



PAKISTAN TELECOMMUNICATION AUTHORITY

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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 Wholesale IP Bandwidth 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 2nd April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Wholesale IP Bandwidth 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:

- a) LL Operators
- b) LDI Operators
- c) SCO
- d) CMOs

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 Wholesale IP Bandwidth 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 cost effective and 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 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 wholesale IP bandwidth 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 in the following manner:

“This Misc. Appeal has become infructuous because a new determination of SMP is in the process....”.

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 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. Wholesale IP Bandwidth Market:

2.2.1. The Authority in its consultation paper proposed IP Bandwidth market as a relevant market and defined as provision of wholesale IP Bandwidth to other operators for voice as well as data services. Furthermore, it was noted in the paper that SCO is primarily the dominant operator who is offering these services in AJ&K and GB whereas PTCL has limited presence in the region, therefore, the market should be identified as a relevant market for the purpose of declaring SMP operators.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in IP Bandwidth market, only the revenues earned by the operators from the provision of IP Bandwidth services are taken into account. For the purpose of clarification, only the revenues from the original rental or sale by the operator, and not the revenues from reselling of IP Bandwidth are considered.

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) for finalizing "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. Based upon receipt of comments/input from the stakeholders/relevant operators the matter was examined in depth and analysis for declaring/determining relevant markets/SMP operators in Wholesale IP Bandwidth Market is provided in the forthcoming paragraphs.

4. The Operators' responses on Wholesale IP Bandwidth Market and the Authority's Findings:

4.1. Comments on the Consultation Paper:

Although no comments were received from the operators, however, the Authority has observed that only SCO is providing Optical Fiber Cable (OFC) services in AJ&K and GB. On the other hand, PTCL has very limited presence in AJ&K and GB. SCO is providing IP Bandwidth services to all local loop, LDI and CVAS licenses. The Authority is of the view that dominance of one operator may result in charging of higher prices and depriving operators from reaping benefits of competition.

4.2. Comments on the Draft Determination:

Jazz comments: Telecommunications Policy 2015 issued by the Government of Pakistan envisaged that Competition Rules were to be developed by MoIT within six months in accordance with the Competition Act 2010 and that such rules will be “based on best international practice for markets with similar levels of competition to those evident in Pakistan”. It is also provided, inter alia, that “the test for SMP will be based on international best practices taking account of many ways in which a licensee may achieve and maintain such power.” The Telecommunication Policy 2015 elucidates further with respect to SMP regulation, but the defining principles are those mentioned above.

While the Competition Rules have been delayed, it is only reasonable and proper for the PTA to follow the principles set out in the Telecommunication Policy 2015 noted above. These require that the criteria set out in this definition be followed as this is set out in the Competition Act 2010 and is also consistent with international regulatory best practices as evident from the framework directive of the EU discussed in detail in our earlier submission and consistently followed thereafter.

Authority Findings: The Authority in exercise of its powers conferred under the applicable law for the time being in force read with the parameters laid down in the relevant rules and considering the analysis of relevant factors has initiated the process for determining/declaring relevant market and SMP operators. It is also relevant to point out that the whole exercise has been carried in consultation with all the stakeholders. It is pertinent to highlight that the Authority in accordance with applicable legal regulatory framework and after considering all relevant parameters has ascertained / declared relevant markets and determine SMP operators in Wholesale IP Bandwidth market.

More so, it is also relevant to highlight that scope/ mandate and applicability of telecom policy, 2015 is for the territory of Islamic Republic of Pakistan. The said policy is not applicable in AJ&K and GB on the premise that the same has not yet been adopted/ made applicable in the said territories. Nevertheless, it may be noted that despite the technicalities involved with regard to the applicability of the legal instruments the principles /parameters as laid down therein have been considered and analyzed in all aspects.

5. The Relevant Market and SMP Operator:

5.1. Wholesale IP Bandwidth 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. It has been found that SCO has approximately 100% market share on the basis of revenue data whereas Rule 17(1) of Telecom Rules, 2000 presumes an operator to have SMP power if it has more than 25% market share.

5.1.3. Regarding Rule 17(2), it is evident that since SCO is the dominant operator who is providing IP bandwidth services therefore it has the ability to influence market conditions by offering higher prices to other telecom operators. Resultantly, SCO has all the means to control its consumers as other operators have no choice but to acquire IP bandwidth services only from SCO due to limited presence of PTCL.

5.1.4. Furthermore, SCO's turnover relevant to size of the relevant market is 100% which clearly indicates that it has the control and ability to disrupt the market by charging higher prices which could not have been happened in case of presence of more operators.

5.1.5. Keeping in view the foregoing, wholesale IP Bandwidth 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	
Wholesale Level Market(s):		
Wholesale IP Bandwidth Market	AJ&K and GB	SCO

6.2. SCO is hereby declared as SMP operator in AJ&K and GB *at para 6.1 above*, in wholesale IP Bandwidth market and directed to comply with all obligations and all other regulatory requirements, notifications, decisions and directions issued by the Authority 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.