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F. No.15-46/16(CA)/PTA/155/2006

3rd October, 2016

Subject: Determination on Relevant Markets and Significant Market Power (SMP) Operators in Pakistan, Azad Jammu and Kashmir (AJ&K) and Gilgit Baltistan (GB)

Please find attached herewith determination on the captioned subject for information, record and compliance.

M. Saleem
Dr. Muhammad Saleem
Director General (Commercial Affairs)

To:

1. For Director General, (Ghulam Hussain Anjum), Special Communications Organization (SCO), HQs, Rawalpindi.
2. CEO, PMCL (Mobilink), 1-A, IBC, Kohistan Road F-8 Markaz Islamabad.
3. CEO, CMPak, Plot No. 47 Kuri Road National park Chak Shahzad Islamabad.
4. CEO, Telenor Pakistan, 15, Silver Square F-11 Markaz Islamabad.
5. CEO, PTML (Ufone), 15th Floor Plot No. 55-C Jinnah Avenue Blue Area Islamabad.
6. CEO, Warid Telecom, 65-W, Fazal-e-Haq Road Blue Area Islamabad.
7. CEO, LinkdotNet, 1-A, IBC, Kohistan Road F-8 Markaz Islamabad.
8. CEO, Wateen, House No. 11 School Road F-6/1 Islamabad.
9. CEO, Telenor LDI, 15, Silver Square F-11 Markaz Islamabad.
10. CEO, PTCL, H/Qs Sector G-8/4 Islamabad.
11. CEO, Interworld, Suit No. 3 Hiltop Arcade Kizre Boulevard DHA Face - 4 Karachi.
12. CEO, SKY Telecom, 14-N F - 8 Markaz Islamabad.
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Copy for information to:

1. Chairman, PTA
2. Member (Finance), PTA
3. Member (Compliance & Enforcement), PTA
4. All DG's, PTA



F. No. 15-73/14(CA)/PTA

36th September, 2016

Determination on Relevant Markets and Significant Market Power (SMP) Operators in Pakistan, Azad Jammu and 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 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 Pakistan, Azad Jammu & Kashmir (AJ&K) and Gilgit Baltistan (GB) respectively.
- 1.2. In order to regulate the matters related to competition, rule 17 (1) of the Pakistan Telecommunication Rules, 2000 (the "Rules") further provides that an operator shall be presumed to have significant market power when it has a share of more than twenty-five per cent of a particular telecommunication market. The relevant market for these purposes shall be based on sectoral revenues.
- 1.3. Sub-rule 2 of rule 17 of the Rules 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 per cent of the relevant market has significant market power. It may also determine that an operator with a market share of more than twenty-five per cent 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. PTA vide its Determination No. 15-46/01(Tariff)/PTA dated 25th August, 2004, *inter alia*, determined and declared Relevant Markets and SMP Operators as follows:

| Sr. No. | Relevant Markets | | SMP Operators |
|---------|--|---------------------|---------------|
| | Product / Service Market | Geographical Market | |
| 1. | Local Loop Fixed Line Telecommunications | All Telecom Regions | PTCL |
| 2. | Local Loop Fixed Line Telecommunications | AJ&K & GB | SCO |
| 3. | LDI Fixed-Line Telecommunications | Pakistan | PTCL |
| 4. | LDI Fixed-Line Telecommunications | AJ&K & GB | SCO |
| 5. | Leased Lines | Pakistan | PTCL |
| 6. | Mobile Cellular Telecommunications | Pakistan | PMCL |
| 7. | Mobile Cellular Telecommunications | AJ&K & GB | SCO |
| 8. | National Interconnection | Pakistan | PTCL & PMCL |

1.5. After detailed review and consultation with stakeholders, PTA vide letter No. 15-46/10(CA) dated 15th July 2010 issued Determination on Relevant Markets and Significant Market Power (SMP) Operators in Pakistan, Azad Jammu and Kashmir (AJ&K) and Gilgit Baltistan (GB). In the said Determination, following retail as well as wholesale relevant markets were introduced:

| Sr. No. | Relevant Markets | | SMP Operators |
|--------------------------------|--|------------------------|------------------|
| | Product / Service Market | Geographical Market | |
| Retail Level Markets | | | |
| 1. | Fixed Local Loop (LL) Telecommunications Market | 14 Regions of Pakistan | PTCL |
| | | 3 Regions of AJ&K & GB | SCO |
| 2. | Fixed Long Distance & International (LDI) Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 3. | Retail Broadband Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| Wholesale Level Markets | | | |
| 4. | Domestic Leased Lines Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 5. | International Leased Lines Market | Pakistan | PTCL |
| 6. | IP Bandwidth Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 7. | Individual Fixed Interconnect Market | Pakistan | All LL Operators |

| | | | |
|-----|---------------------------------------|-----------|----------------------|
| | | AJ&K & GB | All LL Operators |
| 8. | Individual Mobile Interconnect Market | Pakistan | All Mobile Operators |
| | | AJ&K & GB | All Mobile Operators |
| 9. | Call Transit Services Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 10. | Wholesale Broadband Access Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |

1.6. The said Determination on SMP was challenged by PTCL in F.A.O No. 144 of 2010. The Honorable Islamabad High Court vide its order dated 31st January 2013 remanded the case to the Authority with the direction to decide the case afresh in accordance with law, rules and procedure.

2. Need of Determining Relevant Market and SMP Operators afresh:

2.1. In order to assess the current market conditions and in compliance of the Honorable Islamabad High Court order, PTA considered it appropriate to review the existing and other possible relevant markets in consultation with all stakeholders. PTA is of the view that the telecommunication markets of Pakistan, Azad Jammu and Kashmir and Gilgit Baltistan (AJ&K-GB) have changed in their size, scope, diversity, needs and dynamics which require a fresh review of the relevant markets and declaration of SMP operators according to the changed market situation.

3. The Process of Conducting Market Review:

3.1. PTA issued a Consultation Paper (the "paper") on the subject on 5th March 2014 and requested the stakeholders to furnish data, for the period covering from 1st January 2013 to 31st December 2013 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. 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 Markets |
| | Retail Level Markets: | |
| 1. | Local Loop Fixed Line Telecommunications Market | (i) 14 Regions of Pakistan (ii) 3 Regions of AJ&K & GB |
| 2. | LDI Fixed-Line Telecommunications Market | (i) Pakistan (ii) AJ&K & GB |

| | | |
|----|---|--------------------------------|
| 3. | Mobile Cellular Telecommunications Market | (i) Pakistan (ii) AJ&K & GB |
| 4. | Retail Broadband Market | (i) Pakistan (ii) AJ&K & GB |
| | Wholesale Level Markets: | |
| 5. | Domestic Leased Lines Market | (i) Pakistan (ii) AJ&K & GB |
| 6. | International Leased Lines Market | (i) Pakistan |
| 7. | Call Transit Services Market | (i) Pakistan (ii) AJ&K & GB |
| 8. | Wholesale Broadband Access Market | (i) Pakistan (ii) AJ&K & GB |

4. Hearing held on 10th February 2015

PTA vide its letter No. 15-46/14(CA)/PTA dated 2nd February 2014 issued Hearing Notices to all Local Loop (LL), Long Distance and International (LDI), Cellular Mobile Operators (CMOs) and holder of Class Licensing and Registration Services Licenses (CLRS) for finalizing "Determination on Relevant Markets and Significant Market Power (SMP) Operators in Pakistan, Azad Jammu and Kashmir (AJ&K) and Gilgit Baltistan (GB)". In order to proceed further, the matter was fixed for hearing before the Authority on 10th Feb., 2015. The representatives of Local Loop (LL), Long Distance and International (LDI), Cellular Mobile Operators (CMOs) and Class Licensing and Registration Services Licenses (CLRS) attended the hearing on the said date. During the hearing, the licensees requested the Authority to allow them the opportunity to comment on the said paper. The Authority acceded to their request and allowed all licensees to submit their comments on the consultation paper.

5. The Operators' responses to the Paper and the Authority's Findings:

Criteria for Determining SMP Operators

- (i) **Pakistan Telecommunication Company Limited (PTCL) comments:** The subject consultation paper derives statutory powers from Telecom Rules, 2000, which are outdated as the telecom market is wholesomely changed after deregulation 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 Rule 17 (2) and should also not be repugnant to any other law which is in force in the country, including the provisions of 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. The paper does not give or share any such analysis of the aforementioned factors.

Authority's findings: The Authority within the legal framework has initiated the process of declaration of SMP. The Authority is fully cognizant and well aware about the elements and factors to be considered while declaring SMP. For ready reference rule 17 of the Rules is hereby reproduced below:

17. SMP Operator: (1) An operator shall be presumed to have significant market power when it has a share of more than twenty-five per cent of a particular telecommunication market. The relevant market for these purposes shall be based on sectoral revenues.

(2) The Authority may, notwithstanding sub-rule(1), determine that an operator with a market share of less than twenty-five per cent of the relevant market has significant market power. It may also determine that an operator with a market share of more than twenty-five per cent of the relevant market does not have significant market power. In each case, the Authority shall take into account the operator's liability 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.

- (ii) **PTCL's comments:** The example of fixed line voice market which is considered a separate market from mobile in earlier determinations issued by the Authority following the European Trends. In developed markets, fixed-line voice segment had already achieved high penetrations (close to 100%) of households before mobile telephony was launched. Mobile voice was expensive niche product at launch. Fixed voice was therefore regulated in order to provide a boost to the new mobile technology. In Pakistan, however, the telecom market developed very differently where fixed-line could not achieve the desired level of penetration due to overwhelming dominance of mobile services being cost effective substitute for fixed-line voice services. In contrast to fixed, the mobile industry across the world, including in Pakistan had been subject to less ex-ante regulation. As a result, most mobile operators rolled out parallel infrastructure in Pakistan. Penetration increased rapidly and consumers benefitted from affordable services. Therefore, it is not be a prudent decision to place fixed and mobile services in different relevant markets as

mobile operator's ability to offer very cheap on-net packages have squeezed the fixed-line voice segment to nil.

Authority's findings: The Authority has issued separate licenses for fixed (LL and LDI) and mobile services owing to different market dynamics and required network elements. Based on separate licensing, the Authority vide its determinations dated August 2004 and July 2010 declared separate markets for fixed and mobile services. Keeping these facts in view, fixed and mobile services cannot be merged into one relevant market for the purpose of declaring SMP operators.

- (iii) **PTCL's comments:** By determining SMP status in the relevant markets as depicted and inferred from the paper, would erroneously lead to imposition of extra burden on operators thereby causing serious dents to the profitability and commercial interests of the operators and damaging further prospects of investment.

Authority's findings: PTCL has been declared as SMP operator in the past and the Authority is of the view that there was no impact of declaration of SMP by PTA on PTCL in terms of profitability and commercial interest. As mentioned earlier, the Authority has to follow the factors / features as provided in rule 17 of the Rule and declaration of SMP would not damage prospects of investments in any way.

- (iv) **PTCL's comments:** The Authority should wait for policy guidelines on competition framework (rules) as provided in the draft policy circulated for consultation by MoIT. The competition framework will require industry consultation where benchmarks for market power and basis for relevant markets be discussed and finalized. Once the framework, backed up by policy provisions and statutory rules, will be there the Authority then could ask the operators for submission of data and complete the analysis for determining SMP in newly agreed relevant markets.

Authority's findings: The Authority under the existing prevailing regulatory law is empowered / mandated to regulate the competition. Telecommunications Policy 2015 has also identified criteria which is not contrary to criteria already mentioned in the Rules. Furthermore, MoIT vide its letter dated 9th May 2016 has suggested PTA to determine SMP operators according to the regime currently applicable and in case of any inconsistency with the rules on competition as and when promulgated, relevant issues / matters would be determined and decided accordingly.

- (v) **Mobilink's comments:** We in general agree with PTA's conclusion that both LL and LDI telecommunication markets continue to lack competition in fixed line case is correct. The incumbent operators still enjoy dominant role in all the regions both in Pakistan and AJ&K areas where PTCL owns about 95% of subscriber base both in fixed and WLL in Pakistan and SCO owns about 100% subscriber base in AJ&K as per PTA's annual report 2014. We however observe that the Authority is using

geographical area as basis of defining relevant markets in local loop fixed line telecommunication market but also recognized the fact that the market can further be subdivided into fourteen regions in Pakistan and three regions in AJ&K. We would like to mention here that the Authority must consider each region a separate relevant market in this area and identify an SMP for each of such markets otherwise it would mean that an operator having a license in one region is being compared with an operator having licenses in all the regions. This would therefore mean that such an operator could never be considered for being an SMP, no matter, how big it becomes in its licensed area. We therefore suggest seeking data from all the operators on regional basis and determining SMP separately for each region where they are licensed.

Authority's findings: The Authority has collected region wise data from all local loop operators and has considered each region as a separate relevant market for the purpose of declaring SMP operator.

(vi) **Mobilink's comments:** In case of LDI Fixed line Telecommunication Market, the Authority has identified two separate markets namely Pakistan and AJ&K based on licenses. This segregation has created serious technical and commercial issues, nevertheless keeping in mind the licensing constrains, and we agree with the geographical nature of relevant markets as proposed by the Authority but disagree with the market definition as proposed by the Authority with regard to services. The LDIs are currently offering Nationwide long distance traffic, International incoming traffic, International outgoing traffic and Leased lines services. The nationwide long distance service offered by LDIs is of two types:

- a) Calling card, where LDI owns the customer (buyer of the calling card) and therefore should be categorized as retail service.
- b) Call carrying service to local loop operator by carrying its inter-region long distance calls.

We, therefore, recommend that such service should be made part of wholesale service (Call Transit Service) and not retail market. In case of international traffic, we like to submit that LDI plays the role of a carrier only and not the originator of the traffic as they do not sell or purchase traffic directly from retail origin. It is therefore part of wholesale and not retail market. Since the major business of the new entrants in LDI area is related to international traffic.

Authority's findings: The Authority concurs with Mobilink's viewpoint regarding offering of Nation-wide Dialing (NWD) and International Direct Dialing (IDD) calls by way of calling card or carrier pre-selection. Services indicated by Mobilink have already been included as retail and the revenues from these services have been taken

into account for determining the total market size and the market share of a particular operator in LDI Fixed-line Telecommunications Market.

- (vii) **Mobilink's comments:** The trend of decreasing share of the incumbent operator and increasing share of its competitors clearly shows how the competition is growing in the mobile market, which provides level playing field to all operators by giving an equal access to reach the customers. The market situation in AJ&K is even more competitive as compared to Pakistan where the number of operators is more than Pakistan (five) including SCO whereas the coverage area is far less than Pakistan. The applicable tariffs are the same as in Pakistan by the same operators. We therefore understand that given the above facts, the Authority should treat AJ&K market the same way as Pakistan market. Given the above facts we agree with PTA's conclusion that this market is fairly competitive and there is no need to declare it as relevant market for the purpose of determining SMP.

Authority's findings: Although PTA did declare cellular mobile retail market as competitive in its earlier determination, however, there are instances where the cellular mobile operators either jointly introduced new charges such as admin/operational/maintenance fee @ 5% on card reload services or increased charges for operator assistance services (helpline, balance inquiry). These steps clearly indicate that there is lack of effective competition and the mobile subscribers are left with no choice but to accept increase in charges introduced by the operators.

- (viii) **Mobilink's comments:** The broadband market, which was quite insignificant in the initial years, is now picking up pace mainly after PTCL's entry in the market. The operators are offering broadband services on Digital Subscriber Line (DSL), *Wimax*, and fiber; however, DSL contributes the major share in total broadband market. The largest operator offering DSL services is PTCL, which is also access line provider to the other operators offering DSL services and is in a perfect position to influence the competition through its pricing and access line controlling ability. We therefore agree with the Authority's views to declare retail broadband market as relevant.

Authority's findings: The Authority did introduce and declare new market for retail broadband service in order to safeguard interest of smaller operators. Based on the revenue data received from the operators, the Authority would declare SMP operator in retail broadband market.

- (ix) **Mobilink's comments:** We agree with the Authority's views that new operators have emerged in the leased line market and PTCL's monopoly has ended. We however, like to mention here that in at least two cases i.e. Link Direct and Wateen the major revenue earned by them is through sale to its own parent companies, which was

initially used to buy the capacity from PTCL. Their optic fiber cables only covers main routes and their parent companies are still dependent on PTCL for spur routes, which constitute a fairly large share of the leased circuit capacity required from PTCL. Because of this handicap, their sale to the other customers is very minimal e.g. in PMCL case share of such sales is only 10% of the total sales for the year 2014. It is therefore possible that an operator may have more than 25% revenue share in this specific market but is not in a position to influence the market as it only provides service in a given area i.e., main route and to a given customer. Under the circumstances, we understand that Authority must not rely merely on Rule 17(1) i.e., 25% revenue share as it shall not portray the true picture of market. We therefore propose that the Authority must consider other factors under Rule 17(2) of Telecom Rules 2000 for the purpose of identifying SMP in leased line market.

Authority's findings: The Authority has already segregated leased line market into domestic leased line and International leased line market. In case any operator is declared as SMP in domestic leased line market, it will also cover obligation pertaining to spur routes.

- (x) **Mobilink's comments:** We agree with the Authority's opinion that international leased line market is not fully competitive in the presence of only two operators and hence should be identified as a relevant market for the purpose of declaring SMP operators.

Authority's findings: The Authority in order to protect and safeguard interests of operators would regulate international lease line market in accordance with legal framework provided in the Act and the Rules.

- (xi) **Mobilink's comments:** We agree with the Authority's view that call transit service may be defined as relevant market for the purpose of determination of SMP in this market in both geographical areas.

Authority's findings: The Authority is of the view that in line with global trends special emphasis should be based on wholesale markets and PTA intends to declare transit market as a relevant market.

- (xii) **Mobilink's comments:** The Authority has rightly pointed out that PTCL enjoys considerable competitive advantage in provision of network access services to other operators being sole provider of the broadband access service in Pakistan. We however, note that the Authority has not mentioned AJ&K in this case, where SCO is also in the same position as PTCL in Pakistan with reference to broadband access market. Considering the monopolistic status of both PTCL in Pakistan and SCO in

AJ&K we agree with the Authority's opinion to declare broadband access market as relevant market.

Authority's findings: The Authority intends to declare broadband access market as a separate relevant market to protect and safeguard interests of smaller operators. PTA would ensure that operators comply with the legislative requirement and not indulge in anti-competitive practices regarding tariffs.

- (xiii) **Warid Telecom comments:** The retail broadband as proposed to be recognized as a relevant market must be revisited in view of the recent 3G/4G licensing. In view of the technical capability the CMOs would fall into this category. However, CMOs and WLL or LL providers into this singular category may have a skewed result. It would be appropriate to clarify that Broadband may be a Relevant Market for cellular licensed operators separate to the Retail Broadband Market for all other licensees such as WLL or LL etc.

Authority's findings: PTA is of the view that it has clearly defined Retail Broadband Market as DSL, which makes use of the fixed telephone network; therefore, there is no need to further elaborate the market. Furthermore, PTA is of the view that mobile broadband market is at infancy stage and if need arises, PTA can always seek comments of the industry to declare it as a relevant market.

- (xiv) **Warid Telecom comments:** Due to ongoing BVS activity, status of cellular operators in terms of factors relating to influencing the declaration of SMP are likely to be changed. Proposed new Telecom Policy also recommends for raising this factor of 25% market share to 40% market share to 40% which is in line with CCP's considerations and practice being followed in EU countries. PTA should carry out this exercise after completion of BVS Activity and issuance of New Telecom Policy.

Authority's findings: PTA is of the view that the ongoing BVS activity would not affect determination of SMP as the basis of determination of SMP operators is derived from sectoral revenues. Regarding market share and issuance of Telecommunication Policy, 2015 the Rules clearly define the criteria of 25% of sectoral revenues.

- (xv) **Witribe comments:** PTA should declare Retail Broadband Market as relevant market as the incumbent operator is offering lower tariffs both in DSL and wireless segments. Resultantly, smaller operators are in extremely tight corner due to competition onslaught by the incumbent operator.

Authority's findings: PTA has observed that the industry has supported the idea of declaring retail broadband market as a relevant market to ensure that SMP operators do not abuse their positions by offering anti-competitive tariffs.

- (xvi) **Witribe comments:** The Authority should nominate SMP operators both in LL and Mobile segments as they abuse their dominant positions in these markets.

Authority's findings: PTA has noted suggestion and will be given due consideration while determining SMP operators. It may be noted that PTA in the consultation paper sought data from LL and Mobile operators.

- (xvii) **Telenor's comments:** The National Telecom Policy (NTP) is a governing document that dictates the telecom market structure and industry competition rules and as such proposition to identify relevant market and SMP for Pakistani Mobile Market is not consistent with the Draft NTP. Telenor is of the view that the exercise of identifying the relevant market and SMP operators should be put on hold by PTA until the Telecom Policy is notified and the statutory rules are made by MoIT. It is requested to postpone the consultation process on the said determination.

Authority's findings: Telecommunication Policy, 2015 has also outlined detailed criteria regarding determination of SMP operators. In case of any inconsistency between this determination and Competition Rules as when promulgated by MoIT, relevant issues to the extent of inconsistency may be considered and in consultation with all the stakeholder would be addressed and decided, if so required. However, on the issue of SMP operator for mobile market, PTA is of the considered view that although the mobile operators are competing with each other and offering new packages but there were instances when the industry unanimously introduced and imposed call set-up charges thus defeating the concept of fair competition.

- (xviii) **Telenor's comments:** Competition Commission Act, 2010 states that an undertaking (telecom operator) should be deemed dominant if its share of relevant market exceeds 40%, Telecom Rules, 2000 on the other hand states that an operator should be deemed dominant if it has more than 25% share of relevant market, crafting conflict in the standards set for declaring an operator as SMP.

Authority's findings: As mentioned in the preceding paragraph, Telecommunication Policy 2015 has not identified any particular market share for identification of SMP operators. Furthermore, the Rules clearly provide the criteria for determining SMP operator, in telecommunication sector, which cannot be deviated at this point in time. PTA being sector specific regulator is mandated to determine SMP based on 25% market share based on sectoral revenues.

- (xix) **Telenor's comments:** The factors mentioned in sub-rule (2) of Rule 17 should be given due consideration in addition to the revenue market share benchmark, regardless of 25% or 40% threshold. Based on the factors mentioned in sub-rule, it can clearly be comprehended that revenue market share is not the fundamental criteria

for determining SMP. In fact, the main apprehension is the anti-competitive behavior of a dominant player.

Authority's findings: The Rules expressly provide criteria of 25% of sectoral revenues which is being considered while determining SMP operator in telecommunication market including other factors as permitted under the said rules like operator's ability to influence market conditions. There were many instances in the past wherein the mobile operators have unanimously increased and introduced charges with various nomenclature such as maintenance / account fee / call set up charges / operator assistance charges etc. jointly.

- (xx) **Telenor's comments:** PTA has already declared cellular market in a state of fair competition and the competition has only increased further since 2010, therefore considering the Pakistani mobile market as a relevant market for the study of SMP would serve no purpose because the outcome of the analysis would be the same as the study conducted in 2010.

Authority's findings: The admitted position of the Telenor with regard to determination of SMP well taken on record. However, considering the all relevant factors, including but not limited to the conduct of mobile operators with regard to increase in call-setup charges / operators assistance etc. there is a need to reassess the market and warrants to re-initiate consultation process for determining the SMP operator in the relevant market.

- (xxi) **CMPak's comments:** Clear definition and distinction in the roles of Competition Commission of Pakistan and PTA in regard to telecom operators need to be made. The overlap that currently exists needs to be removed before the parameters for SMP status can be defined and outlined. The process outlined in the Competition Act is more reliable than the one suggested in the Consultation Paper. Therefore, it should be followed.

Authority's findings: By virtue of section 4(1)(m) of the Act read with Rules, PTA is mandated / empowered to determine SMP operators in the telecom market. Being a sector specific regulator, PTA can declare SMP as per prevailing regulatory law. Thus there is no overlapping with regard to definition and distinction in the role of Competition Commission of Pakistan and Pakistan Telecommunication Authority. For further clarification, superior courts in judgments [un reported] passed in F.A.O No.72 of 2011 by Honorable Islamabad High Court titled PTCL Vs. PTA on the issue of jurisdiction on competition related matter concluded in the following manner:

"Furthermore, the contention of learned counsel for the petitioner that the Authority has no jurisdiction to entertain complaints is not correct. There is no doubt that the Competitive Commission is empowered to adjudicate upon such

like complaints, nevertheless concurrent jurisdiction is available to the Competitive Commission as well as the respondent/ Authority. In this respect, contention of learned counsel for the appellant is that by establishment of the Competitive Commission impliedly jurisdiction of the Authority has been ousted but it is not correct. Since different companies are involved in the same business, so in order to maintain a healthy competition among the companies, the jurisdiction of the authority cannot considered as ousted".

Feeling aggrieved by the said order, the same was challenged before the August Supreme Court of Pakistan in C.P No. 630 of 2014. On the issue of jurisdiction of PTA relating to competition, the August Supreme Court of Pakistan on the issue of PTA's jurisdiction concluded [not reported] as under:

"Para 6. Before us learned counsel for PTCL argued that the requirement by PTA to provide for the separated accounts went beyond the regulations / guidelines of 2007. On this basis it was contented that the order of 18.11.2011 was not legally sustainable. This contention is completely misconceived. The PTA as regulator of Telecom sector is fully mandated to ensure fair competition between the service providers rendering the same service. The PTA is also required to ensure that none of the services provider indulge in anti-competitive practices. This mandate of the PTA is not disputed. Therefore, if PTA has ordered the submission of separated accounts this is meant for the purpose of determining if needed PTCL is indulging in anti-competitive practices as alleged by respondent No.2 and 3. The PTA is empowered to seek information from services providers licensed by it, to hear and decide the complaints alleging anti-competitive practices such as cross subsidies...."

The aforesaid conclusion drawn by superior courts while passing judgments in telecom related matters [between licensee and telecom regulator] explicitly defines the jurisdiction of PTA on the matter related to competition.

- (xxii) **Worldcall's comments:** New markets such as fixed voice call termination, mobile voice call termination; wholesale broadband access (Metro and Local access to end-users) should be regulated. Furthermore, leased lines should be divided into two areas; domestic high network replication areas may not be regulated while low penetration i.e. outside areas of high network replication may be regulated. International bandwidth should be regulated. In case of origination market, it needs to be expanded by inclusion of mobile networks in addition to the PTCL network for call origination and termination through carrier selection as at present customers have no choice of select of long distance service providers.

Authority's findings: PTA appreciates the suggestions regarding introduction of new markets. This would in turn help the competition and operators to compete with each other.

- (xxiii) **Nayatel's comments:** Twelve years back, PTCL had the major share in retail voice services including FLLOs and CMOs. However, things have drastically changed in last decade and presently fixed-line voice service subscribers are less than 4% of the total retail voice subscribers in the country. Theoretically market segments of LLOs and CMOs may differ but practically both compete and share the same market, i.e. voice telephony. CMOs because of their large customer base can operate at very low margins and offer very low rates to their voice subscribers. It is suggested that along with PTCL, mobile operators' voice services should also be considered while identification of SMP for retail voice services.

Authority's findings: The issue raised by the Nayatel is already under consideration by PTA and to address this issue necessary data has already been sought by the relevant licensees with the purpose to consider and declare it as a separate relevant market and declaring SMP operators.

- (xxiv) **Nayatel's comments:** After launch of 3G and 4G(LTE) services last year, there are two different categories of retail broadband; fixed-line broadband and wireless broadband. However, broadband have spectrum limitations for the broadband services. Therefore, it should not be taken into account while identification of SMP for fixed-line broadband.

Authority's findings: PTA is of the view that 3G and 4G (LTE) services are at infancy / initial stage, therefore, they should not be considered for retail broadband services.

6. The Relevant Markets and SMP Operators:

- 6.1. For the purpose of declaring SMP Operators, the entire telecom market of Pakistan, AJ&K & GB is divided into different relevant markets on the basis of (i) geographical area and (ii) products / services offered in that particular market segment.
- 6.2. Geographical market shall be based on the area where an operator is authorized to operate under its respective licenses. Regarding product / service markets, the Authority's view is as under:

Retail Level Markets:

(i) Local Loop Fixed-line Telecommunications Market

Local Loop Fixed-line Telecommunications Market includes 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, this product/service market can be further sub-divided into fourteen (14) Regions in Pakistan and three (3) Regions in AJ&K & NA.

As to determine the 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 shall be taken into account. Such revenues may include installation/shifting charges, line rental, call charges, etc. For the avoidance of doubt, interconnection revenues from call termination services shall not be included in the total revenue base.

There are only a few operators in the Local Loop Fixed-line Telecommunications Market of Pakistan, especially in the Wireless Local Loop segment. However, still majority of market share, which ranges from approximately 93% to 100% in different telecom regions of Pakistan, is with PTCL. It is also pertinent to highlight that in 2009, PTCL's market share ranged from 78% to 100% whereas it has now increased from 78% to 93%. PTA has noted that Local Loop Fixed-line Telecommunications Market in AJ&K & GB is still under monopoly of SCO, which holds approximately 100% market share in all three regions. Although Sky Telecom has started operations in Telecom Region-1 (TR-1) but its presence is non-significant. Keeping this into consideration, PTA is of the view that:

- a) Local Loop Fixed-line Telecommunications Market shall continue to be identified as relevant market for the purpose of declaring SMP operators; and
- b) PTCL and SCO have SMP status in Local Loop Fixed-line Telecommunications Market in each of the fourteen (14) Regions of Pakistan and three (03) Regions of AJ&K & GB, respectively.

(ii) LDI Fixed-line Telecommunications Market

LDI Fixed-line Telecommunications Market includes provision of long distance and international call services on national basis to end-users. Geographically, this product/services market can be further sub-divided into two markets: Pakistan and AJ&K & GB markets.

As to determine the total market size and the market share of a particular operator in LDI Fixed-line Telecommunications Market, only the revenues from licensed LDI Telecommunications services shall be taken into account. Such revenues may include call

charges for long distance and international outgoing calls, whether collected from the customers directly or from other operators (excluding call transit charges). Revenues generated from calling cards shall also be considered while assessing the market share. However, revenues from international incoming calls shall not be included in the total revenue base.

With the entrance of new LDI operators in Pakistan market, considerable competition has been experienced from new LDIs. However, PTCL still holds 63% of the said market. PTA observes that in AJ&K & GB, currently, two operators FDI Telecom and Sky Telecom are providing long distance and international telephony services besides SCO. However, SCO has approximately 100% market share in the said relevant market. Based on the aforesaid, PTA, is of the view that:

- a) LDI Fixed-line Telecommunications Market shall continue to be identified as relevant market for the purpose of declaring SMP operators; and
- b) PTCL and SCO have SMP status in LDI Fixed-line Telecommunications Market in Pakistan and AJ&K & GB respectively.

(iii) Mobile Cellular Telecommunications Market

Mobile Cellular Telecommunications Market includes provision of wireless-based telecommunication services (other than WLL) on national basis. This product/service market can be further sub-divided into two geographic markets: Pakistan and AJ&K & GB markets.

As to determine the total market size and the market share of a particular operator in Mobile Cellular 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 (2G), etc.

PTA in its determination dated 15th July 2010 declared Mobile Cellular Telecommunications Market (of both Pakistan and AJ&K & GB) as fairly competitive with no operator as SMP. However, PTA sought fresh data from all mobile operators of both Pakistan and AJ&K & GB to determine the latest position of market shares and declare SMP operator, if need arises. It has been observed that cellular mobile operators are offering competitive tariffs but in case of operator assistance services (such as card reload services, helpline, balance inquiry charges), the operators are levying same tariffs, leaving no choice for the consumers. Furthermore, CMOs introduced uniform call set-up charges @ Rs. 0.10 per call (excluding tax) in addition to normal tariffs. In case of

Pakistan, market shares of cellular mobile operators range from 10% to 36% and in case of AJ&K & GB, it ranges from 2% to 39%. The Authority has observed that all the cellular mobile operators have unanimously increased charges of operator assistance service and have influenced market in a negative way. Based on the above, PTA is of the view that:

- a) Mobile Cellular Telecommunications Market shall continue to be identified as relevant market for the purpose of declaring SMP operators; and
- b) PMCL and Telenor have SMP status in Mobile Cellular Telecommunications Market in Pakistan and in AJ&K & GB respectively.

(iv) Retail Broadband Market (Fixed)

Broadband services involve the provision of always-on internet connection with a download speed of at least 128/256 kbps connectivity. The broadband services are provided to end-users by means of various technologies like DSL, Cable, Fiber, Wireless etc. However, the most common technology in Pakistan is DSL, which makes use of the fixed telephone network.

As to determine the total market size and the market share of a particular operator in Broadband Market, the monthly rental revenues from the licensed services to subscribers, bandwidth capacity charges etc shall be taken into account. For clarification purpose, revenues from sales of consumer premises equipment and installation charges (if applicable) shall not be included in the total revenue base.

It has been noticed that despite entrance of new broadband operators in Pakistan market, PTCL still dominates the market. PTCL is holding approximately 64% of retail market share. In AJ&K & GB, Sky Telecom is offering retail broadband services besides SCO at retail level. SCO has 80% market share in the said relevant market. Based on the aforesaid, PTA is of the view that:

- a) Retail Broadband Market shall be identified as relevant market for the purpose of declaring SMP operators: and
- b) PTCL and SCO have SMP status in Retail Broadband Market in Pakistan and AJ&K & GB respectively.

(v) Wholesale Level Markets:

(i) Domestic Leased Lines Market

Domestic Leased Lines Market means 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. This product/service market can be further sub-divided into two geographic markets: Pakistan and AJ&K & GB markets.

As to determine the total market size and the market share of a particular operator in domestic leased lines market, only the revenues of domestic leased lines 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 lines shall be considered.

Although operators have recently started to provide services in the said market, PTCL still holds 70% market share for the period under consideration. In AJ&K & GB, SCO has 100% market share in provision of domestic leased line services. Keeping these in view, PTA is of the view that:

- a) Domestic Leased Lines Market shall be identified as relevant market for the purpose of declaring SMP operators: and
- b) PTCL and SCO have SMP status in Domestic Leased Lines Market in Pakistan and AJ&K & GB respectively.

(ii) International Leased Lines Market

International Private Leased Circuits (IPLC) means the telecommunications facilities which provide for transparent transmission capacity between network termination points through submarine as well as terrestrial cable systems and by other means. IPLC is used by an organization to communicate from one area to another that is geographically dispersed throughout the world. IPLCs can be used for Internet access, business data exchange, video conferencing, and any other form of telecommunication.

As to determine the total market size and the market share of a particular operator in international leased lines market, only the revenues earned by the operators from the international leased lines 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 international leased lines shall be considered.

Although new operators have started to provide services in the said market, PTCL still holds approximately 62% market share for the period under consideration. Keeping these in view, PTA is of the view that:

- a) International Leased Lines Market shall be identified as relevant market for Pakistan for the purpose of declaring SMP operators; and
- b) PTCL has SMP status in International Leased Lines Market in Pakistan.

(iii) Individual Fixed Interconnect Market

Individual Fixed Interconnect Market includes provision of call termination services by a given individual LL operator (PSTN or WLL) for local, long distance, and/ or international calls.

There is virtually no competition in the 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 LL operator has monopoly (100% market share) on termination of calls to customers connected to its own network. Therefore, this market shall be identified as relevant market for the purpose of declaring SMP operators and each of the LL operators is SMP operator in this market.

PTA is also of the view that regulatory obligations on operators should be appropriate and proportionate. In this regard, the operators who are already under obligation to comply with the requirements of publishing Reference Interconnect Offers (RIO), cost-based interconnection charges, accounting separation etc. shall continue to observe these obligations, unless otherwise determined by the Authority. All other operators shall only have to follow the obligations of provision of interconnection upon request and non-discrimination, as given in the Rules.

(iv) Individual Mobile Interconnect market

Individual Mobile Interconnect Market includes provision of call termination service by a given mobile operator to other telecom operators for local, long distance, and/ or international calls.

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 mobile operator has a monopoly (100% market share) on termination of calls to customers connected to its own network. Therefore, this market shall be identified as relevant market for the purpose declaring SMP operators and each of the mobile operators is SMP operator in this market.

The operators who are already under obligation to comply with the requirements of publishing RIO, cost-based interconnection charges, accounting separation etc. shall continue to observe these obligations, unless otherwise determined by the Authority. All other operators shall only have to follow the obligations of provision of interconnection upon request and non-discrimination, as given in the Rules.

(v) Call Transit Services Market

The interconnection comprises of call origination and call termination as well as transit traffic, when traffic is carried through the network of a third party. Call transit service means transmission of switched voice service originating from another telecom network. This includes transmission of traffic through the network of a third party both inside a Telecom Region (i.e. Metropolitan Transit) and between Telecom Regions. A third party means a network operator that conveys switched voice services, which does not originate from or terminate on this operator's network.

Most of the LDI operators throughout all Telecom Regions have made interconnection with each other. However, some of the operators have not directly interconnected their networks with other operators due to practical, technical or economic reasons. On the other hand, the incumbent operator i.e., PTCL is interconnected with almost all telecom operators. In this scenario, if an operator wants to provide voice transmission services within a Telecom Region or between Telecom Regions by means of transit services, it must acquire the transit services from PTCL. Considering the current scenario, PTA is of the view that this market should be declared as relevant market for the purpose of declaring SMP operators.

For the purpose of determining the total market size and the market share, revenues generated from call transit services to other operators shall be taken into consideration.

The share of PTCL has reduced in comparison to Wateen Telecom. Wateen Telecom has market share of more than 25% of Call Transit Services Market of Pakistan. Rule 17(2) empowers the Authority to declare an operator as SMP even it has less than 25% share along with other factors such as 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. PTA is of the view that PTCL has the ability to influence market conditions as an incumbent operator. Furthermore, PTCL has been providing transit services to LDI operators after the deregulation of telecommunication sector. In

AJ&K & GB, SCO is currently in a position to hold 100% market share of Call Transit Services Market of AJ&K & GB. Keeping this in consideration, PTA is of the view that:

- a) Call Transit Services Market shall be identified as relevant market for the purpose of declaring SMP operators; and
- b) PTCL has SMP status in Call Transit Services Market in each of the fourteen Regions of Pakistan and SCO has SMP status in three Regions of AJ&K & GB region respectively.

(vi) **Wholesale Broadband Access Market**

Wholesale broadband access market is composed of the wholesale access service provided by the network operator to other broadband service operators. Wholesale broadband access service means provision of network access service to broadband service operators, through technical equipment (e.g. splitter and DSLAM), that enhances the throughput capacity. Optical Fiber Access Networks (OFAN) may also be used for the provision of said service. The particular use of technology / networks in provision of services to other operators is not the key issue for market definition, since competing wholesale services might provide similar functionality using a different mix of technology or network architecture. Therefore, for the purpose of this determination, reference to any particular technology / network will be for illustrative purposes only and it is the functionality of the service that is more important.

As to determine the total market size and the market share, revenues generated from the provisions of access service to broadband service operators shall be taken into consideration.

Although PTCL has less than 25% market share in comparison to its competitor i.e. TWA but sub-rule (2) authorizes PTA to declare any operator with less than 25% market share. PTA is of the view that PTCL has the ability to influence market conditions and also has the control of the means of access to customers. As mentioned in the preceding paragraphs, PTCL has 64% market share of retail broadband services and PTCL is providing this service by utilizing its own wholesale services. TWA which is providing wholesale services to DSL operators is not in a position to distort the market. Keeping this in consideration, PTA is of the view that:

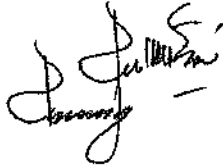
- a) Wholesale Broadband Access Market shall be identified as relevant market for Pakistan for the purpose of declaring SMP operators; and
- b) PTCL has SMP status in Wholesale Broadband Access Market in Pakistan.

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

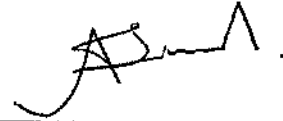
7.1. What has been discussed above in detail, the Authority hereby determines the relevant markets (Product / Services Market and Geographical Market) and declares SMP operators / licensees in the relevant market as under :

| Sr. No. | Relevant Markets | | SMP Operators |
|---------------------------------|---|------------------------|----------------------|
| | Product / Service Market | Geographical Market | |
| Retail Level Markets | | | |
| 1. | Fixed Local Loop (LL) Telecommunications Market | 14 Regions of Pakistan | PTCL |
| | | 3 Regions of AJ&K & GB | SCO |
| 2. | Long Distance & International (LDI) Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 3. | Mobile Cellular Telecommunications Market | Pakistan | PMCL |
| | | AJ&K & GB | Telenor |
| 4. | Retail Broadband Market (Fixed) | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| Wholesale Level Markets: | | | |
| 5. | Domestic Leased Lines Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 6. | International Private Leased Lines Market | Pakistan | PTCL |
| 7. | Individual Fixed Interconnect Market | Pakistan | All LL Operators |
| | | AJ&K & GB | All LL Operators |
| 8. | Individual Mobile Interconnect Market | Pakistan | All Mobile Operators |
| | | AJ&K & GB | All Mobile Operators |
| 9. | Call Transit Services Market | Pakistan | PTCL |
| | | AJ&K & GB | SCO |
| 10. | Wholesale Broadband Access Market | Pakistan | PTCL |

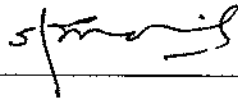
8. Licensees declared as SMP in Pakistan, and AJK & GB, at para 7.1 above, in relevant markets are hereby directed to comply with the obligations in the manner as determined in this determination and all other regulatory requirements, notifications, decisions and directions of the Authority issued from time to time.



Tariq Sultan
Member (Finance)



Abdul Samad
Member (Compliance & Enforcement)



Dr. Syed Ismail Shah
Chairman

9. This Determination is signed on 30th day of September 2016 and comprises of 23 pages .