



PAKISTAN TELECOMMUNICATION AUTHORITY

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F. No. PTA/CA/CA-DTE/155/5/15-46/2021

20<sup>th</sup> September 2021

**Subject: Determination on Significant Market Power (SMP) Operators in Retail Mobile Telecommunication Market in AJ&K and GB**

This is with reference to PTA's hearing held on 23<sup>rd</sup> February 2021 on the above subject and subsequent circulation of draft determination with the operators for their comments vide PTA's letter of even number dated 28<sup>th</sup> May 2021.

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

Encl: As above.

Muhammad Arif Sargana  
Director General (Commercial Affairs)

**To:**

Regulatory Heads of all Cellular Mobile Operators including SCO

**Copy for information to:**

1. CEOs of all CMOs including SCO
2. DG (Law & Regulations), PTA HQs
3. DG (Coord), PTA HQs
4. Director to Chairman, PTA
5. SO to Member (C&E), PTA
6. PS to Member (Finance), PTA



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

20<sup>th</sup> September 2021

**Determination on Significant Market Power (SMP) Operators in Retail Mobile Telecommunication 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 Gilgit Baltistan Council Adaptation of Laws Act, 2012 (hereinafter called the “Act”) (*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 3<sup>rd</sup> 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, Telenor Pakistan was declared as SMP operator in Retail Mobile Telecommunication 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 26<sup>th</sup> 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.

## 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 16<sup>th</sup> October 2019 and requested the stakeholders to furnish data, for the period covering from 1<sup>st</sup> January 2017 to 31<sup>st</sup> December 2017 and 1<sup>st</sup> January 2018 to 31<sup>st</sup> 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 1<sup>st</sup> January 2019 to 31<sup>st</sup> 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
<b>Retail Level Markets:</b>		
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.	Fixed Broadband Market	AJ&K and GB
<b>Wholesale Level Markets:</b>		
5.	Domestic Leased Line 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 Mobile Telecommunication Market:**

2.2.1. The Authority in its consultation paper proposed retail mobile telecommunication market as a relevant market and defined the market as provision of wireless-based telecommunication services (other than WLL) on national basis.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in Mobile Telecommunications Market, only the revenues from the licensed mobile telecommunication services to subscribers shall be taken into account. Such revenues may include connection charges, line rent, outgoing airtime, roaming charges, revenue from data services, etc.

**3. Hearing held on 23<sup>rd</sup> February 2021**

3.1. PTA vide its letter No. 15-46/14(CA)/PTA dated 12<sup>th</sup> 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 and Kashmir (AJ&K) and Gilgit Baltistan (GB)**". In order to proceed further, the matter was fixed for hearing before the Authority on 23<sup>rd</sup> February 2021. The representatives of LL, LDI, SCO, and 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 Retail Mobile Telecommunication Market is provided in the forthcoming paragraphs.

**4. The Operators' responses on Retail Mobile Telecommunication Market and the Authority's Findings:**

**Telenor comments:**

4.1. Methods for identification of markets and determining market power requires revision in accordance with the spirit and principles laid in the Telecom Policy, 2015. Draft SMP Regulations should be issued to bring more clarity in procedures and process to be adopted by the Authority in carrying out the study of the identification of relevant markets.

4.2. Draft Pakistan Telecommunications Competition Rules, 2017 already recognizes that a firm with 40% threshold or above shall be presumed to have SMP aligned with

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Competition Act, 2010, therefore, the threshold of 40% should be used instead of 25% as given in Telecom Rules.

- 4.3. Determination of relevant markets and dominance must be done as per best international practice and keeping in view the effect of digital / Over the Top (OTT) services. PTA should carry out SMP studies and focus should be on the wholesale market and should draw its conclusions after finalization of Draft Competition Rules.
- 4.4. As per Rule 17(2) of the Rules, PTA may provide evidence of the analysis that establishes Telenor Pakistan to have the ability to influence existing market conditions in AJ&K and GB based on size of the market. Examples provided in section 5.4 of the draft determination does not sufficiently establish that Telenor Pakistan having its dominant position may unilaterally implement such measures that result in decreasing competition in the AJ&K and GB market.
- 4.5. Mobile market in AJ&K and GB is competitive. On the other hand, there exists a concentration of power in the backhaul media and optical fibre market that requires regulatory intervention.

***Authority's findings:***

- 4.6. The Authority in line with the provisions of the Telecom Rules, 2000 has identified relevant markets including retail mobile telecommunication market for the purpose of determining and declaring SMP operator. It is relevant to point out that Telecom Policy, 2015 is not applicable in AJ&K and GB. Accordingly having mandated under the applicable regulator / legal framework, It would not be out of place to highlight that Telenor challenged PTA's Determination dated 2016 because Telenor was declared as SMP operator in Retail Mobile Telecommunication Market in AJ&K and GB, and raised objection in the IHC that Telecom Rules, 2000 are ultra vires to Competition Commission Act, 2010 and Telecom Policy, 2015. However, the Honourable IHC vide its decision dated 22<sup>nd</sup> January 2018 did not entertain Telenor arguments and decided that: "*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. The framework outlined in Telecom Policy, 2015 does not run counter to existing criteria of more than 25% market share envisaged in the Rules, 2000 because no specific limit of market share size for declaring SMP has been mentioned therein.*" Keeping in view the foregoing, PTA has the power to determine SMP operators based on Telecom Rules, 2000, and the same has been decided by the Honourable IHC.

- 4.7. It is also clarified that regulatory authorities determine SMP operators based on local market characteristics while considering international best practices. The purpose is to safeguard operators having no dominant position in telecom market as per applicable regulatory law time being in force and to protect the interest of telecom consumers from the anti-competitive / burdensome practices of dominant operators. Bangladesh, Oman, Qatar, and Saudi Arabia have defined retail mobile market as relevant market for determining SMP operator. Bangladesh Telecom Regulatory Commission (BTRC) has defined “retail mobile service related market” as a market where the service provider provides voice, data, internet services and other services using the spectrum allocated for the cellular mobile services and receives direct or indirect revenues from the subscribers. Accordingly, BTRC has declared its largest operator Grameenphone as SMP operator in 2019 and the same has been upheld by the High Court in Bangladesh. Under SMP obligations, Grameenphone is to secure prior approval from BTRC before rolling out any packages or tariffs or any change in the existing packages / tariffs, amongst others.
- 4.8. It is also pertinent to highlight that 25% market share has been adopted by several countries such as Iran, Japan, Niger, Bahrain, Syria, and partially by Thailand, Bolivia, Costa Rica, Dominica & Paraguay. Therefore, the determination in mobile retail market is neither against international best practices, nor in violation of any rules or regulation.
- 4.9. In the next section, the control of mobile market by Telenor in AJ&K and GB with respect to size and resources / means of market are explained, depicting the sufficient ability of Telenor to influence the market.
- 4.10. With respect to issues in backhaul media and Optic Fiber markets, the Authority has already determined SMP operators in the wholesale telecom market in AJ&K and GB; accordingly, the market will be regulated for competitive pricing in the market.

## **5. The Relevant Retail Mobile Telecommunication Market and SMP Operator:**

- 5.1. 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 shall be based on the area where an operator is authorized to operate under its respective licenses.
- 5.2. Retail mobile telecommunication market includes provision of wireless-based telecommunication services (other than WLL) on national basis. Retail mobile services

in AJ&K and GB are provided by Telenor Pakistan, Special Communication Organization (SCO), PMCL (Jazz), CMPak (Zong), and PTML (Ufone) through their own networks.

5.3. To assess the market share of a particular operator in the retail mobile telecommunication market, only the revenues from the licensed mobile telecommunication services to subscribers has been taken into account, including connection charges, line rent, outgoing airtime, roaming charges, revenue from data services, etc. It has been observed that Telenor has the largest market share (39.2%) of the total revenues (on account of revenues from licensed services minus interconnect charges as defined in the Consultation paper on MTR) of retail mobile telecom market in AJ&K and GB whereas Rule 17 (1) of the Rules states that an operator shall be presumed to be an SMP operator if it has more than 25% market share. It may further be noted that the market share of Telenor based on gross mobile market revenues in AJ&K and GB was 50% for the year 2019, which has further increased to 53% in 2020.

Operator	Market Share (2019)
Telenor Pakistan (Pvt.) Ltd.	39.2%

5.4. Regarding Rule 17(2) of the Rules, it is evident that Telenor with the largest turnover relative to the size of the retail mobile market has the ability to influence and 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. The Authority has also observed that there have been instances where increase in charges for mobile services by one operator has influenced other operators to increase similar charges. Examples include imposition of service charges and call setup charges by mobile operators. The Honorable Supreme Court of Pakistan vide its orders dated 24<sup>th</sup> April 2019 and 12<sup>th</sup> July 2019 had to intervene and ordered mobile operators not to levy service charges. Further, it has been observed that after the increase in call rates of basic packages by one of the largest operator, the same has been followed by other operators and they have also increased call charges of their respective call packages.

5.5. It is pertinent to highlight that Mobile Number Portability (MNP) facility is available to subscribers, however, switching to other operators still involve a physical visit to respective franchise / retailer, sacrificing the balance amount (if any), 2-14 business days to complete the MNP process and sixty days lock-in period before applying for MNP.

5.6. On the resource side, Telenor has also the largest share of spectrum holdings (37%) and BTS towers (39%) in mobile market of AJ&K and GB.

5.7. Keeping in view the foregoing, retail mobile market shall be identified as relevant market for the purpose declaring SMP operators.

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**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 operator / licensee in the relevant market as under:

Relevant Markets		SMP Operator
Product / Service Market	Geographical Market	
Retail Level Market (s):		
Mobile Telecom Market	AJ&K and GB	Telenor Pakistan (Pvt.) Ltd.

6.2. Telenor Pakistan is hereby declared as SMP operator in AJ&K and GB, *at para 6.1 above*, in retail mobile telecommunication market and directed to comply with all the obligations and other regulatory requirements, notifications, decisions or 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 20 day of September 2021 and comprises of 7 pages.