

COMPETITION ASSESSMENT FRAMEWORK FOR COMMUNICATIONS SECTOR IN SADC

April 2019

Contents

1 Introduction 2

1.1 Background 2
1.2 Scope of the Guidelines 2
1.3 Objectives of the Guidelines 3
1.4 Abbreviations and Acronyms 4
1.5 Definition of Terms 4

2 Technology and Service Neutrality 9

2.1 Introduction 9
2.2 Non-Discrimination 9
2.3 Transparency 9
2.4 Technology Neutrality 9

3 Relationships Between Sector Regulator and Competition Authority 10

4 Major Prohibitions 11

4.1 Determining Anti-Competitive Conduct 11

4.1.1 Definition of the Relevant Market 11
4.1.2 Assessment of Market Power 12
4.1.3 Anti-Competitive Conduct 13

5 Remedies and Procedures 19

5.1 Remedies 19
5.2 Powers of Investigation 19
5.3 Transparent Decision-Making 20
5.4 Dispute Resolution 20
5.5 Enforcement and Penalties 21

1 Introduction

1.1 Background

The Southern African Development Community (SADC) Protocol on Transport, Communications and Meteorology (1996) is the basis for providing direction to development of the communications sector in the region. Amongst others, the Protocol provides the National Regulatory Authorities (NRAs) with the responsibility to develop and determine harmonized guidelines and regulations for the region.

In the "Declaration on Information and Communications Technology (ICT)", signed by the Heads of all the SADC countries in August 2001, it is recognised that SADC needs a coherent regional policy and strategy on ICT that promotes sustainable economic development, technology and bridges the digital divide within the region.

The Declaration on ICT acknowledges that effective information and communication is best achieved under an environment characterized by policy guidelines, legislation, well-defined strategy and telecommunications deregulation.

Further, it is declared that SADC Member States undertake to continue to sustain efforts "in creating a favourable regulatory environment and accelerated liberalization of the telecommunications sector, which aims at creating a three-tier separation of power, with governments responsible for a conducive national policy framework, independent regulators responsible for licensing, and a multiplicity of providers in a competitive environment responsible for providing services".

1.2 Scope of the Guidelines

Major steps have been taken in SADC in the last few years to deregulate and open up segments of the communications market for competition that traditionally have been characterized by monopoly provision. The market in SADC is becoming increasingly competitive. The transition from previous monopoly environments to effective and sustainable competition in the communications sector, policy makers and regulators face a number of challenges that relate to how competition should be promoted as a means to achieve a more efficient market for the benefit of the end users.

The concept of fair competition here refers to an environment in which competing service providers have an opportunity to participate in the market place under conditions that are not unduly distorted by other competing service providers possessing significant market power. Another objective of competition law is to boost productivity, innovation, competitiveness and growth (GSMA Competition Policy in the digital age

- Case studies from Asia and Sub-Saharan Africa). Regulatory authorities should therefore provide transparent guidance to the industry with respect to rights and obligations in an evolving competitive market situation in order to ensure a level playing field.

The rapid changes in technology and markets lead to an increased convergence between the traditional telecommunications, IT and media/broadcasting sectors. This on-going convergence needs to be considered when reviewing and analysing market conduct in the sector in order to ensure fair competition.

These guidelines should apply to fair competition in the communications sector.

1.3 Objectives of the Guidelines

The objectives of the guidelines are to:

a) Provide a regulatory framework for the promotion of fair competition and the protection against anti-competitive practices in the communications industry;

b) induce licensed operators to become more efficient in order to offer a greater choice of products and services;

c) ensure that licensed operators exercise market power with due regard to consumer welfare and overall industry performance and to prevent abuse of their market power;

d) Promote sharing of essential facilities; and

e) Promote consumer protection in the communications sector.

1.4 Abbreviations and Acronyms

The following abbreviations and acronyms have been used throughout this document:

CRASA	-	Communications Regulators' Association of Southern Africa
ICT	-	Information and Communications Technologies
LRAIC	-	Long Run Average Incremental Cost
LRIC	-	Long Run Incremental Cost
MNO	-	Mobile Network Operator
NRA	-	National Regulatory Authority
SADC	-	Southern African Development Community
SMP	-	Significant Market Power
QoS	-	Quality of Service

1.5 Definition of Terms

Terms for entities used in this document are defined as follows:

"Abuse of dominance" means a conduct by an operators), made possible by its market power / dominant position in a market, that is or may be harmful to competition in that market.

"Access" means to make available facilities and/or services, to another firm, under defined conditions, on either an exclusive or non-exclusive basis, for the purpose of providing electronic communications services.

"Accounting separation" means a separation of the accounting systems for the purpose of identifying the external transfer prices of activities, services and network components such as a switching facility and convergence systems necessary for the provision of all services.

"Associated facilities" means facilities associated with an electronic communications network and/or an electronic communications service, to which access is necessary for the competitive provision of electronic communications services on equal terms.

"Authority" means the body or bodies empowered to regulate the activities of operators and any other ICT providers in the public interest.

"Competition" means a situation in market in which firms or sellers independently strive for the patronage of buyers in order to achieve a particular business objective

"Consumer" means a natural or juristic person who uses publicly available electronic communications services for the purposes, which are outside his or her trade, business or profession.

"Cross-subsidy" means covering the cost of offering some services through excess revenues earned from other services. Anti-competitive cross-subsidy normally refers to a practice by a dominant firm of offering services in competitive markets at low (i.e. below cost) prices, while maintaining overall firm profitability by charging above cost prices in monopoly markets or in markets where the firm enjoys market power.

"Dominance" means a strong form of market power. While the definition of market dominance varies with the laws of different countries, a finding of dominance usually requires proof of a relatively high market share and the existence of significant barriers to entry into the markets in which the firm is dominant.

"Economies of Scale" is when the average total cost (AC) of the firm decreases with the volume of production. One common source of economies of scale in telecommunications industry is the significant fixed costs that are incurred regardless of the output units. When output expands, average fixed costs will decline and may result in economies of scale.

"Economies of Scope" is when it is cheaper for one firm to provide two or more services than it is for different firms to provide each service separately.

"Electronic communications network" means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means including satellite networks, networks used for radio and television broadcasting, and cable TV networks, irrespective of information conveyed.

"Electronic communications service" means services provided for remuneration which consist wholly or mainly in the transmission and routing of signals on electronic communication networks, including telecommunications services and transmission services in networks used for broadcasting, but excluding services providing, or exercising editorial control over, content transmitted using electronic communications networks and services.

"Essential facility" means facilities associated with a network and essential product or service that are exclusively or predominantly provided by a monopolist or a small number of suppliers, and that cannot feasibly be duplicated by competitors for economic or technical reasons.

"Essential retail service" means core communications services available to users necessary to fulfil requirements for e.g. commerce, education, health, safety and entertainment, and enabled through the capabilities of electronic communications networks.

"Ex-ante regulation" means prospective or forward-looking regulatory measures and tools that are imposed on individual firms or groups of firms in a market, in order to prevent certain behaviour from taking place.

"Ex-post regulation" means retrospective regulatory measures and remedies that are imposed on an individual firm or groups of firms that, normally, already have been assessed to behave in an anti-competitive manner.

"Fair competition" is an environment in which competing providers have an opportunity to participate in the market place under conditions that are not unduly distorted by other competing providers possessing significant market power.

"Horizontal integration" is when firms that are actual or potential competitors and are occupying similar positions in the production/value chain partly or fully integrate their business operations. For example, two operators who individually provide international bandwidth may decide to integrate their operations to achieve greater economies of scale.

"Incremental cost" means the change in total cost resulting from an increment.

"Incumbent operator" means the established operator in a market, which normally operates all or most of the public switched telecommunications infrastructure in the market.

"Interconnection" means the physical and logical linking of public electronic communications networks used by the same or a different operator in order to allow users of one undertaking to communicate with users of the same or another operator or to access services provided by another operator. Services may be provided by the parties involved or other parties who have access to the network.

"Interconnection charge" means the price charged by a network owner to another operator for the purpose of interconnecting to the network

"Interconnecting operator" means the operator seeking to be connected to the operator or any other network.

"Leased line" means a point-to-point communication channel or circuit that is committed by the network operator to the exclusive use of an individual subscriber.

"Local loop" means the transmission path linking end users to the nearest exchange. It generally consists of a pair of copper wires, but increasingly employ fibre optic or wireless technologies.

"Long-run incremental cost (LRIC)" means the incremental costs that arise in the long run with a specific increment in volume of production.

"Market" is when buyers and sellers transact business for the exchange of particular goods and services and where the prices for these goods and services tend towards equality.

"Market power" is when an operator is able to establish and maintain prices or other key terms and conditions of sales in a market for a non-transitory period, without regard to the actions of competitors and losing sales to such a degree as to make this behaviour unprofitable.

"Non-discriminatory" means a condition by which an operator, engaged in the provision of electronic networks and services, do not apply less favourable technical and commercial conditions on any competitor than what it would apply it to itself, its subsidiaries or its affiliates in delivery of services.

"Operator" means in this context, any firm or provider that offers and/or requests electronic networks, electronic services and/or associated facilities on a retail and/or on a wholesale basis in a relevant market, as defined by the Authorities.

"Public communications network" means an electronic communications network used wholly or mainly for the provision of publicly available communications services.

"Quality of Service" means a collective effect of service performance measures, which determines the degree of meeting set standards.

"Significant Market Power" is when an operator, either individually or jointly with others, enjoys a position of economic strength affording it the ability to behave to an appreciable extent, independently of its competitors and ultimately consumers.

"Subscriber" – any natural person or legal entity who or which is party to a contract with the provider of publicly available electronic communications services for the supply of such services.

"Telecommunications service" means any domestic or international transmission of information by wire, radio waves, optical media or other electromagnetic systems, between or among points of the user's choice

"Transfer charge" means the price paid by a separate business segment within the operator for the usage of network elements or other facilities and services of another business segment of the operator. A fair transfer charge system aims to ensure that the transfer charges that the operator pays to itself is the same as other external operators have to pay for the same facility or service.

"Unbundling" means the provision of components on a stand-alone basis. Interconnecting operators can then obtain access to single unbundled components without an obligation to buy other components as part of the interconnection "package".

"User" means a legal entity or natural person using or requesting publicly available electronic communications services.

"Vertical integration" is when a firm (or a group of firms) owns or controls different parts of the production process/value chain in a particular industry.

"Vertical price squeezing" is when an operator with market power controls certain services that are key inputs for competitors in downstream (i.e. retail) markets and where those same key inputs are used by the operator or its affiliates to compete in the same downstream markets.

"Wholesale pricing" refers to the compensation for a wholesale facility or service provided in an upstream (wholesale) market between two or more providers.

2 Technology and Service Neutrality

2.1 Introduction

The basic principles underlying these guidelines are:

a) Non-discrimination;

b) Transparency; and

c) Technology neutrality.

2.2 Non-Discrimination

The principle of non-discrimination should ensure that operators who have significant market power give fair treatment to other operators, service providers and consumers, and are not allowed to provide less favourable conditions to some parties for the same product or service.

However, any operator may differentiate offerings and prices provided there are objectively justified conditions to do so.

2.3 Transparency

The Authorities should keep their procedures and decision-making processes open to the public. The Authorities should also, whenever reasonable, consult the affected parties and the public on matters that will affect the consumers.

Operators should, in accordance with the Authorities' requirements, provide transparent information that should be available to other companies and to the public.

2.4 Technology Neutrality

The principle of technology neutrality should apply, and will be assured if the application of the guidelines does not discriminate or favour any specific technology to the extent that it will benefit the Member States.

3 Relationships Between Sector Regulator and Competition Authority

The application of Competition Assessment Framework should consider the specific characteristics of the sector, and ensure that sector regulation and general competition law are complementary.

Where both a sector regulator and a competition authority exist, the Acts establishing both Authorities should clearly define and cross-reference their roles and responsibilities. In such instances, the competition authority should normally be responsible to apply the general competition rules to the sector, but the application of the rules should be made through consultation with and assistance from the sector regulator. The sector regulator should, however, have the presumptive responsibility to impose and apply possible ex-ante regulation relating to the development of fair competition in the sector.

Where there is concurrent jurisdiction, it should be clarified between the Authorities, and communicated in a transparent manner to the industry, which Authority is responsible for what issues and the procedures used to handle the issues.

The separate Authorities should establish formal and informal communication channels and routines in order to, on frequent basis, share information and assist each other in the handling of competition related issues in the communications sector.

Where there is no clarity on the Authority responsible for competition issues, the sector regulator should be responsible for and have the mandate to apply the common competition rules to the communications sector.

4 Major Prohibitions

The major prohibitions in competition laws should be the basis for determining anti-competitive conduct that prohibits fair competition in the communication sector against:

a) Abuses of dominant position; and

b) Anti-competitive behaviour.

4.1 Determining Anti-Competitive Conduct

A determination whether there is anti-competitive conduct should follow the following three-step process:

a) Definition of the relevant market;

b) Assessment of market power; and

c) Determination whether there is any anti-competitive conduct, i.e. breach of any of the prohibitions; abuse of a dominant position or anti-competitive co-operation.

4.1.1 Definition of the Relevant Market

The definition of the relevant market should consider:

a) The products/services that are sold in that market ("the product market"); and

b) The geographical area within which the products are sold ("the geographical market").

The product market should consist of the product/service (or groups of products/services) to which the conduct relates plus any demand-side substitutes and/or supply-side substitutes, the availability of which prevents the operator(s) from sustaining a small but significant increase in the price of the product above the competitive level. The analysis of supply-side substitution should take account of any existing legal, statutory or other regulatory requirements, which could defeat a time-efficient entry into the relevant market, and as a result discourage supply-side substitution.

The geographical market may be a part of an individual Member State, the whole Member State or a larger geographical area (e.g. the whole SADC region).

The geographical scope of the relevant market should normally be determined by reference to two main criteria:

a) The area covered by the network; and

b) The existence of legal and other regulatory instruments.

On the basis of these, markets should be considered to be local, regional, national or covering territories of two or more countries.

The boundaries of the geographical market will depend on the extent to which:

a) Customers are able to switch to substitutes by firms in different areas (demand-side substitution); and

b) Firms in different areas are able to supply substitute products/services (supply-side substitution).

Defining the relevant market should then be done by identifying and analysing the constraints on the freedom of the firm to raise the price of the product/service in question over the competitive level.

4.1.2 Assessment of Market Power

The assessment of market power should consider:

a) The firm's market share and changes in that share over time; and

b) Whether there are constraints that would prevent the firm from acting competitively even if it does not have a high market share.

Market shares should be the prime indicator of degree of market power, but other criteria should be used to measure market power. These criteria should include among others:

a) Overall size of the undertaking;

b) Control of infrastructure not easily duplicated;

c) Technological advantages or superiority;

d) Absence of countervailing buying power;

e) Easy or privileged access to capital markets/financial resources;

f) Product/service diversification (e.g. bundled products or services);

g) Economies of scale;

h) Economies of scope;

i) Vertical integration;

j) A highly developed distribution and sales network; and

k) Absence of potential competition.

An assessment of market power should consider the existence of barriers to market entry that limits competition.

The following types of barriers to entry should be considered:

a) Government restrictions e.g. monopoly franchises or restrictive licensing practices;

b) Economies of scale;

c) High fixed/capital costs; and

d) Intellectual property rights.

Existence of essential facilities should be considered while assessing the market power in a relevant market.

An essential facility should normally have the following characteristics:

a) Supplied on a monopoly basis or at least subject to some degree of monopoly control;

b) Required by competitors in order to compete; and

c) Cannot be practically duplicated by competitors for technical or economic reasons.

4.1.3 Anti-Competitive Conduct

Assessing anti-competitive conduct should consider:

a) Whether an operator, or operators, with market power are engaging in conduct that is likely to have an appreciable harmful effect on competition in the market; and

b) Whether an operator, or operators, with market power in one market are vertically integrated into markets upstream or downstream of that market, and whether the operator has the ability to harmfully affect competition in the upstream or downstream markets.

A breach of any of the major prohibitions may include, but is not limited to, one or more of the following:

a) Refusal to supply essential facilities;

b) Cross-subsidization;

c) Price discrimination;

d) Price squeezing;

e) Predatory pricing;

f) Excessive pricing;

g) Misuse of information;

h) Refusal to supply information;

i) Bundling;

j) Locking-in customers; and

k) Restrictive agreements, including collusions.

4.1.3.1 Refusal to Supply Essential Facilities

Abuse of a dominant position should normally be determined where an operator refuses access to its network, facilities, products and functions, withdraws access to the same or only provide access subject to unjustifiable delays, poor quality or excessive prices.

4.1.3.2 Cross-Subsidization

Cross-subsidies occur when an operator uses revenues from one market to subsidize losses in another market. Where the operator uses revenues from a market where it has monopoly or significant market power to subsidize services in a market where it faces more competition, it should be considered to abuse its position.

4.1.3.3 Price Discrimination

An operator with significant market power should be considered to be discriminating when it applies dissimilar conditions to equivalent transactions.

Price discrimination should be prohibited where:

a) Its effect is to exclude competitors from the market in question; and

b) An operator (or group of operators) exploits its market power by charging excessively high prices to certain customers.

The following types of discounts should be prohibited when offered by an operator with significant market power:

a) Loyalty rebates, where the discount (or its level) is dependent on the customer not taking (or restricting) supplies from competitors, whether this is de facto (for example, the customer must meet certain expenditure targets) or by agreement;

b) Discounts that are calculated across, and applied to products offered in a range of markets;

c) Volume rebates that are calculated on the basis of the total telecommunications expenditure across a range of competitive and regulated markets even though the discounts are applied to spending only in competitive markets; and

d) Discounts that are targeted at a narrow group of customers, particularly where the group consists of only those customers who have the ability to switch to alternative suppliers.

4.1.3.4 Price Squeezing

An operator with significant market power may be in a position that allows it to squeeze the margins of competitors by raising wholesale prices paid by the competitors, while at the same time lowering retail prices on competitive services.

The Authority may require wholesale cost imputation to test the existence of price squeezing by an operator, whereby the following should hold:

a) Should be applied to a monopoly or an operator with significant market power on the provision of essential facilities and wholesale products; and

b) Where the operator also competes in market for “retail services” that require the facilities or wholesale products as inputs.

The operator must provide evidence to the Authority that its retail prices are no lower than the sum of the following:

a) The price it is charging competitors for the wholesale services that form part of the retail service (this price is said to be “imputed” in the cost of the dominant provider whether it actually incurs this cost or not); and

b) The actual incremental costs (above the imputed wholesale costs) that are incurred by the dominant supplier in providing the retail service.

4.1.3.5 Predatory Pricing

Predatory pricing exists where a firm deliberately incurs short- term losses so as to eliminate a competitor and be able to charge excessive prices in the future.

The following elements must exist to constitute predatory pricing:

a) The operator has market power (power to unilaterally increase its prices, etc.);

b) The operator charges prices that fall below a predatory price standard;

c) There is evidence of a clear strategy of selling at predatory prices, not just sporadic or reactive price cutting; and

d) There is a reasonable expectation that the operator will be able to recoup its losses after its predation ends (e.g. after the competitors are driven out of the market).

4.1.3.6 Excessive Pricing

An operator with significant market power who charges excessive prices for the supply of network inputs required by competitors in a retail market should be deemed to abuse its market position.

An operator with significant market power who charges excessive prices to end users in markets where there is lack of competition should normally be deemed to abuse its market position.

4.1.3.7 Misuse of Information

Information exchanged to ensuring arrangements and contracts between operators should not be allowed to be used to give advantages to any of the involved parties when offering products and services to the consumers.

4.1.3.8 Refusal to Supply Information

An operator with significant market power refusing to supply information generated by its network, that is required for interconnection or the interoperability of services between the networks, should be considered to abuse its position.

A refusal by the operator to supply information that implies that services based on the availability of the information, for example, calling line information, could be provided only by the operator should be prohibited.

A refusal to supply technical information, for instance information on possible interconnection points to an interconnecting competitor, should be prohibited.

4.1.3.9 Bundling

The following forms of bundling of products and services should be prohibited:

a) Where an operator ties the supply of products in one market in which it is dominant to the supply of products that are (at least potentially) supplied competitively; and

b) Where an operator with significant market power bundles together physically services that could be supplied separately.

Bundling varies somewhat between countries. Generally, in competition law, prices in the sector must be below Average Total Costs, and near or below Average Variable Costs. In the telecommunications sector, prices must usually be below Long Run Incremental Costs (LRIC).

Providers of infrastructure and telephone services, for example, normally are in a position to collect competitively sensitive and valuable information on their interconnecting competitors. As one example, a competitor might require a local access circuit from the incumbent operator to provide a dedicated Internet service to a business customer. The incumbent should then not be allowed to approach the business customer to induce this customer to switch to or remain with the incumbent's own dedicated Internet service.

4.1.3.10 Locking-in Customers

Locking-in subscribers through agreements that make it unduly difficult or impossible for a customer to move to another operator should be prohibited where the intent or effect is likely to have an appreciable harmful effect on competition.

4.1.3.11 Restrictive Agreements

Agreements that have anti-competitive effects should be prohibited. There are two main types of agreements and co-operation that may be anticompetitive:

a) Horizontal agreements that create a "joint dominant" position, and make it problematic for other competitors or are harmful to consumers; and

b) Vertical agreements that create bottlenecks against other competitors e.g. by giving exclusive distribution rights.

The potential benefits of agreements, e.g. agreements to adopt technological standards, should be considered in the determination whether an agreement is anticompetitive.

The following types of agreements should presumptively be determined to constitute anti-competitive conduct:

a) Price fixing - agreements on the prices to be charged to consumers, e.g. jointly raise prices to a certain level, or resist price changes;

b) Market sharing - agreements to share markets in terms of customers, geography or product.

c) Bid rigging - agreements where, for example, one party agrees not to leave a bid provided that it gets another bid, or bid-prices put at a certain level to deliberately exclude some bidders.

Interconnection agreements should be routinely reviewed since they are an essential prerequisite of network and services competition. Interconnection agreements should be determined to be anti-competitive where:

a) they restrict competition between the parties to the agreement by e.g. price fixing or market sharing;

b) they restrict competition from those not party to the agreement where, for example, it provides for interconnection on an exclusive basis; and

c) commercially sensitive information is used for other purposes by one party.

5 Remedies and Procedures

5.1 Remedies

The Authorities should have the power and mandate to impose both structural and behavioural remedies on firms that engage in anti-competitive conduct.

The authorities should be empowered and able to enforce the following remedies, among others:

a) prevent anti-competitive and/or cross-subsidization by imposing requirements on accounting separation combined with a system of transfer charges;

b) issue enforceable orders against operators;

c) cease abusive behaviour;

d) prescribe specific changes in the behaviour to limit the abusive aspects;

e) compel operators with significant market power, to provide access to essential facilities and to unbundling networks, such as the local loop;

f) fine the operator and the individual persons responsible for the abusive conduct;

g) order compensation (damages) to be paid to subscribers or competitors injured by the abusive conduct;

h) restructure the operator with significant market power (such as the divestiture of some lines of business or structural separation of those lines into a separate but affiliated company);

i) facilitate and approve informal settlements in cases of abuse of dominance; and

j) revoke the licence of operators abusing market power.

5.2 Powers of Investigation

The Authorities should have sufficient powers of investigation to identify and prevent any anti-competitive conduct, which may include to:

a) Require the production of any document or information that is specified or that falls within a specified category, which is

considered relating to any matter relevant to the investigation, at a time and place, and in the manner or form specified;

b) Take copies of, or extracts from, any document produced;

c) require an explanation of any such document; and

d) if a document is not produced, require a statement as to where it can be found.

5.3 Transparent Decision-Making

Procedural rules may vary from Member State to Member State depending on legal systems and the objectives of the decision-making process, however, the following approaches should provide guidance for the Authorities' decision-making:

a) Use public processes, if time permits, and issue public notices inviting comments on proposed rules or other major decisions;

b) Design public processes, which includes to providing background information and options for the decision to be made, in notices or in consultation documents;

c) Publish all significant regulatory developments, preferably on a web site;

d) Provide written information requests to major operators on complex matters. Have them provide the regulator with technical, financial and economic information necessary to make informed decisions;

e) Encourage electronic filing of comments and all other material filed by interested parties. If necessary to protect confidential information, provide for secure electronic filing;

f) Decide what information is relevant in deciding and determine the best way to gather appropriate information. Provide, wherever possible, an opportunity for comments on the evidence and reasons; and

g) Streamline decision-making, where possible, through establishing and publishing schedules for decision-making processes, and be bound to them.

5.4 Dispute Resolution

On the declaration of a dispute, the Authority should issue a decision within the prescribed time period in accordance with the relevant

legislation, and within the shortest time period available. Such time period should be sufficient to allow fair consideration of disputed facts.

In resolving disputes, the Authority should primarily consider:

a) the user interests;

b) the promotion of fair competition; and, where appropriate,

c) the availability of technically and commercially viable alternatives to the services or facilities requested.

The Authority should ensure that procedures are fair and transparent.

5.5 Enforcement and Penalties

The Authorities should have necessary powers and tools to effectively enforce its determinations and decisions.

When the Authorities have proposed to make a decision there should be:

a) a written statement explaining the matters to which the objection has been made;

b) the action and remedies that are proposed; and

c) the reasons therefore.

The party or parties receiving the statement should normally have the opportunity to make representations.

Where the Authorities decide to the party involved, it will be required to comply with the decision. It may include a direction to modify or terminate an agreement in question.

If an operator fails to comply with the direction, the Authorities may take necessary penalty measures.

The penalties for serious anti-competitive conduct should be substantial and be determined based on actual or expected harm of the anti-competitive conduct.

The penalties may be determined in relation to the turnover of the operator that abuses its market power. Financial penalties up to a specified maximum percentage of an individual operator's annual turnover may be enforced. Such penalty may apply for a specified period, if the anti-competitive conduct continues.