Competition – Need, Scope & Regulatory Policy

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ITU Arab Regional Office
ITU in brief

• Leading United Nations Agency for ICTs.

• 193 Member States, 750+ Sector Members

• SG & DSG

• Three sectors:
  – Radiocommunication
  – Standardization
  – Development

• ITU TELECOM Events
ITU’s Global Presence

ITU Headquarters is in Geneva, Switzerland
There are 5 regional offices and 8 area offices around the world

<table>
<thead>
<tr>
<th>Objective #1</th>
<th>Foster international cooperation on telecommunication/ICT development issues</th>
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<tbody>
<tr>
<td>Objective #2</td>
<td>Foster an enabling environment conducive to ICT development and foster the deployment of telecommunication/ICT networks as well as relevant applications and services, including bridging the standardization gap</td>
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<tr>
<td>Objective #3</td>
<td>Enhance confidence and security in the use of telecommunications/ICTs, and roll-out of relevant applications and services</td>
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<td>Objective #4</td>
<td>Build human and institutional capacity, provide data and statistics, promote digital inclusion and provide concentrated assistance to countries in special need</td>
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<td>Objective #5</td>
<td>Enhance environmental protection, climate-change adaptation and mitigation, and disaster-management efforts through telecommunications/ICTs</td>
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1. Competition Trends in Telecom

Growth of competition in selected services

Percentage of Countries allowing Competition, for Selected ICT Services

<table>
<thead>
<tr>
<th>Service</th>
<th>Competition, 2015</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Local Fixed Line Services</td>
<td>70%</td>
<td>10%</td>
</tr>
<tr>
<td>International Fixed Long Distance</td>
<td>74%</td>
<td></td>
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<tr>
<td>International Gateways</td>
<td>85%</td>
<td></td>
</tr>
<tr>
<td>IMT (3G, 4G, etc.)</td>
<td>89%</td>
<td></td>
</tr>
<tr>
<td>Internet Services</td>
<td>95%</td>
<td></td>
</tr>
<tr>
<td>Concept of dominance or Significant Market Power recognized in law</td>
<td>83%</td>
<td></td>
</tr>
<tr>
<td>Accounting separation required</td>
<td>70%</td>
<td></td>
</tr>
<tr>
<td>Functional separation of SMP/dominant network operator(s) required by law</td>
<td>32%</td>
<td></td>
</tr>
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2. Changes in Competition Policy in Telecom Market

1985
From Monopoly To Competition
- Introduction of the principle of competition

1997
Development of Fair Competition Rule
- Introduction of asymmetric regulation

1997
Development of Fair Competition Rule
- Introduction of asymmetric regulation

2001
From Ex-ante Regulation To Ex-post Regulation
- Deregulation of market entry => Abolition of permission system

2004
Response to Changes of Market Environment
- Response to shift to mobile
- Introduction of accounting separation

2010
Response to Changes of Market Environment
- Response to shift to mobile
- Introduction of accounting separation

1997
Development of Fair Competition Rule
- Introduction of asymmetric regulation

2001
From Ex-ante Regulation To Ex-post Regulation
- Deregulation of market entry => Abolition of permission system
3.1 The Basic Framework of Competition Policy

**Laws**
- Economy wide
- Focus on preserving competition
- Specific complaint or investigation driven
- Predominantly ex post

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

**Institutions**
- Institutions are needed to apply the laws and regulations.
- Most countries employ telecommunications regulators or a combination of both telecommunications regulators and competition authorities to implement competition policy in telecommunications.
3.2 Competition Policy Objectives & Market Analysis /Process

1) Competition Policy Objectives:
   - Increasing competition
   - Developing broadband
   - ..etc

2) Market Analysis /Process:

   - Step 1: Defining relevant markets
   - Step 2: Designating SMP
   - Step 3: Imposing appropriate remedies

   - Market passes 3 criteria test
     - Yes
     - No

   - Operator has SMP
     - Yes
     - No

   - No remedies imposed
     - Impose necessary and proportionate remedies

   - Identification of potential competition problems
   - Selection of remedies
3.3 Ex-ante Regulation

- Market intervention by the regulator “before the event” of anticipated or potential market failure
- In order to keep from unnecessarily limiting market forces, countries explicitly set out prerequisites for ex ante regulation in their regulatory framework. That is, ex-ante regulation is only necessary if the following three prerequisites are fulfilled (three criteria test):
  1. There are substantial barriers to market entry
  2. There is no visible trend towards the development of Competition
  3. The ex-post interventions provided for in general competition law are unable to guarantee competitive structures.
- The three criteria test is meant to help the regulator to intervene at the right time with the right intensity in market activity.
- If the criteria of this test are not all met at once, the market will be regulated ex-post.
3.4 Ex-post Regulation

- Refers to the opposite situation ("after the fact"), where no explicit ex-ante market intervention is performed.

- Ex-post regulation refers to:
  - Anti-trust and merger regulation (Gambia Competition and Consumer Protection Commission)
  - Defined action of the regulatory authorities such as Arbitration and imposition of Penalties.

- The prerequisite for optimum regulation is a combination of ex-ante and ex-post actions.

- Some consider that ex-ante regulation can create undue market distortions and hindrance to investment.
  - but also, a constantly learning regulator!
3.5 Ex ante Regulation Methodology

- Regulators define markets & determine dominance for these markets in order to design appropriate regulatory interventions, to
  - Promote competition
  - Affordable user prices
  - Efficient investments
- Ex-ante regulation is designed to protect consumers in the retail market, often by safeguarding fair competition in wholesale markets.
3.6 Fields of ex ante Regulation

Traditionally these are:

- Interconnection practices and rates
- Unbundling of the local loop or retail packages
- Wholesale terms of backbone and bandwidth access
- Infrastructure sharing
- Price regulation
3.7 Steps to Ex-ante Regulation

1. Define “relevant markets”
2. Analyze the defined markets to determine if there is effective competition or not
3. Identify Dominant (SMP) operators
4. Impose measures and remedies with the aim of preventing monopolistic behaviour
   • Obligations
   • Regulations
4. Need for Regulation during Transition from Public Monopoly to Fully Competitive Environment

Value of Competition:
Resolve disputes, address anticompetitive abuses, protect consumers, and attain national goals such as universal access, industrial competitiveness or economic productivity and growth.

The transition to competition:
- **Public Monopoly**: Limited regulation because government is sole operator and regulator
- **Private Monopoly**: Greater regulation because private operator must know its rights and obligations and government needs regulatory framework for oversight of operator
- **Partial Competition**: Greater need for regulation as regulator must implement tools to address new competitive market (e.g., rules regarding potential anti-competitive practices, licensing framework, universal service, tariffing)
- **Full Competition**: More limited regulation as competitive market largely regulates itself; there is a shift towards ex post, competition-based regulation
5. General Aims and Objectives of Regulation

Regulation aims to protect the long-term interests of consumers where the market is unlikely to be able to do so.
Regulation has always been needed but its nature has changed over time
6. Regulatory Factors relevant to Competition

- **Design of the legal Framework:** Whether the telecommunication law establishes a regulator and defines its role, scope of responsibility, accountability and market objectives.

- **Licensing Regime:** The extent to which licence obligations are transparent or come with additional burdens such as administration, reporting and fees.

- **Interconnection Regime:** Whether there is a well-designed and implemented interconnection regime that protects investors from below-cost interconnection payments from operators or unreasonable rate mandates from regulators.

- **Regulatory Fees and Taxation:** Whether there are excessive fees and taxes, which can increase operating costs and discourage innovation and further investment.

- **Universal Service Funds (USF):** Whether operators are obliged to contribute to USFs and have the ability to access them to fund investment in cases of market failure.

- **Competition policy:** The regulators’ effectiveness in protecting new operators against the abuse of market power from existing dominant operators, and in promoting fair competition through non-discriminatory, wholesale, open access to dominant operator infrastructure.

- **Tariff Regulation:** The ability of the regulator to implement tariff regulation in developing regions or in the provision of services where there is ineffective competition.

- **Spectrum Management:** Whether scarce spectrum is over-priced and overburdened with coverage obligations, thereby decreasing the operators’ available capital to invest in infrastructure.
7. The balance between Competition and Regulation

<table>
<thead>
<tr>
<th>Competition</th>
<th>Regulation</th>
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<tbody>
<tr>
<td>When competition is effective and sustainable</td>
<td>When there is structural weakness in the market,</td>
</tr>
<tr>
<td>Tests</td>
<td>When an operator has substantial power in the market</td>
</tr>
<tr>
<td>➢ Competitors are established</td>
<td>Summary: when there is likely market failure, underlined by the existence</td>
</tr>
<tr>
<td>➢ Limited barriers to entry and exit</td>
<td>of significant market power in one or more participants</td>
</tr>
<tr>
<td>➢ Market relatively mature</td>
<td></td>
</tr>
<tr>
<td>➢ No collusion</td>
<td></td>
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</table>
8. Anti-competitive behaviour

8.1 What is anti-competitive behaviour?

Anti-competitive behaviour is behaviour that has the intention or effect of significantly lessening competition in a market.
8.2 Forms of anti-competitive pricing behavior

- Anti-competitive agreements
- Abuse of dominance
- Tying and bundling
- Price Discrimination
- Predatory Pricing
- Margin Squeeze
- Excessive Pricing
9. How to Increase Competition

Mobile Number Portability:

MNP increased competition by reducing the incumbent's market power and by tightening the range of prices practiced.

Interconnection:

A fair, transparent, non-discriminatory and cost-based interconnection regime is essential to promote competition and efficiency.

Mobile Termination

Cost-based charge for originating and terminating encourages the competition

Other Issues

MVNOs, International Roaming, National roaming, Spectrum Allocation
10. ITU-BDT Resources

• Resources and events organization information is available at the Regulatory and Market environment Website: [www.itu.int/en/itu-d/regulatory-market/Pages/default.aspx](http://www.itu.int/en/itu-d/regulatory-market/Pages/default.aspx)

• ITU has developed a series of publications and studies on regulatory, economic and financial issues, including interconnection [www.itu.int/en/ITU-D/Regulatory-Market/Pages/Studies.aspx](http://www.itu.int/en/ITU-D/Regulatory-Market/Pages/Studies.aspx)

• In the framework of ITU-D Study Group 1, there is Question 4/1 on Economic policies and methods of determining the costs of services related to national telecommunication/ICT networks, including NGN [www.itu.int/net4/ITU-D/CDS/sg/questions.asp?lg=1&sp=2014](http://www.itu.int/net4/ITU-D/CDS/sg/questions.asp?lg=1&sp=2014)

• ITU is collecting data from NRAs with the:
  – ITU Regulatory Survey
  – ITU Tariff Policies Survey

The data collected is available on the ITU ICTEye Database [www.itu.int/ICTEYE](http://www.itu.int/ICTEYE)
All the statistics data are available on the [www.itu.int/ICTEYE](http://www.itu.int/ICTEYE)
The ITU-InfoDev ICT Regulation Toolkit

WHAT'S THIS?
The ICT Regulation Toolkit is a live resource for policy-makers, regulators, the telecom industry, and consumers. It provides a global overview of how telecom policy is best implemented with practical materials highlighting experience and results.

SHORTCUTS
- Table of Contents
- Table of Practice Notes
- Table of Reference Documents
- Translations

RESOURCES
- ITU Blog
- Broadband Toolkit
- ITU Broadband reports
- ITU Trends in Telecommunication Reform 2013
- ITU Trends in Telecommunication Reform - Special Edition (new)
- Training

1. Overview
2. Competition and Price
3. Authorization of Services
4. Universal Access and Service
5. Radio Spectrum Management
6. Legal and Institutional Framework
7. Content Regulation (COMING SOON)

www.ictregulationtoolkit.org/en/home
ITU Regional Workshop on “Competition in Telecommunications Market”
Khartoum-Sudan, 24-26 May 2016

ITU/BDT Reports

Trends in Telecommunication Reform 2016: Regulatory Incentives to Achieve Digital Opportunities


Regulatory, Economic and Financial Reports 2013-2014:

- **New** A Practical Guide on Benchmarking Telecommunications Service Prices
- **New** Regulatory analysis of international mobile roaming services
- ITU Report on International Mobile Roaming services: Facilitating competition and protecting users
- Competition and regulation in a converged broadband world

Thank you for your attention

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