cable and Wi-Cloud in AJ&K and GB market, SCO still dominates the market. SCO is holding approximately 90% of Retail Fixed Broadband Market share in 2019 as compared to 75.4% share in 2018. It is pertinent to highlight that Rule 17 (1) states that an operator shall be presumed to be an SMP operator if it has more than 25% market share, however, in the instant case, SCO has market share of 89.6% for 2019.

Operator	Market Share	
	2018	2019
SCO	75.4%	89.6%

5.1.5. Regarding Rule 17(2), it is evident that SCO being an incumbent operator has the ability to influence market conditions by excessively increasing prices of its broadband services offered to its retail customers. Resultantly, majority of subscribers have no choice to switch to other operators due to limited network deployment and SCO has all the means to control its consumers.

5.1.6. Furthermore, SCO's turnover relevant to size of the relevant market clearly indicates that it has the control and ability to negatively or positively disrupt the market either by offering lower prices which can drive other players out of the market or higher prices which may hurt its retail consumers.

5.1.7. Keeping in view the foregoing, this market is identified as relevant market for the purpose declaring SMP operators.

6. The Authority's Determination of Relevant Markets and SMP Operators:

6.1. After detailed analysis and deliberations, the Authority hereby determines the relevant markets (Product / Services Market and Geographical Market) and declares SMP operators / licensees in the relevant market as under :

Relevant Markets		SMP Operator
Product / Service Market	Geographical Market	
Retail Level Market(s):		
Retail Fixed Broadband Market	AJ&K and GB	SCO

6.2. SCO is hereby declared as SMP in AJ&K and GB, *at para 6.1 above*, in Retail Fixed Broadband Market and directed to comply with the obligations and all other regulatory requirements, notifications, decisions and directions of the Authority issued from time to time.

Muhammad Naveed
Member (Finance)

Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Maj. Gen. Amir Azeem Bajwa (R)
Chairman

This Determination is signed on 21 day of MAY 2021 and comprises of 7 pages.