



PAKISTAN TELECOMMUNICATION AUTHORITY

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

17th August 2021

Subject: Determination on Significant Market Power (SMP) Operators in Retail LDI Fixed-line Telecommunication 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 2nd April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Retail LDI Fixed-line Telecommunication 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 Fixed-line Operators

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 of Significant Market Power (SMP) Operators in Retail LDI Fixed-line Telecommunication 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 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 LDI 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 in M.A. 46 of 2016 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 Telecommunication Market	14 Regions of Pakistan
2.	LDI Fixed-line Telecommunication Market	Pakistan
3.	Mobile Telecommunication 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. Retail LDI Fixed-line Telecommunication Market:

2.2.1. The Authority in its consultation paper proposed retail LDI fixed-line telecommunication market as a relevant market and defined the market as provision of long distance and international call services on national basis to end-users.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in LDI Telecommunications Market, only the revenues from licensed LDI Telecommunications services shall be taken into account. Such revenues may include call charges for long distance and international outgoing calls, whether collected from the customers directly or from other operators (excluding call transit charges). Revenues generated from calling cards (if any) shall also be considered while assessing the market share. However, revenues from international incoming calls shall not be 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) 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, 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 Retail LDI Fixed-line Telecommunication Market is provided in the forthcoming paragraphs.

4. The Operators' responses on Retail LDI Fixed-line Telecommunication Market and the Authority's Findings:

4.1. **PTCL comments:** Clauses 5.1.2 and 5.1.3 of the Telecommunications Policy states that the sector will be managed through the application of Competition Rules for the telecommunication sector. Afterwards, a set of initial product markets will be defined on the basis of international practices and conditions in Pakistan. It would be in the fitness of the matter to keep the current regulatory status as it is till promulgation of competition rules, under the policy.

Authority's findings: The Authority as per Clause 4(1) (m) of the Pakistan Telecommunication (Reorganization) Act, 1996 is mandated to regulate competition in

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the telecommunication sector and protect consumer rights. Furthermore, Rule 17 of Telecom Rules provides the criteria to determine SMP operators. Although Ministry of Information Technology has issued Draft Competition Rules for industry consultation back in 2017 but the same does not restrict the Authority to regulate competition in the telecom sector. It is also pertinent to highlight that the Honorable Islamabad High Court vide its order dated 26th January 2018 in FAO No. 111 of 2016 and 114 of 2016 filed by Pakistan Mobile Communications Limited (PMCL) (Jazz) and Telenor Pakistan (Telenor) has not only endorsed Authority's power to regulate the telecom sector through Telecom Rules, 2000 but also addressed the issue of framing rules by the MoIT in its order. The court has stated that *".....Moreover, the Telecom Policy, 2015 places duty of framing rules, outlined therein, upon Ministry of Information Technology and since the same have not been promulgated, the Pakistan Telecom Rules, 2000 which were framed by the Federal Government through notification in the official gazette cannot be presumed to have lost their effectiveness and the determination made by the Authority under the rules in field cannot be disregarded on this score."* It is relevant to point out that the Authority in line with the parameters Telecommunication Policy, 2015 has initiated consultation on identification of relevant markets and determining SMP operators on the basis of international practices and applicable regulatory regime in Pakistan. For example, Malaysian Communications and Multimedia Commission (MCMC) in 2014, Communications and Information Technology Commission (CITC) of Saudi Arabia in 2017, and Communication Regulatory Authority of Qatar in 2016 have declared "fixed telephony market comprising of access lines and local calls (residential and business), national calls, international calls, and fixed-to-mobile", "retail fixed access and local and national fixed call services" and "retail fixed access service and retail national fixed call services" as relevant markets for the purpose of declaring SMP operators in these markets.

- 4.2. **PTCL comments:** The LDI market is overwhelmingly impacted by OTT operators, which do not currently fall under the regulatory regime. A number of times the attention of the Authority has been invited to provide some regulatory relief to license operators in LDI segment by bringing these OTT operators under some kind of regulatory umbrella. However, the Authority has to date taken no steps to regularize this situation either through its licensing program or through its analysis of relevant markets and yet PTCL has been determined as SMP in this already suppressed market. It should be noted that the market has not been defined by the license but rather the service and as such PTCL once again urge PTA to review its definition of this market to encompass all providers of such services irrespective of whether or not they have been issued with a license by PTA.

Authority's findings: It is clarified that the Authority has carried out industry consultation on OTT & VoIP and is in the process of developing OTT framework. Furthermore, all

over the world OTT operators are competing with licensed operators and the phenomena is not unique in case of Pakistan. It is also pertinent to highlight that the Authority has defined retail LDI market based on existing market conditions as PTCL holds largest revenue market share which is in the range of 62.5% to 79.2%. Furthermore, Telecom Regulatory of Qatar has also defined retail international outgoing call service as a separate market for the purpose of declaring SMP operator in this market.

5. The Relevant Market and SMP Operator:

5.1. Retail LDI Fixed-line Telecommunications 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. As per the available data submitted by the operators, PTCL is still the dominant operator in terms of revenues generated from LDI segment. Market share of PTCL in terms of sectoral revenues is given in the following table:

Operator	Table-1 Revenue Market Share		
	2017	2018	2019
PTCL	79.2%	62.5%	72.8%

5.1.3. As evident from the above, PTCL has been able to retain revenue market share which is in the range of 62.5 % to 79.2% for the years 2017 to 2019. This represents that PTCL by far has the largest market share when compared with operators. 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. In the instant case, PTCL has more than 25% market share based on sectoral revenues.

5.1.4. Regarding Rule 17(2), it is evident that PTCL being an incumbent operator has the ability to influence market conditions in terms of retail prices. Furthermore, 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.

5.1.5. Keeping in view the foregoing, retail LDI fixed-line telecommunication 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	
Retail Level Market(s):		
LDI Fixed-line Telecommunication Market	Pakistan	PTCL

6.2. PTCL is hereby declared as SMP operator in Pakistan *at para 6.1 above*, in retail LDI fixed-line telecommunication 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 17th day of August 2021 and comprises of 7 pages.