



Competition Issues: Market Definition, SMP and Dominance

ITU-MCMC International Training Programme

26-28 August 2015

Kuala Lumpur, Malaysia

Sofie Maddens

Head, Regulatory and Market Environment Division

Telecommunication Development Bureau (BDT)

Effective Competition

EU

- **DG Competition** – in cooperation with national competition authorities – ensures that telecoms networks and services can expand and innovate, by safeguarding a level playing field in and access to the IT and telecoms markets. This means applying the general EU competition rules on
 - **Antitrust:** prohibiting anti-competitive agreements or abuse of dominant positions
 - **State aid:** prohibiting certain types of State aid that distort competition
 - **Mergers:** prohibiting mergers that would significantly impede competition on a market.

All of these rules apply to the telecoms sector

Source: http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html

Effective Competition

EU

- the notion of effective competition means that there is no undertaking with dominance on the relevant market:
 - finding that a relevant market is effectively competitive is, in effect, a determination that there is neither single nor joint dominance on that market
 - finding that a relevant market is not effectively competitive is a determination that there is single or joint dominance on that market

General Principles:

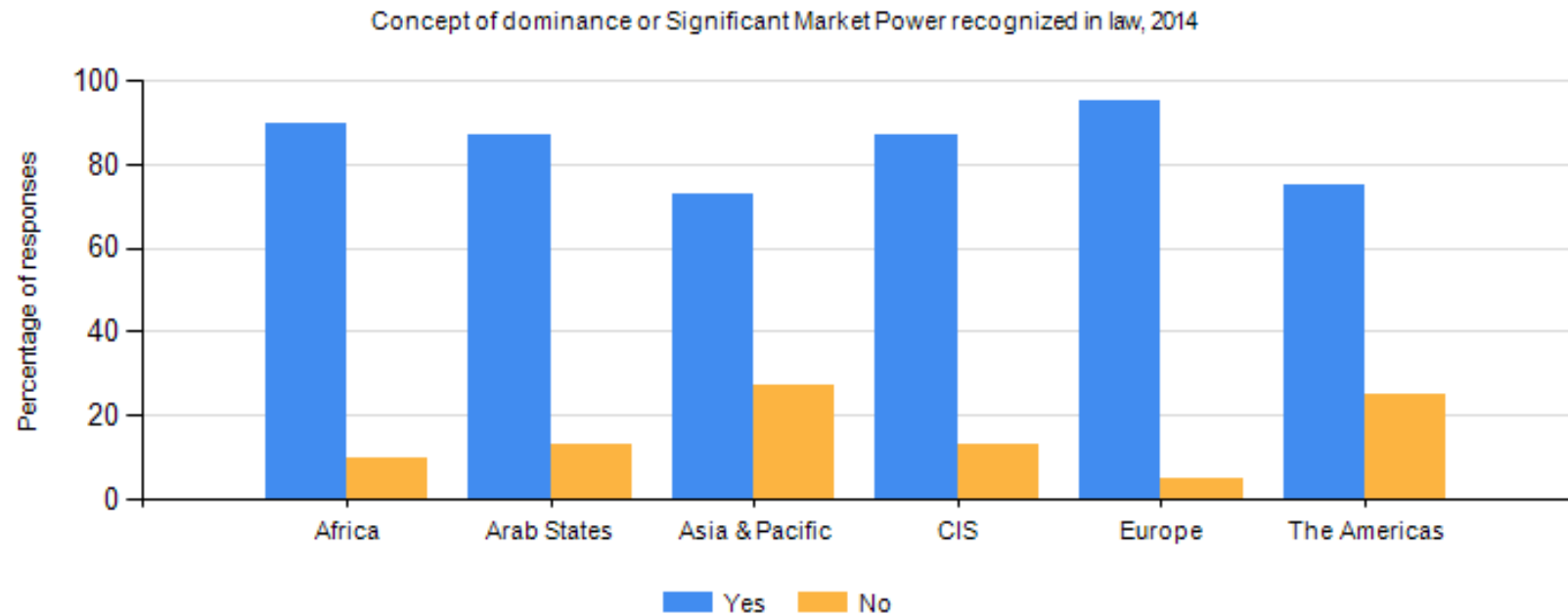
- Limit regulatory intervention to markets where competition is ineffective or cannot develop without some assistance that helps smaller firms and new entrants overcome the obstacles that they face vis-à-vis a strong incumbent
- Impose regulatory obligations on firms that are capable of distorting competition, harming rivals or exploiting consumers firms
- Withdraw obligations when markets become competitive

Mandate

Jurisdiction over telecom/ICT competition issues *	Regulatory Authority	5	4	8	4	9	11	41
	Competition Authority	0	1	1	3	12	8	25
	Both Authorities	7	2	7	3	16	1	36
	None of the above	2	0	0	0	5	2	9
Legal instruments defining competition *	General competition law	4	1	3	2	13	6	29
	Telecom/ICT law	9	6	6	3	3	7	34
	Both	9	4	8	4	20	10	55
	None of the above	2	1	4	0	1	6	14

Source: ITU.

Mandate to Act?



Source: ITU.

Steps:

- **Definition of Markets**
- **Market Power**
- **Obligations**
- **Review**

Market Definition:

- Markets are generally defined in terms of the products and services that are considered to be:
 - sufficiently substitutable from the perspective of their users so that demand can readily move between them (*demand side substitutability*); or
 - sufficiently similar from the perspective of suppliers so that a firm supplying one of them would be able to supply the others on short notice and without having to make significant investments (*supply-side substitution*).
- Relevant markets are also defined in terms of the *geographic area* within which such adjustments can take place with sufficient ease to impose a competitive constraint

Source: ICT Regulation Toolkit

Market Definition:

Effective substitutes may not be only those services supplied by similar telecommunications carriers (or by carriers at all):

- Voice and data services are now available from conventional wireline or wireless networks, using either circuit-switched or packet-switched technologies
- Voice mail services are available from telecommunications networks, answering machines, or manned answering services
- Some markets may be two-sided which will have regulatory implications for both pricing and merger analysis

Source: ICT Regulation Toolkit

New Zealand Market Definition:

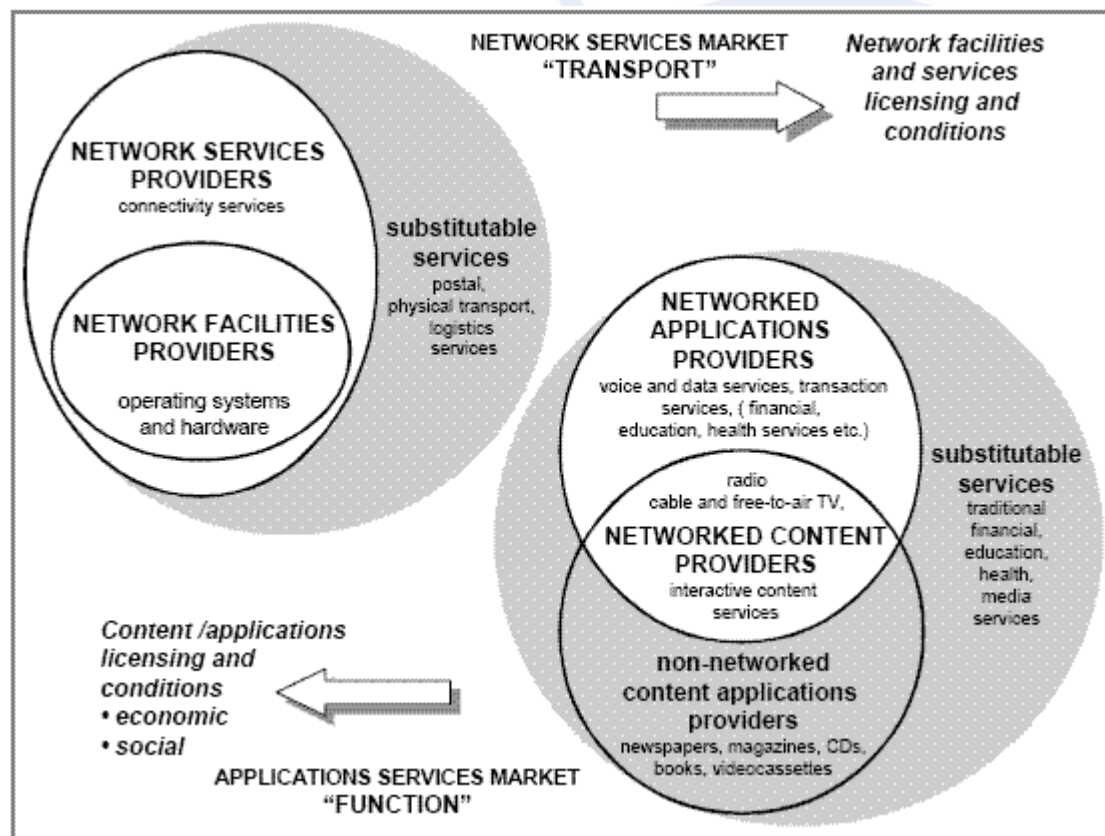
- The goods or services supplied and purchased (the product dimension)
- The geographic area from which the goods or services are obtained, or within which the goods or services are supplied (the geographic dimension)
- The level in the production or distribution chain (the functional dimension)
- The time frame or timing within which the market operates, where relevant (the temporal dimension), and
- The different customer types within a market, where relevant (the customer dimension)

Source: ICT Regulation Toolkit

European Commission Market Definition Analysis

- Tentatively define the product market by determining whether two products belong in the same market.
- Tentatively define the geographic market in terms of competitors' market shares, prices, and price differentials.
- Conduct a more detailed analysis of demand-side and supply-side substitutability.
- Determine whether customers can switch to an alternate product or supplier in response to a small (5-10 per cent) increase in price; the “SSNIP” test
- Determine whether other suppliers can readily switch to providing the alternate product in the relevant market
- Further investigate the conditions in which competing firms operate.
 - This may entail exploring the recent past activities of those firms, consumer behaviour and preferences (through demand elasticities and other studies), regulatory or market barriers to entry, market segmentation and the viability of efficient price discrimination.
- Use consultations with firms and consumers and on-the-spot inspections to further inform and refine the market definition analysis.

Malaysia Market Structure



The Communications and Multimedia Act (1998) specifically recognises the impact of convergence between telecommunications and other communications sectors in defining markets for competition analysis and requires market definition to have regard to all sources of actual or potential competition in a communications market. This includes the use of mobile and other wireless access technologies (including, for example digital broadcasting and datacasting).

Source: ICT Regulation Toolkit

Definition of Significant Market Power/Dominance

- Does a high market share imply market power?
 - A firm's market share may increase, at least temporarily, due to a successful new invention or better customer service.
 - incumbent telecommunications firms may have high market shares but as competition emerges, its market share cannot guarantee it the ability to charge prices higher than its competitors

Source: ICT Regulation Toolkit

Criteria to Determine SMP or Dominance

Indicator		Africa	Arab States	Asia & Pacific	CIS	Europe	The Americas	Total
Criteria used in determining dominance or SMP *	Geographical	4	6	4	3	27	13	57
	Market share in terms of number of subscribers (or revenues)	20	11	14	6	35	20	106
	Control of essential facilities	16	10	8	2	31	16	83
	Easy access to financial resources	9	8	4	2	27	4	54
	Strength of the countervailing power of consumers	8	5	3	2	29	6	53
	Economies of scale and scope	10	6	3	2	33	9	63
	Barriers to entry	13	7	5	3	33	13	74
	Potential competition	11	4	6	3	30	9	63
	Other	4	5	4	0	10	5	28

Source: ITU.

Remedies

- Malaysia's Communications and Multimedia Act 1998 defines the remedies available to the Communications and Multimedia Commission to stop or authorize anticompetitive conduct:

Issue	Possible Action
The conduct appears to have the purpose of substantially lessening competition	Interim injunctions or fines
The conduct appears to have the effect of substantially lessening competition	Direct to the licensee to cease the conduct and to implement appropriate remedies
Application for authorization of specific conduct	Issue an authorization of the conduct, or refuse the application

Source: ICT Regulation Toolkit

Remedies

EU

- The specific regulatory obligations which may be imposed on SMP undertakings can apply both to wholesale and retail markets
 - Wholesale markets (Access Directive)
 - transparency; non-discrimination; accounting separation; obligations for access to and use of specific network facilities , and price control and cost accounting obligations
 - NRAs may impose obligations outside this list. In order to do so, they must submit a request to the Commission, which will take a decision, after seeking the advice of the Communications Committee, as to whether the NRA concerned is permitted to impose such obligations.
 - Retail Markets (US Directive):
 - regulatory controls on retail services, availability of the minimum set of leased lines and carrier selection and preselection

SMP Obligations

Indicator		Africa	Arab States	Asia & Pacific	CIS	Europe	The Americas	Total
Most common ex ante obligations imposed on operators *	Transparency	21	9	11	5	30	17	93
	Non discrimination	22	9	12	7	30	17	97
	Interconnection and access obligations	22	9	12	6	31	21	101
	Regulatory accounting	8	6	11	3	24	10	62
	Accounting separation	20	6	11	4	27	12	80
	Price control	13	5	11	4	26	13	72
	Other	2	2	3	0	2	3	12

Source: ITU.

Review of SMP

Indicator		Africa	Arab States	Asia & Pacific	CIS	Europe	The Americas	Total
Status of dominance or SMP reviewed	Every year	6	1	3	1	0	1	12
	Every two years	3	1	2	3	4	3	16
	Every three years	5	2	1	0	21	3	32
	More than three years	0	1	0	0	2	1	4
	Other	7	3	7	3	7	11	38

Source: ITU.

Reading Materials and Sources

- ITU infoDev ICT Regulation Toolkit, available at:
<http://www.ictregulationtoolkit.org/en/home>
- EU Competition Rules -
http://ec.europa.eu/competition/sectors/telecommunications/overview_en.html
- Koboldt, C, Competition and regulation in a converged broadband world, ITU, February 2013, available at:
<http://www.itu.int/ITU-D/treg/publications/Competitionregulation.pdf>



Thank you!

Sofie Maddens

Head, Regulatory and Market Environment Division

Telecommunication Development Bureau (BDT)