



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 Retail Fixed Broadband 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 12th April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Retail Fixed Broadband 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 on Significant Market Power (SMP) Operators in Retail Fixed Broadband 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 its 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, PTCL was declared as SMP operator in Retail Fixed Broadband 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. Retail Fixed Broadband Market:

2.2.1. The Authority in its consultation paper proposed Retail Fixed Broadband Market as a relevant market and defined the market as provision of always-on internet connection through fixed line. In this market, broadband services are provided to end-users by means of various technologies like DSL, Cable, and Fiber etc.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in Fixed Broadband Market, the monthly rental revenues from the licensed services to subscribers, bandwidth capacity charges etc. shall be taken into account. For clarification purpose, revenues from sales of consumer premises equipment and installation charges (if applicable) 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) to finalize "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 on draft determination, the matter was examined in depth and analysis for declaring/determining relevant markets/SMP operators in Retail Fixed Broadband Market is provided in the forthcoming paragraphs.

4. The Operators' responses on Retail Fixed Broadband Market and the Authority's Findings:

4.1. **PTCL's comments:** PTA currently defines a fixed broadband retail market which seems to be inclusive of fixed technologies (DSL, fiber, HFC) and some wireless technologies (WCDMA), but exclusive of mobile cellular technologies. The PTA market definition corresponds to the licensing framework (i.e. broadband services for dongle and MiFi are mostly provided through a mobile license). Yet this does not reflect competition dynamics for broadband. All mobile operators except Ufone are also currently offering broadband access either through mobile hotspots (MiFi) or through Dongles (called Wingles in Pakistan) in addition to that offered through the smartphones. The dongles and Wi-Fi hotspots from mobile operators are very clearly marketed to compete with EVDO and DSL offers from fixed line operators. The devices offered are very similar, therefore,

Retail Fixed Broadband Market requires in-depth analysis and inclusion of all kind and type of broadband operators whether fixed or mobile.

4.2. **PTCL's comments:** There is another factor detrimental to broadband sector being the fact that there are large number of CVAS or non-licensed broadband retailers impacting business of Fixed Local Loop operators within a grey market that has been excluded from any market analysis by PTA. Hence, total market for broadband has not been taken into account by PTA in its assessment of market share and by extension the relative position of PTCL within this market. It is apprehended that PTA has not counted the revenue of these operators for the determination of SMP for retail broadband market. Hence, broadband market has not been 100% covered while calculating market share of PTCL. It is therefore suggested, as a first step all such operators need to be brought under the same regulatory and tax regime as other significant local loop operators, with proper documentation, which will provide fair estimate of the market shares.

4.3. **Ufone's comments:** PTA may consider data services of WLL or Mobile as same market segment in the given geographic area. Subsequently, there should be a Home Retail Broadband Market for WLL and Mobile in the context of fact that CMO's dongles are substitutable option against WLL dongles.

Authority's findings: The Authority in line with the provisions of the Telecom Rules, 2000 has identified relevant markets including Retail Fixed Broadband Market for the purpose of determining and declaring SMP operator. Regulatory authorities of major countries i.e. Malaysia, Kingdom of Saudi Arabia, Qatar, and Thailand have identified separate markets for Retail Mobile Broadband and Retail Fixed Broadband due to significantly different characteristics and no substitutability based on the following grounds:

- mobile broadband services permit users to retrieve data while on the move and in different locations, which is a fundamental deviation from fixed-line services that are only available at a particular location;
- fixed broadband services are generally considered to be more reliable and offer higher data transmission speeds than mobile equivalents;
- different pricing strategies are used by fixed and mobile broadband providers (e.g. higher data caps for fixed services etc.); and
- different cost structures underline fixed and mobile broadband provision

It is also pertinent to highlight that fixed broadband is provided through use of copper (DSL), FTTH, optical fiber etc. which is more reliable and secure along with internet

speed and unlimited download facility. On the contrary, mobile broadband services including EVDO, MiFi and dongles are provided through use of spectrum which is scarce resource. Limited data packages are offered and internet speed is unreliable in case of mobile broadband. Resultantly, fixed broadband cannot be termed as substitutable of mobile broadband.

Regarding CVAS licensees, it is stated that the market share of CVAS subscribers including Fixed Local Loop is negligible as PTCL has approximately 1.65 million fixed broadband subscribers whereas CVAS licensees have only 0.44 million subscriber base as of December 2019. On this basis, PTCL has 79% market share therefore assertion of PTCL that 100% market share has not been covered is not correct. The Authority has taken revenues of all the relevant operators for calculating market share of retail fixed broadband market. It is also pertinent to highlight that the Authority has already initiated action against non-licensed broadband retailers as per law based on the complaints received from the operators and the same is an ongoing process. Furthermore, the Authority has also advised all fixed local loop operators, CVAS Data operators to share details of their respective franchisees to initiate action against illegal / unlicensed internet service providers.

5. The Relevant Market and SMP Operator:

5.1. Retail Fixed Broadband 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. Fixed Broadband services involve the provision of always on internet connection with a download speed of at least 128/256 kbps connectivity. The broadband services are provided to end-users by means of various technologies like DSL, Cable, and Fiber etc. Although, the most common technology in Pakistan is DSL, which makes use of the fixed telephone network. But local loop operators including PTCL are also deploying FTTH, GPON technology for broadband services. However, deployment of FTTH, GPON is confined to limited areas only.

5.1.3. Fixed Broadband technology i.e. DSL, FTTH etc. has inherited following differences than wireless based Mobile Broadband services.

Description	Fixed Broadband Features	Mobile Broadband Features
Technology	GPON, FTTH, DSL, Cable	3G / 4G LTE / VoLTE
Service	Reliable, being fixed	Insecure as signal varies from place to place
Download / Upload Speed	Consistent	Inconsistent

5.1.4. Over the years, nominal decrease in market share of PTCL has been observed despite presence and entrance of new broadband operators (Cybernet, Multinet Pakistan, Nayatel, Wateen Telecom, Transworld Enterprise Services, Optix Pakistan, Web Concepts, Connect Communications, Eureka Net, and Hazara Communications) in the market. It has been observed that PTCL is holding more than 70% of Retail Fixed Broadband revenue share whereas 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 market share of 70.4% for the year 2019.

Operator	Revenue Market Share		
	2017	2018	2019
PTCL	77.3%	73.1%	70.4%

5.1.5. Regarding Rule 17(2), it is evident that PTCL being an incumbent operator has the ability to influence market conditions by excessively increasing prices of its broadband services offered to its retail customers. Resultantly, majority of subscribers have no choice to switch to other operators due to limited network availability and PTCL has all the means to control its consumers due to high shifting costs. It is also pertinent to highlight that majority of local loop operators are providing fixed broadband services through use of different technologies in limited areas. However, PTCL provides fixed broadband services all across Pakistan. Upfront cost of shifting from PTCL to other Fixed Line operator is also very high as users have to pay installation charges and cost of equipment.

5.1.6. Furthermore, PTCL's turnover relevant to size of Fixed Broadband Market clearly indicates that it has the control and ability to negatively or positively 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.

5.1.7. Keeping in view the foregoing, this 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):		
Fixed Broadband Market	Pakistan	PTCL

6.2. PTCL is hereby declared as SMP in Pakistan, *at para 6.1 above*, in Retail Fixed Broadband 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 23rd day of July 2021 and comprises of 8 pages.