



PAKISTAN TELECOMMUNICATION AUTHORITY

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

20<sup>16</sup> September 2021

**Subject: Determination on Significant Market Power (SMP) Operators in Retail Mobile Telecommunication Market in Pakistan**

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 in Retail Mobile 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.

Encl: As above.

Muhammad Arif Sargana  
Director General (Commercial Affairs)

**To:**

Regulatory Heads of all Cellular Mobile Operators

**Copy for information to:**

1. CEOs of all CMOs
2. DG (Law & Regulation), 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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<http://www.pta.gov.pk>

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20<sup>11</sup> September 2021

**Determination of Significant Market Power (SMP) Operators in Retail Mobile  
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 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 3<sup>rd</sup> October 2016 issued Determination on Relevant Markets and declared Significant Market Power (SMP) Operators in Pakistan. In the said Determination, Pakistan Mobile Communication Limited (PMCL) was declared as SMP operator in Retail Mobile Telecommunication 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 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.

1.6. The Honorable Sindh High Court vide its order dated 21<sup>st</sup> 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 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	14 Regions of Pakistan
2.	LDI Fixed-line Telecom Market	Pakistan
3.	Mobile Telecom Market	Pakistan
4.	Fixed Broadband Market	Pakistan
<b>Wholesale Level Markets:</b>		
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 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 Pakistan**". In order to proceed further, the matter was fixed for hearing before the Authority on 23<sup>rd</sup> 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. 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:**

**PMCL (Jazz) comments:**

4.1. Telecom Rules were issued in 2000, which are neither reflective of the current international telecommunication industry regulatory practice nor adequately suited to regulate the telecom markets. PTA should follow the principle of Competition Rules as envisaged in the Telecom Policy, 2015 in conformity with the Competition Act, 2010 and SMP Determination should be based on international best practices. As per provisions in 17(1), an operator shall be presumed to have SMP when it has a sectoral revenue share of more than 25% of a particular market, therefore, all four players are SMP, PTA's finding to declare only PMCL as SMP are discriminatory.

- 4.2. Declaring retail mobile market as relevant market for SMP, relying on countries in the draft determination is at odds with ongoing and current regulatory practice in countries of the world with well-regulated telecom sectors including the European Union (EU). EU in its recommendation has stated that the retail mobile market should be left unregulated. Herfindahl-Hirschman Index (HHI), a measure of market concentration, increased from 2325 in 2015-16 to 2839 in 2016-17 after the merger of Warid Telecom (Pvt.) Ltd. with Pakistan Mobile Communication Limited now known as Jazz, however, afterwards a modest reduction has been observed in market concentration to 2807 in 2019-20. In the PTA Annual Report for the year 2019, mobile market has been acknowledged as competitive. Therefore, there is no need to separately identify a retail mobile telecommunication market.
- 4.3. PMCL also stated that draft determination has not provided circumstances of anti-competitive or burdensome practices by operators having large market shares in telecom market. Therefore, examples of Saudi Arabia, Oman, Qatar, and Bangladesh for retail mobile market are not appropriate as these markets are less competitive compared to Pakistan. In 2010, PTA declared the mobile market as competitive and did not determine SMP despite PMCL's more than 25% market share. PTA vide its letter dated 9<sup>th</sup> June 2017 also maintained the operator assistance charges of operators and did not require a change and PMCL has been able to get PTA's approval in increasing its call charges based on PMCL arguments that ARPUs in Pakistan's markets are still very low, convincing the regulator to allow increase in call charges.

**Authority's findings:**

- 4.4. It would not be out of place to highlight that PMCL challenged PTA's Determination dated 2016 because PMCL was declared as SMP operator in Retail Mobile Telecommunication Market in Pakistan 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 PMCL 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 honorable IHC.

- 4.5. 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.
- 4.6. It may be noted that Pakistan is a large mobile market (subscriber-wise) compared to the small markets such as Saudi Arabia, Qatar and Oman. Therefore, it can be observed that the smaller markets have 2-3 players compared to 4 players in the mobile sector of Pakistan. Further, the dominance of a single operator in Pakistan’s mobile market has significantly increased since 2014-15. In the next section, the control of mobile market by PMCL with respect to size and resources / means of market are explained, depicting the sufficient ability of PMCL to influence the market.
- 4.7. 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. Furthermore, Pakistan’s market characteristics are significantly different from EU and EU recommendations are not binding on PTA as the regulator needs to assess the market considering the local factors and market practices, as discussed in the later section. It may be noted that Pakistan’s market had become much concentrated/less competitive after the merger of Mobilink and Warid in 2016 i.e. HHI in 2014-15 was of 2291 compared to 2807 in 2019-20. Furthermore, Jazz has been able to increase its overall revenue market share including voice and data from 39% in 2017 to 41% in 2019, which is also in excess of criteria determined by the CCP. This shows that competition in mobile market has deteriorated over the years, resulting in strengthening the influence of the dominant player in the market. Therefore, the determination in mobile retail market is neither against international best practices, nor in violation of any rules or regulation.

4.8. None of the existing regulation or Telecom Policy, 2015 provides basis to determine the SMP status in telecom sector based on HHI. HHI is a basic measure to gauge the level of competition and even if we take into account the HHI, it has deteriorated to 2807 in 2019-20, showing that the current mobile market is less competitive (more concentrated) compared to HHI of 2250 of 2010-11 (in terms of subscribers) that require afresh determination for retail mobile 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 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.
- 5.2. Retail mobile telecommunication market includes provision of wireless-based telecommunication services (*other than WLL*) on national basis. Retail mobile services in Pakistan are provided by PMCL (Jazz), Telenor, 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 Jazz has the largest market share (41.3%) of the total revenues of retail mobile telecom market (on account of revenues from licensed services minus interconnect charges as defined in the Consultation paper on MTR) in Pakistan as of 2019 whereas Rule 17 (1) of the Rues states that an operator shall be presumed to be an SMP operator if it has more than 25% market share.
- 5.4. Furthermore, after the Warid-PMCL merger, PMCL (Jazz) has been able to increase its market share from 38.8% in 2017 to 41.3% in 2019. It may be further noted that the market share of PMCL based on gross mobile market revenues in Pakistan was 39.6% for the year 2018, which has increased to 40.7% in 2019 and 41.4% in 2020 respectively.

Operator	Market Share		
	2017	2018	2019
PMCL (Jazz)	38.8%	39.6%	41.3%

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- 5.5. Regarding Rule 17(2) of the Rules, it is evident that PMCL (Jazz), with the largest turnover relative to the size of the retail mobile market and increasing market share, 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. PTA has been taking notices of arbitrary changes in operator assistance charges including service charges, however, due to non-declaration of SMP determination in the mobile market, PTA could not effectively stop operators from imposing burdensome, anti-competitive and cartelized charges such as service charges, call setup charges, etc. In absence of SMP determination, operators also obtained stay orders from the Honourable courts against the Authority Orders. In order to resolve the matter, PTA vide its order dated 9<sup>th</sup> June 2017, required operators to take prior approval before increasing prices of operator assistance charges including call setup charges. It is not of place to mention that the Authority is always of the view that tariffs should be simple, transparent and understandable. The Authority also consider that charges such as “**service charges**” and “**call setup charges**” should not be allowed, however, operators always opposed regulator’s view point while also challenging the SMP determination in the court of law. Nevertheless. 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 also 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.
- 5.6. 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.
- 5.7. On the resource side, Jazz has also the largest share (37%) of spectrum holdings in the mobile telecom market in Pakistan, which provides sufficient ability to affect the market.
- 5.8. 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):		
Mobile Telecom Market	Pakistan	PMCL

6.2. Pakistan Mobile Communication Limited (PMCL) is hereby declared as SMP operator in Pakistan, *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.

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 Muhammad Naveed  
 Member (Finance)

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 Dr. Khawar Siddique Khokhar  
 Member (Compliance & Enforcement)

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 Maj. Gen. Amir Azeem Bajwa (R)  
 Chairman

This Determination is signed on 20 day of September 2021 and comprises of 8 pages.