



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 Domestic 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 2nd April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Wholesale Domestic Lease 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) PTCL
- b) Local Loop Operators
- c) LDI Operators
- d) CMOs

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 Domestic
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, PTCL was declared as SMP operator in wholesale domestic 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:

Sr. 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. Domestic Leased Line Market:

2.2.1. The Authority in its consultation paper proposed wholesale domestic leased line market as a relevant market and defined as the telecommunication facilities which provide for transparent transmission capacity between network termination points for

interconnecting mobile switches, other telecom switches, building etc. within the national boundaries.

2.2.2. For the purpose of determining the total market size and the market share of a particular operator in domestic leased line market, only the revenues of domestic 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 domestic 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), and Cellular Mobile Operators (CMOs) attended the hearing on the said date.
- 3.2. It is relevant to point out that despite sharing the draft determination vide letter dated 2nd April 2021, no further response/comments have been received from the concerned operators within the stipulated time. In such circumstances and in light of available record, relevant market and SMP operators are being declared/determined in the Wholesale Domestic Leased Line Market in Pakistan.

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

- 4.1. **PTCL comments:** The subject consultation paper derives statutory powers from Telecom Rules, 2000, which are outdated as the telecom market is wholesomely changed after declaration in 2004. Rule 17(2) of Telecom Rules, 2000 grants wide discretionary powers to PTA, to determine relevant markets and attributing SMP status to the operators. However, the said discretionary powers has to be exercised in line with the inherent guidelines provided in Rules 17 (2) and should also not be repugnant to any other law which is in force in the country, including the provisions of the freedom of trade as enshrined in the Constitution of Islamic Republic of Pakistan, 1973. Additionally, the mandatory requirement for PTA is to base its decisions on thorough research regarding the market conditions, supply constraints, consumers' behavior towards demand and supply situation and other techno-economic analysis of the whole sector in addition to operator's ability to influence market conditions.

Authority's findings: The Authority within the prevailing legal framework has initiated the process of identifying relevant markets and declaring SMP operators within these markets. 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 duly 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.”

5. The Relevant Market and SMP Operator:

5.1. Wholesale Domestic 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. Although operators such as LINKdotNET, Wateen Telecom, and Multinet are provide services in the said market but PTCL is still leading in terms of market revenues which are in the range of 48% to 73% for the years 2017 to 2019. Rule 17(1) of the telecom Rules states that an operator shall be presumed to have significant market power in case of more than 25% market share of relevant market whereas PTCL has market share of 48% for the year 2019.

Table-1 PTCL's Revenue Market Share (%)	
Years	Market Share
2017	72.6
2018	51.8
2019	48.0

5.1.3. Regarding Rule 17(2) of Rules, it is evident that PTCL being an incumbent operator has the ability to influence market conditions by excessively reducing the price which can drive other operators out of the market. Furthermore, PTCL has all the means to control consumers as it is an incumbent operator and it has presence of nationwide network all across the country.

5.1.4. 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 PTCL as SMP operator / licensee in the relevant market as under:

Relevant Markets		SMP Operator
Product / Service Market	Geographical Market	
Wholesale Level Market(s):		
Domestic Leased Line Market	Pakistan	PTCL

6.2. PTCL is hereby declared as SMP operator in Pakistan, *at para 6.1 above*, in wholesale domestic leased line market and directed to comply with the obligations and all other regulatory requirements, notifications, decisions or 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 6 pages.