Competition Policy in Telecommunications

Background Paper

Eric Lie
Strategy and Policy Unit
International Telecommunication Union

The views expressed in this presentation are those of the authors and do not necessarily reflect the opinions of ITU or its Membership. The author can contacted by e-mail at eric.lie@itu.int.
Outline

- Why competition?
- Trends in telecom competition
- The basic framework: sector-specific regulation and competition law
- The trend toward convergence: A new framework?
- Some challenges: Access to the Internet
- Mergers and acquisitions
Competition as a policy tool …

… to reduce prices…

OECD, trends in average residential prices, 1990=100

Source: OECD, Teligen
Competition as a policy tool …

… to increase mobile penetration …

Comparison between the growth of mobile penetration in Hong Kong, China and Singapore, 1988-2000

Where competition is allowed

% of countries allowing competition in selected services

Source: ITU Trends in Telecommunications Reform 2002: Effective Regulation
Competition just keeps growing

Source: ITU Trends in Telecommunications Reform 2002: Effective Regulation

Growth in countries allowing competition in selected sectors
Allowing competition may not be enough …

- Competition is absent when there are no service providers in the market
- Competition is absent when there is no competitor to the incumbent in the market
- Effective competition may be absent when the incumbent dominates the market
This is in part due to...

- Strong network externality effects
- Large sunk costs involved
- Numerous advantages enjoyed by the incumbent

Competition policy
The basic framework

Telecommunications regulation
- Industry specific
- Multiple policy objectives
- Precise in setting acceptable behavior
- *Ex ante* and *ex post*

Competition law
- Economy wide
- Focus on preserving competition
- Specific complaint or investigation driven
- Predominantly *ex post*
Competition law prohibits …

- **Anti-competitive agreements**
  - e.g. bid rigging, price fixing, group boycotts

- **Anti-competitive behavior by dominant firms**
  - e.g. refusal to deal, predatory and excessive pricing, tying and bundling, cross-subsidization

- **Mergers and acquisitions that have a strong negative impact on competition**
Relevant markets and dominance

- **Market definition**
  - Product and geographic dimension
  - Demand substitutability analysis
  - Hypothetical monopolist test; application of a small but significant non-transitory increase in price (SSNIP)

- **Dominance**
  - Quantitative and qualitative factors; e.g. market share, barriers to entry, size, etc.
Toward a new framework: Deregulation and re-regulation

- Why deregulation?
  - Benefits of competition, risk of regulatory failure, resistance by business, globalization

- But is competition law sufficient?
  - Uncertainty - Fact specific, focus on illegality,
  - Delay - Costly and lengthy litigation
A converged approach to competition policy

- Regulatory adoption of competition law concepts and principles
- Forbearance from regulation in competitive markets
- Realignment of regulation with principles of competition e.g. USO
- Extension of competition law to telecommunications markets
Asymmetrical regulation

- Market definition
  - Service classification based approach
- Dominance
  - Emphasis on quantitative thresholds

Certain negative effects
  e.g. regulatory distortions, arbitrage

A need for greater flexibility?
  e.g. July 2002, EC guidelines on market analysis and assessment of SMP
**Some common principles**

### Telecom regulation
- Mandatory interconnection
- Non-discrimination in terms & conditions
- Cost-oriented pricing
- Sufficiently unbundled
- Prohibition against cross-subsidization

### Competition law
- Essential facilities doctrine
- Non-discrimination
- Prohibitions against:
  - Anti-competitive pricing
  - Tied sales and unbundling
  - Cross subsidization
Institutional implications

- Who should apply competition policy?
  - Relative advantages and disadvantages
    - e.g. sector specific expertise vs. cross-sector flexibility, risk of capture, etc.
  - Other considerations
    - Costs of existing institutions have already been sunk

- Need for cooperation and coordination
  - e.g. clear lines of competence, procedures to resolve overlaps, institutional mechanisms for collaboration and co-ordination
Challenges: Access to the Internet

- **Local level access**
  - Local loop unbundling
    - Service vs. facilities-based competition?
  - Inter-modal competition
    - Tilting the regulatory framework?

- **International Internet access**
  - Internet backbone services
    - Charging practices
  - International Internet connectivity
    - A possible role for competition policy?
Mergers and acquisitions

Who approves mergers?

- **Number of Countries**
  - Sector Ministry: 23
  - Other Ministry: 30
  - Regulator: 40
  - Operator: 0
  - Other*: 25
  - Not regulated: 9

*other: mainly the Competition Authority

Source: ITU Trends in Telecommunication Reform, 2002 Effective Regulation
Merger notification and review

- Market definition
- Substantial lessening of competition
  - Market share and concentration
  - Barriers to entry, import competition, dynamic market characteristics
  - Vertical merger concerns
- Merger efficiencies and public benefit
- Merger approval
  - Behavioral vs. structural conditions
Thank You

http://www.itu.int/competition