



PAKISTAN TELECOMMUNICATION AUTHORITY

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

23rd July 2021

Subject: Determination on Significant Market Power (SMP) Operators in Wholesale International Private Leased Line Market in Pakistan

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 1st April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Wholesale International Private Leased Line Market in Pakistan". 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) CMOs
- d) PTCL

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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Determination on Significant Market Power (SMP) Operators in Wholesale International Private Leased Line Market in Pakistan

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"), 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 Pakistan.
- 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 Pakistan. In the said Determination, Pakistan Telecommunication Company Limited (PTCL) was declared as SMP operator in wholesale international private leased line market in Pakistan.

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 Market 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	14 Regions of Pakistan
2.	LDI Fixed-line Telecom Market	Pakistan
3.	Mobile Telecom Market	Pakistan
4.	Fixed Broadband Market	Pakistan
Wholesale Level Markets:		
5.	Domestic Leased Line Market	Pakistan
6.	International Private Leased Line Market	Pakistan
7.	Call Transit Service Market	Pakistan
8.	Broadband Access Market	Pakistan
9.	IP Bandwidth Market	Pakistan
10.	Individual Fixed Interconnection Market	Pakistan
11.	Individual Mobile Interconnection Market	Pakistan

2.2. Wholesale International Private Leased Line Market:

2.2.1. The Authority in its consultation paper proposed wholesale international private leased line market as a relevant market and defined as telecommunications facilities which provide for transparent transmission capacity between network termination points through submarine as well as terrestrial cable systems and by other means. IPLL is used by an organization to communicate from one area to another that are geographically dispersed throughout the world. IPLL can be used for Internet access, business data exchange, video conferencing, and any other form of telecommunication.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in international private leased line market, only the revenues earned by the operators from the international leased line services shall be 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 international leased line shall be 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 Pakistan". 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), PTCL, Transworld Associates (TWA), 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 on draft determination, the matter was examined in depth and analysis for declaring/determining relevant markets/SMP operators in wholesale international private leased line market is provided in the forthcoming paragraphs.
- 3.3. It is also pertinent to highlight that PTCL vide its email dated 15th April 2021 has submitted revised revenue data for wholesale international private leased line market in response to PTA's request to verify the data. Therefore, revenue market shares of operators have been revised accordingly.

4. The Operators' responses on Wholesale International Private Leased Line Market and the Authority's Findings:

4.1. Although no comments were received from the operator but the Authority has observed that despite deregulation of telecom sector since 2003 none of the LDI operators has established cable landing stations. Presently, there are six submarine cables connecting four landing stations in Pakistan namely SEA-ME-WE 3, SEA-ME-WE 4, SEA-ME-WE 5, I-ME-WE, AAE-1 and Transworld-1. These submarine cables services are being provided by only two operators i.e. PTCL and TWA. PTCL and TWA are providing IPLL services to all Local Loop and LDI licenses. The Authority is of the view that presence of only two operators can incentivize PTCL and TWA not to reduce price beyond certain level and deprive rest of the operators from reaping benefits of competition.

5. The Relevant Market and SMP Operator:

5.1. Wholesale International Private Leased Line Market:

5.1.1. For the purpose of declaring SMP Operators, the entire telecom market of Pakistan 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 shall be based on the area where an operator is authorized to operate under its respective licenses.

5.1.2. It has been found that PTCL has maintained its market share in terms of revenues generated from IPLL market segment. As per the revenue data provided by the operators, market shares of PTCL and TWA are as follows:

Table-1 Revenue Market Share (%)		
Years	PTCL	TWA
2017	81.0	19.0
2018	87.7	12.3
2019	84.5	15.5

5.1.3. As evident from the above, PTCL has been able to retain market share which is in the range of 81% to 88% whereas TWA's market share is in the range of 12% to 19% for the years 2017 to 2019. This represents PTCL has market shares of more than 25% threshold as provided in Rule 17(1) of Telecom Rules, 2000.

5.1.4. Regarding Rule 17(2) of Telecom Rules, 2000, it is evident that PTCL being an incumbent operator has the ability to influence market conditions by indulging in collusive behavior and not offering competitive prices to other telecom operators. *Per se*, international leased line market in Pakistan has duopoly market structure and it is highly likely that prices set by PTCL will be followed by TWA. Furthermore, determination of

SMP in the instant market would enable the Authority to look into the anti-competitive practices and cross-subsidy (if any), and disposal of related complaints in an informed and transparent manner.

5.1.5. PTCL's turnover relevant to size of the relevant market as already been provided in Table -1 which clearly indicates that it has the control and ability to negatively or positively disrupt the market by charging higher prices which would result in payment of higher prices by other operators.

5.1.6. Keeping in view the foregoing, wholesale international private leased line market shall be 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):		
International Private Leased Line Market	Pakistan	PTCL

6.2. PTCL is hereby declared as SMP operator in Pakistan *at para 6.1 above*, in wholesale international private leased line market and directed to comply with the 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 23rd day of July 2021 and comprises of 6 pages.