



## THE ROLE FOR COMPETITION IN THE TELECOMMUNICATIONS SERVICES SECTOR

### Suggested Best Practices

1. The ICN Working Group Report on Telecommunications Services found that both rapid technological change and market liberalization are allowing competition to play a more important role in the telecommunications sector. Consequently, competition authorities are involved as both enforcers of competition law and advocates for the removal of impediments to the development of fully competitive markets. This includes the opportunity to apply competition legislation, enforcement, and remedies to anti-competitive behaviour, as well as to advocate for legislative and regulatory reform. The Report identifies specific areas where competition policy has been effective in opening up telecommunications to competition and areas where it is likely to do so in future.
2. On the basis of the Report, the ICN Annual Conference of Cape Town proposes the following suggested best practices for achieving a more competitive telecommunications services sector in Member jurisdictions by encouraging open entry and increased reliance on market forces.
3. Depending on specific circumstances and institutions, jurisdictions should promote competition in the telecommunications sector by:
  - **ensuring that antitrust law applies to the telecommunications sector and that antitrust law provides effective instruments, including sanctions and remedies, for deterring anticompetitive conduct;**
  - **ensuring that the powers and duties of the competition authority and sector-specific regulator are transparent;**
  - **promoting co-ordination between the regulator and the competition authority to avoid conflict involving any overlapping jurisdiction (e.g. by entering into co-operation agreements and assigning agency responsibility);**
  - **ensuring, in the case of state ownership, that the part of the government that regulates telecommunications is separate from the part of the government that exercises ownership rights.**
4. In their enforcement role, competition authorities should:
  - **protect competition in the telecommunications sector by taking appropriate enforcement action against anticompetitive conduct;**
  - **when reviewing potentially anticompetitive activity and deciding whether enforcement action is appropriate, apply sound antitrust analysis (including relevant market definition, market power/dominance) and remedies;**
  - **take into account technological changes that are occurring in the telecommunications industry and that may impact competitive analysis;**
  - **build effective working relationships with the regulatory agencies (if they exist in the jurisdiction) and coordinate their efforts in the review of particular matters, including with respect to emerging services based on new technology and innovation.**

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5. In their advocacy role before sector-specific regulators, legislators, and the judiciary, competition authorities should encourage:

(a) an effective and transparent system of regulation by advocating for:

- **expeditious decision making where appropriate;**
- **the removal of unjustified regulatory restrictions on competition in the provision of communications networks and services and in the usage of spectrum. With respect to entry, competition agencies should advocate that the regulatory framework set by jurisdictions for the provision of such networks and services is consistent with non-discrimination principles. Furthermore, competition agencies should advocate, as a minimum, against the mandating of a single provider for any particular communications service;**
- **regulation only in such a way as to create or maintain appropriate market incentives;**
- **forbearance from unnecessary regulation as soon as practicable, taking into account the availability of existing competition to protect the interests of consumers, and the ability of existing competition laws effectively to remedy anticompetitive behaviour;**
- **sound competition analysis in defining markets and assessing the state of competition in a market;**
- **the periodic review of regulation to ensure that regulation continues to be appropriate and is not adversely affecting competition;**
- **technologically neutral regulation that does not favour one technology over another, create entry barriers for new technologies, or deter convergence of telecommunications services;**
- **when there is a need for social regulation, such as universal service, implementing it in a competition-neutral manner.**

(b) increased competition on the supply side of the telecommunications industry by advocating for regulations that:

- **limit the number of competitors authorized to provide services only where there are clear constraints on scarce resources and, in any case, based on sound public policy criteria;**
- **provide competitors, to the extent necessary, with access to essential or bottleneck networks owned or operated by incumbent firms by mandating interconnection and network interoperability and, where appropriate, mandating unbundling, taking into account the likely long-term effect on investment and innovation;**
- **set access charges in such a way as to minimize anticompetitive results;**
- **minimize regulatory uncertainty by ensuring that rules applicable to the offering of telecommunications services are transparent, including those pertaining to the use of rights of way and application procedures for installing transmission equipment;**
- **take into account competitive concerns in determining spectrum availability and its allocation.**

(c) increased competition on the demand side of the telecommunications industry through reducing switching costs for consumers, by advocacy with respect to such measures as number portability and carrier pre-selection, while establishing relative charges that are not anticompetitive.

