



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 Individual Mobile Interconnection 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 19th March 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Individual Mobile Interconnection 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 CMOs 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 Wholesale Individual Mobile Interconnection 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 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, all Cellular Mobile Operators were

declared as SMP operators in Individual Mobile Interconnection Market for 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.	Wholesale 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 Individual Mobile Interconnection Market:

2.2.1. The Authority in its consultation paper proposed individual mobile interconnection market as a relevant market and defined the market as provision of call termination service by a given mobile operator to other telecom operators for local, long distance and / or international calls.

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 individual mobile interconnection market is provided in the forthcoming paragraphs.

4. The Operators' responses on Wholesale Individual Mobile Interconnection Market and the Authority's Findings:

4.1. Comments on the Consultation Paper:

Jazz comments: Defining individual mobile interconnect market is reasonable and in line with best international regulatory practices and recommendations by European Commission. However, it is requested that any *ex-ante* obligations imposed should be uniformly imposed on all cellular operators in light of the competitive market environment.

Authority's findings: The Authority in line with the provisions of the Telecom Rules, 2000 and Telecommunications Policy, 2015 has identified relevant markets including individual mobile interconnection market for the purpose of determining and declaring SMP operator. Regulatory authorities of Malaysia, Turkey, Australia, Oman, Kingdom of Saudi Arabia, and Qatar have identified individual mobile interconnection market as relevant market for the purpose of regulating termination charges. Furthermore, it is an admitted fact that there exists no competition in this market due to the fact that call termination service cannot be provided by any other operator but the owner of the called

network. Resultantly, each mobile operator has a monopoly on termination of calls to customers connected to its own network.

4.2. Comments on the Draft Determination:

Jazz comments: Reference to Rule 17 of the Telecommunication Rules, 2000 in the draft Determination may be deleted and criteria for determining SMP operator should be based on the definition of dominance as set out in the Competition Act, 2010.

Authority's 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 individual mobile interconnection market.

CMPak (Zong) comments: Instead of defining individual operator as an SMP for the interconnection market, the total wholesale market should be considered as per Rule 17(1) and 17(2) of Pakistan Telecommunication Rules, 2000 that the operator should be presumed to be SMP when it has more than 25% market share of that particular market segment or can influence the market conditions, with regards to its turnover relative to the size of the relevant market.

Authority's findings: As stated in preceding paragraphs, regulatory authorities have identified separate wholesale mobile interconnection markets for the purpose of regulating termination charges. Furthermore, the Authority in the past had declared each mobile operator as SMP operator in the individual mobile interconnection market considering that each mobile operator has a monopoly (100% share) on termination of calls to customers connected to its own network.

CMPak (Zong) comments: To make the telecom sector more competitive, the matter related to rationalization Mobile Termination Rate (MTR) is of utmost importance as larger operators continue to leverage MTR as an anti-competitive tool to safeguard their commercial interests at the cost of relatively smaller operators. This safeguard, however, continues to deprive and hurt Pakistan's telecom users who are already suffering from high inflation including high taxation on the telecom industry.

Authority's findings: The Authority vide its Determination No. 15-30/18 dated 17th November 2018 has already reduced MTR from Rs. 0.90 per minute to Rs. 0.80 per minute in 2019 and to Rs. 0.70 per minute in 2020. Separate consultation on further review of MTR will be carried out in due course of time.

5. The Relevant Market and SMP Operator:

5.1. Individual Mobile Interconnection 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. Individual Mobile Interconnection Market includes provision of call termination service by a given mobile operator to other telecom operators for local, long distance, and/ or international calls. Wholesale call termination services in AJ&K and GB are provided by PMCL (Jazz), Telenor Pakistan, CMPak (Zong), Special Communications Organization (SCO), and PTML (Ufone) to their own networks. Each of the mobile operator is SMP operator in this market as every mobile operator has 100% market share whereas Rule 17(1) of the Rules states that an operator shall be presumed to have significant market power in case of more than 25% market share of relevant market. Furthermore, all mobile operators own and control the physical network necessary to deliver these services to their subscribers. Termination services on each network represent a bottleneck whereby each licensee has control over the provision of termination on its network. It is also concluded that consumers have no choice to avail telecommunication facility with any other operator as further entry is not technically possible.

5.1.3. All operators shall have to follow the obligations of provision of interconnection upon request on a non-discriminatory basis as per provisions of the license, Interconnection Guidelines, 2004, Rules and directives issued by the Authority from time to time.

5.1.4. 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 Operators
Product / Service Market	Geographical Market	
Wholesale Level Market(s):		
Individual Mobile Interconnection Market	AJ&K and GB	All Mobile Operators

6.2. All Mobile Licensees are hereby declared as SMP in AJ&K and GB *at para 6.1 above*, in individual mobile interconnection 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 Naved
 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.