



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 Local Loop Fixed-line Telecommunication 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 1st April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Retail Local Loop Fixed-line 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.

Muhammad Atif 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 Local Loop Fixed-line 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 3rd October 2016 issued Determination on Relevant Markets and declared Significant Market Power (SMP) Operators in Pakistan. In the said Determination, Pakistan Telecommunication Company Limited (PTCL) was declared as SMP operator in 14 (fourteen) telecom regions 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 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 Local Loop Fixed-line Telecommunication Market:

2.2.1. The Authority in its consultation paper proposed retail local loop fixed-line telecommunication market as a relevant market and defined the market as provision of access and call services to end-users (whether through PSTN or WLL) in the region for which the Local Loop licenses have been granted by PTA. Geographically, the product / service market was further sub-divided into fourteen regions in Pakistan.

2.2.2. For the purpose of determining total market size and the market share of a particular operator in Local Loop Fixed-line Telecommunications Market, only the revenues from the provisioning of licensed Local Loop (including WLL) telecommunications services to the subscribers were taken into account. These revenues included installation/shifting charges, line rental, call charges, etc. For the avoidance of doubt, interconnection revenues from call termination services were not 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) 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), 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 Local Loop Fixed-line Telecommunication Market is provided in the forthcoming paragraphs.

4. The Operators' responses on Retail Local Loop Fixed-line Telecommunication Market and the Authority's Findings:

4.1. **PTCL comments:** Clauses 5.1.2 and 5.1.3 of the Telecommunications Policy, 2015 states that the sector will be managed through the application of Competition Rules for the telecommunication sector. Afterwards, a set of initial product markets will be defined on the basis of international practices and conditions in Pakistan. The Telecom Policy also provides that the Competition Rules would be framed in conformity with the Competition Act, 2010, which has a different yardstick for Determination of SMP, being 40% market share as compared to 25% market share given in the Telecom Rules, 2000. It would be appropriate to maintain the current regulatory status until such time as new competition

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rules, as per the Telecom Policy, 2015 are promulgated. Moreover, the 'National Broadband Policy Draft, 2021' which is currently under consultation by MoIT also provides continuity to Competition related provisions of the Telecom Policy, 2015.

The determination of SMP operator(s) derives statutory powers from Telecom Rules, 2000, which are outdated as the telecom market is wholesomely changed after declaration in 2004. Rule 17 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), amongst others, an assessment of company's ability to influence the market. This 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. This is common international best practice. However, the consultation paper and subsequent draft determinations shared by PTA does not include any analysis as indicated above.

Authority's findings: The Authority as per section 4(1) (c) & (m) and section 6 (d) & (e) of the Pakistan Telecommunication (Reorganization) Act, 1996 is mandated to regulate competition in the telecommunication sector and protect consumer rights. Furthermore, Rule 17 of Telecom Rules mandates the Authority to determine SMP operators in accordance with the criteria provided therein. The Authority within the prevailing legal framework has initiated the process of identifying relevant markets and declaring SMP operators within these markets. Furthermore, the Authority has also considered factors as indicated in Rule 17 (2) to declare SMP operators in the relevant markets. Upon promulgation of competition rules, the Authority will initiate fresh consultation.

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. The framework outlined in Telecom Policy, 2015

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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.”

It is clarified that Rule 17(1) of the Telecom Rules already presumes an operator to be SMP operator who has market share of 25% based on sectoral revenues. In the instant case, PTCL in the retail local loop market has market share (in terms of subscribers) in the range of 90 to 99.9%. It is also pertinent to highlight that PTCL has all the means to influence the market by charging higher prices at wholesale level for operators and offering lower prices at retail level which could drive operators out of the market.

Furthermore, the Authority has initiated consultation on identification of relevant markets and determining SMP operators as per international practices and conditions in Pakistan. For example/reference, Malaysian Communications and Multimedia Commission (MCMC) in 2014, Communications and Information Technology Commission (CITC) of Saudi Arabia in 2017, and Communication Regulatory Authority of Qatar in 2016 have declared “fixed telephony market comprising of access lines and local calls (residential and business), national calls, international calls, and fixed-to-mobile”, “retail fixed access and local and national fixed call services” and “retail fixed access service and retail national fixed call services” respectively as relevant markets for the purpose of declaring SMP operators in these markets.

4.2. PTCL & Ufone comments: The definition of relevant markets is the essential starting point in any market review. Inadequate market definition (markets too large or too narrow) inevitably results in not properly addressing potential anti-competitive behaviors in the market. It is therefore important to conduct the relevant market definition thoroughly and justify it with sound legal and economic analysis. Unfortunately, in the Consultation/draft determination, the list of product and geographic markets presented by PTA remain essential unchanged for the past many years without any supporting analysis. The lack of analysis has failed to consider evolution of markets and the degree to which fixed and mobile voice may be a converged market with substitutability between traditional voice and OTT based VoIP. Further, it is not a prudent decision to place fixed and mobile services in different relevant markets as mobile operator’s ability to offer very low-priced on-net packages have squeezed the fixed line voice segment to nil.

In Pakistan, the Telecommunication Rules do not provide any direction on the economic approach and tools to define relevant markets, but instead focuses on the approach to define SMP operators (Rule 17 of the Rules). It is required that the approach to define relevant markets be further specified, building on the established practice, i.e. demand and supply-side substitutability. The PTA could refer to the Competition Commission’s

definitions of a relevant market in the Competition Act, 2010, which also puts the emphasis on substitutability. The prudent decision can only be made once the markets are appropriately defined and the analysis supported thorough consultation with all relevant stakeholder has been carried out.

Authority's findings: As stated above, 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 Telecom Rules, 2000 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 out in consultation with all the stakeholders. The Authority has defined relevant markets based on existing market conditions in Pakistan and best practice in comparable countries, and accordingly, retail local loop market has been further divided in 14 (fourteen) geographic regions. PTCL being the incumbent operator is providing local loop services in all the telecom regions including remote regions such as HTR, STR-V, GTR, NTR-I, CTR, WTR, and NTR-II, where it has been observed that it has 100% market share based on sectoral revenues. In remaining local loop regions, PTCL has market share of over 95% in regions such as STR-I, MTR and RTR, thereby, leaving no choice for consumers to switch to other local loop operators.

Furthermore, it is clarified that the Authority did not favor any particular technology as contended by PTCL and regulation does not bar operators from making investments to increase their market shares. It is also pertinent to highlight that PTCL since 2010 has been challenging Authority's SMP determination and obtaining stay orders against these determinations. Resultantly, PTCL's argument that Authority's SMP determination had barred them for innovating services and making investments does not hold ground. The issue of substitutability of fixed and mobile telephony services has been widely discussed among the regulatory authorities, however, regulatory authorities of Malaysia, Saudi Arabia, and Oman has not acknowledged the argument of substitutability and are of the view that fixed and mobile are distinct services as consumers of mobile services are able to make or receive calls while on the move and significant differences exists between pricing strategies of fixed and mobile services. The Authority is also of the view that fixed and mobile services cannot be constituted as substitutes due to different market dynamics. In Local Loop market, no operator has the ability to challenge PTCL's dominance and compete on national or regional level. Fixed-line and mobile market have separate and unique market characteristics based on different network topologies, therefore, the Authority does not deem appropriate to declare fixed and mobile as one relevant market for the purpose of declaring SMP operators.

5. The Relevant Market and SMP Operator:

5.1. Retail Local Loop Fixed-line Telecommunication 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. As per the available data submitted by the operators, PTCL is still the dominant operator in terms of subscriber base and revenues generated from local loop segment. It has been observed that although local loop operators such as Multinet, Cyber Net, Telecard, Nayatel, and Web Concepts etc. are providing voice telephony services in their respective regions but they are mainly focusing on broadband services. Region-wise market share of PTCL in terms of sectoral revenues is given in the following table:

Year	LTR	KTR	ITR	GTR	FTR	RTR	MTR	HTR	CTR	WTR	NTR-I	NTR-II	STR-I	STR-V
2017	91.6	83.3	81.4	99.8	96.6	92.2	99.2	100	99.3	99.9	99.9	100	99.5	99.9
2018	86.5	83.5	70.5	99.8	90.4	98.9	96.9	100	99.6	99.8	99.4	100	98.3	99.3
2019	84.1	80.1	63.9	99.8	93.6	97.6	95.0	100	99.6	99.8	96.4	100	95.7	99.3

5.1.3. As evident from the above, PTCL has been able to retain market share which is in the range of 63.9 % to 100% for the year 2019. In smaller regions, PTCL has market share of more than 95% to 100%. This represents that PTCL by far has the largest market share of subscribers and revenues when compared with other local loop operators. It is pertinent to highlight that 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 in all the 14 telecom regions of Pakistan has more than 25% market share based on sectoral revenues.

5.1.4. 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 services such as line rent, local calls and fixed-to-mobile calls which are being offered to its retail customers. Resultantly, majority of subscribers have no choice but to switch to other local loop operators due to limited network deployment and PTCL has all the means to control its consumers. PTCL's market share of subscribers is in the range from 79.5% to 99.9% for different regions as shown in the following table:

Region	LTR	KTR	ITR	GTR	FTR	RTR	MTR	HTR	CTR	WTR	NTR-I	NTR-II	STR-I	STR-V
%	90.7	89.2	79.5	99.8	95.2	99.8	98.1	99.8	99.8	99.0	96.3	99.9	97.1	99.8

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5.1.5. Furthermore, PTCL's turnover relevant to size of the relevant market as already been provided in Table -1 which 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.

5.1.6. Keeping in view the foregoing, retail local loop telecommunications 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 as provided above, 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):			
Local Loop Fixed-line Telecommunications Market	14 Regions of Pakistan		PTCL

6.2. PTCL is hereby declared as SMP operator in Pakistan *at para 6.1 above*, in retail local loop fixed-line telecommunication market and directed to comply with all obligations and other regulatory requirements, notifications, decisions and 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 23rd day of July 2021 and comprises of 9 pages.