



PAKISTAN TELECOMMUNICATION AUTHORITY

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

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21 April, 2021

**Subject: Determination on Significant Market Power (SMP) Operators in Wholesale Individual Fixed Interconnection Market in Azad Jammu & Kashmir (AJ&K) & Gilgit Baltistan (GB)**

This is with reference to the Authority Hearing held on 23<sup>rd</sup> 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 26<sup>th</sup> March 2021.

2. The Authority is pleased to issue "Determination on SMP Operators in Wholesale Individual Fixed Interconnection Market in Azad Jammu & Kashmir (AJ&K) & 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 Arif Sargana  
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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21<sup>st</sup> April, 2021

**Determination on Significant Market Power (SMP) Operators in Wholesale Individual Fixed Interconnection Market in Azad Jammu & Kashmir (AJ&K) & 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) (Adaptation and Enforcement) Order, 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 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 3<sup>rd</sup> October 2016 issued Determination on Relevant Markets and declared Significant Market Power (SMP) Operators in Azad Jammu and Kashmir (AJ&K) and

Gilgit Baltistan (GB). In the said Determination, all Local Loop Operators were declared as SMP operators in Individual Fixed Interconnection Market for 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 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 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 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 and identified 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	3 Telecom Regions of AJ&K & GB
2.	LDI Fixed-line Telecom Market	AJ&K & GB
3.	Mobile Telecom Market	AJ&K & GB
4.	Retail Fixed Broadband Market	AJ&K & GB
<b>Wholesale Level Markets:</b>		
5.	Domestic Leased Lines Market	AJ&K & GB
6.	Call Transit Service Market	AJ&K & GB
7.	Wholesale Broadband Access Market	AJ&K & GB



8.	IP Bandwidth Market	AJ&K & GB
9.	Individual Fixed Interconnection Market	AJ&K & GB
10.	Individual Mobile Interconnection Market	AJ&K & GB

## **2.2. Wholesale Individual Fixed Interconnection Market:**

2.2.1. The Authority in its consultation paper proposed individual fixed interconnection market as a relevant market and defined the market as provision of call termination service by a given individual LL operator (PSTN or WLL) to other telecom operators for local, long distance and / or international calls.

## **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 Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB)". 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), SCO, and Cellular Mobile Operators (CMOs) attended the hearing on the said date.

## **4. Draft Determination on Relevant Markets and SMP Operators:**

4.1. The Authority vide its letter No. PTA/CA/CA-DTE/155/1/15-46/2021 dated 26<sup>th</sup> March 2021 has also shared the draft determination with operators for comments. However, no comments have been received from the operators within the given deadline.

## **5. The Operators' responses on Wholesale Individual Fixed Interconnection Market and the Authority's Findings:**

5.1. None of the operator has submitted its comments on this market. In this regard, the Authority is of the view that it has identified relevant markets including individual fixed interconnection market for the purpose of determining and declaring SMP operator in line with the provisions of the Rules, 2000. Regulatory authorities of Malaysia, Turkey, Australia, Oman, Kingdom of Saudi Arabia and Qatar etc. have identified individual fixed interconnection market as relevant market for the purpose of regulating termination charges. Furthermore, it has been admitted by these regulatory authorities that there is virtually no competition in this market due to the fact that call termination service cannot be provided by any other operator but the owner of the called network and, in this context, each individual fixed-line operator has a monopoly (100% market share) on termination of calls to customers connected to its own network.

## **6. The Relevant Market and SMP Operator:**

### **6.1. Individual Fixed Interconnection Market:**

6.1.1. For the purpose of declaring SMP Operators, the entire telecom market of Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (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 shall be based on the area where an operator is authorized to operate under its respective licenses.

6.1.2. Individual Fixed Interconnection Market includes provision of call termination service by a given individual LL operator to other telecom operators for local, long distance, and/ or international calls. Wholesale call termination services in Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB) are provided by Special Communications Organization and Sky Telecom to their own networks. Each of the individual LL operator is SMP operator in this market as every operator has 100% market share whereas Rule 17(1) states that an operator shall be presumed to have significant market power in case of more than 25% market share of relevant market. Furthermore, all LL operators own and control the physical network necessary to deliver these services to their subscribers. Termination services on each network represent a bottleneck whereby each licensee has control over the provision of termination on its network. It is also concluded that consumers have no choice to avail telecommunication facility with any other operator as further entry is not technically possible.

6.1.3. All operators shall have to follow the obligations of provision of interconnection upon request and non-discrimination, as given in the Interconnection Guidelines, 2004, Rules and directives issued by the Authority from time to time.

6.1.4. Keeping in view the foregoing, this market shall be identified as relevant market for the purpose declaring SMP operators.

## **7. The Authority's Determination of Relevant Markets and SMP Operators:**

7.1. 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:

7.2. All Licensees are hereby declared as SMP in Pakistan as provided *at para 7.1 above* in individual fixed interconnection 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.

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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. Adir Azeem Bajwa (R)  
Chairman

This Determination is signed on 21 day of April 2021 and comprises of 6 pages.