



PAKISTAN TELECOMMUNICATION AUTHORITY

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F. No. PTA/CA/CA-DTE/155/1/15-46/2021

21st May 2021

Subject: Determination on Significant Market Power (SMP) Operators in Wholesale Broadband Access 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 2nd April 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Wholesale Broadband Access 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 Arit Sarwana
Director General (Commercial Affairs)

To:

Regulatory Heads of all Fixed-line Operators 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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Determination of Significant Market Power (SMP) Operators in Wholesale Broadband Access 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 cost effective and 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).

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 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 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 Broadband Access Market:

2.2.1. The Authority in its consultation paper proposed wholesale broadband access market as a relevant market and composed of the wholesale broadband service provided by the network operator to the broadband service operator. It was also concluded that wholesale broadband access service (also known as local loop transmission capacity) means provision of network access service to broadband service providers, through technical equipment (e.g. splitter and DSLAM), that enable them to provide broadband services and alternatively, Optical Fiber Access Networks (OFAN) may also be used for the enhanced transmission capacity.

2.2.2. For the purpose of determining the total market size and the market share, revenues generated from the provision of access services to broadband service providers are taken into consideration.

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. It is relevant to point out that despite sharing the draft determination, no 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 Broadband Access Market in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB).

4. The Relevant Market and SMP Operator:

4.1. Wholesale Broadband Access Market:

4.1.1. 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.

4.1.2. It has been found that no operator is offering broadband services over SCO lines. Resultantly, no revenue has been generated by SCO in this regard.

4.1.3. Keeping in view the foregoing, wholesale broadband access market is not identified as relevant market for the purpose declaring SMP operators.

5. The Authority's Determination of Relevant Markets and SMP Operators:

5.1. After detailed analysis and deliberations, the Authority has not determined wholesale broadband access market as relevant and no operator has been declared as SMP operator till the time the Authority determines otherwise.

Muhammad Navæed
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 5 pages.