

Public Hearing

MTC Presentation as per Public Notice N°62, 20 March 2012

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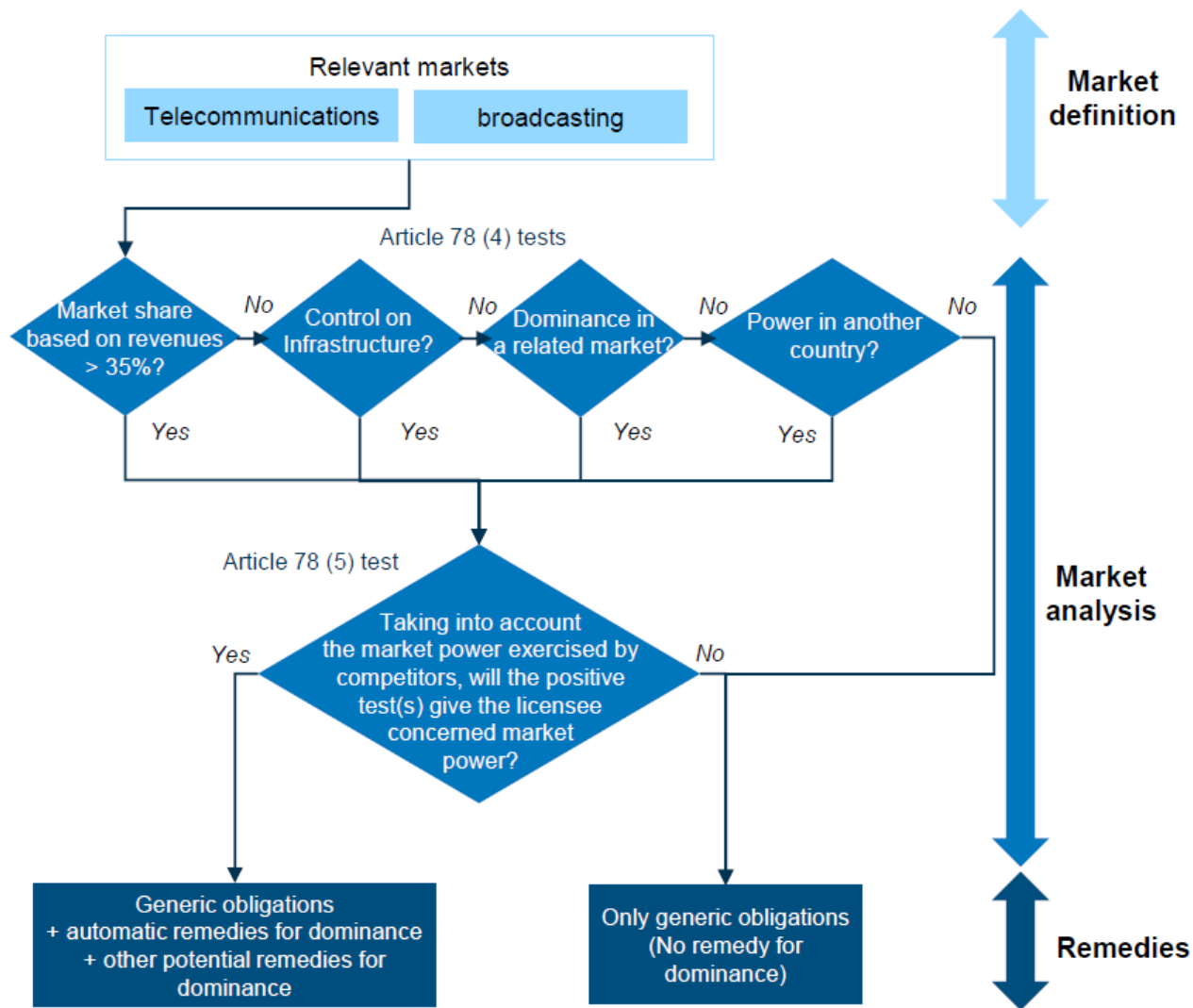
make the connection

mTC

• Understanding the market analysis

- Benchmark
- Comments on CRAN approaches
- Suggestion

Market Analysis Process as Noticed by CRAN



Conclusion of MTC's understanding of the Notice

Section	Detailed remedy
Regarding market definition	<ul style="list-style-type: none"> • CRAN intends to define a very wide relevant market: the overall telecommunications market and the broadcasting market • This rationale behind such a wide market definition is based on the use of "service and technology neutral approach" • Our understanding is that the approach has been used in comparison to other approaches considered in order to: a) minimise the regulatory burden for the operators and CRAN, and b) to suit a converged ICT sector based on a technology and service neutral regulation
Regarding market analysis	<ul style="list-style-type: none"> • Market share - CRAN intends to use a threshold of 35% in revenue for this criterion; • Operator controls some infrastructure that is necessary for the provision of the service in question; • Operator has dominance in a related market that would allow it to exercise power in the relevant market in question; or • Operator has a position in a market in another country, or a relationship with providers in another country, that can be used to exercise market power in respect of the relevant market in Namibia
Regarding remedies	<ul style="list-style-type: none"> • Prohibition of abusing a dominant position • Unbundled access to network elements • Co-location of equipment • Interconnection at any technically feasible point within the dominant operator's network • Sharing of infrastructure • Separated accounts and transparency • Restriction of the provision of telecommunications equipment • Control of discount schemes

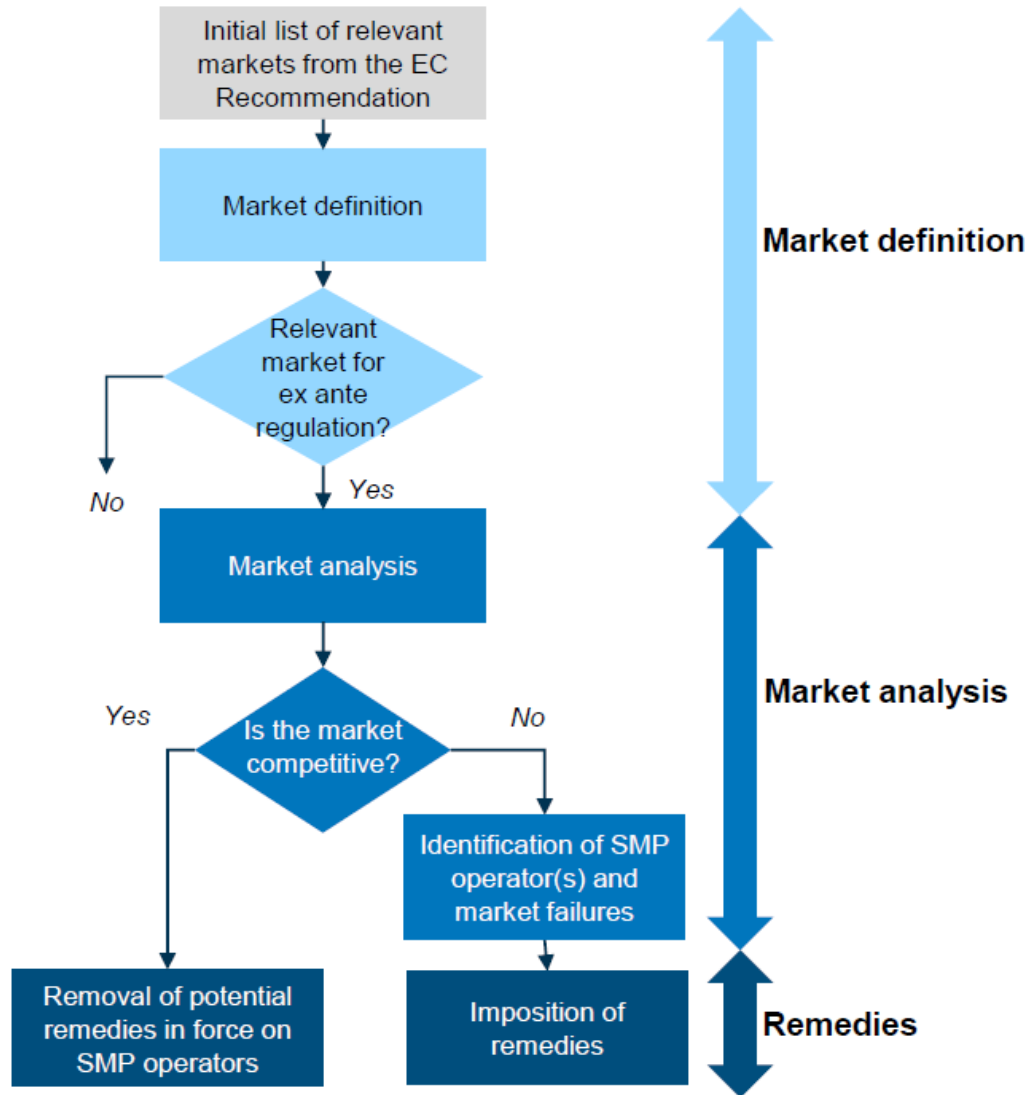


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European Union – Market Analysis Process



EU – Market Definition & Analysis



Market Defenition

Consists of **identifying the list of products and geographical boundaries** that comprise a relevant market for ex-ante regulation, and for that, it is **necessary to identify the competitive constraints on price-setting behaviour** of firms that should be considered:

- **Demand-side** substitutability represents the ability and willingness of consumers to substitute the service in question with other available services;
- **Supply-side** substitutability refers to the ability of a firm to promptly switch its production from its current service to services in question.

It is common practise to apply the “**hypothetical monopolist test**”; **when a service can increase 5-10% the prices and profit-maximising without losing customers by substitution.**


Market Analysis

Aims to determine the level of competition, and the **dominances that have the ability to maintain the prices of their products and/or services above competitive levels.**

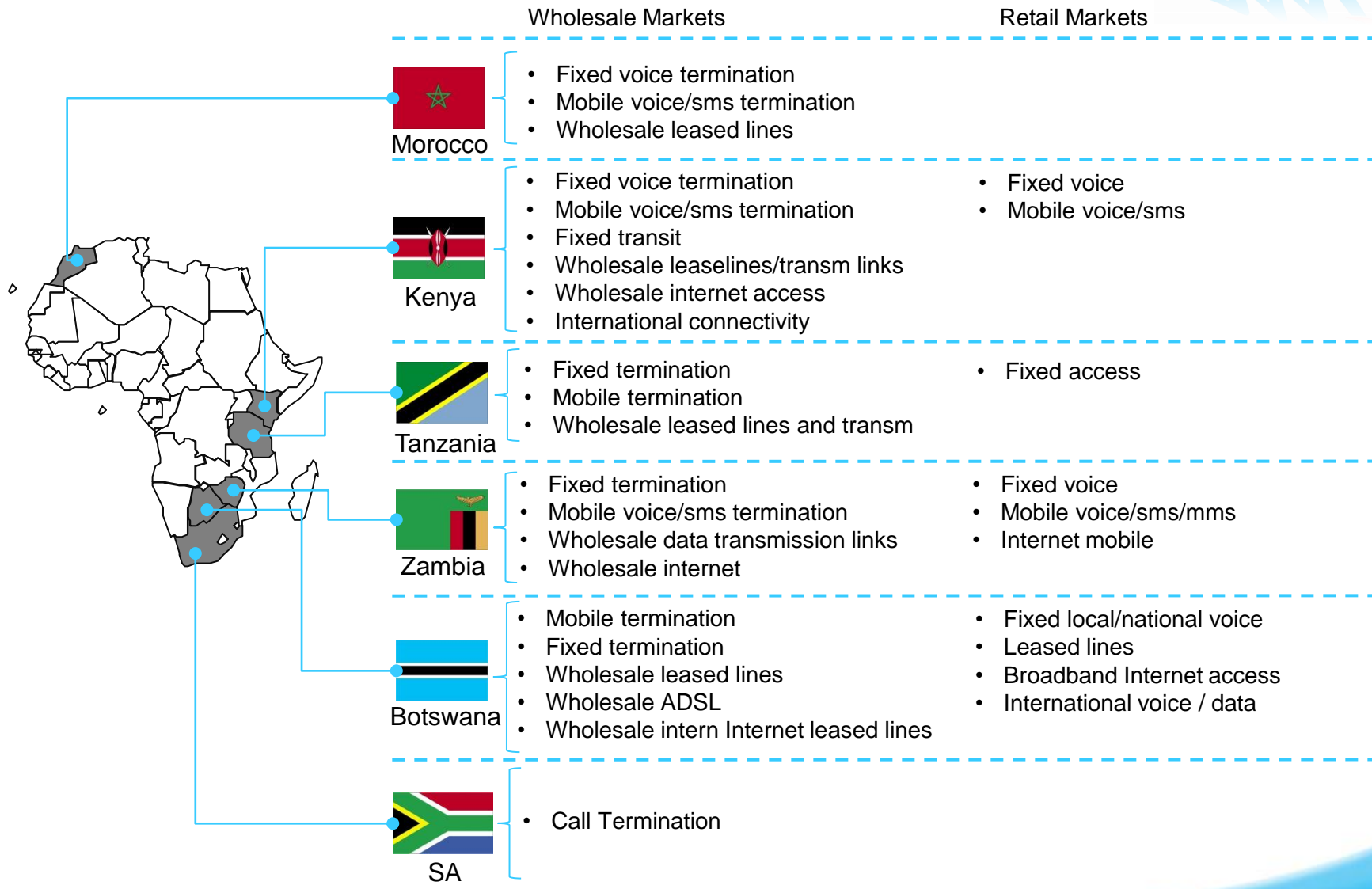
In the EU, the assessment of a dominant position can be made only by reference to a **number of criteria**:

- a) **Market share (MS)**
- b) **Evolution of the MS over time**
- c) **Mature versus emerging markets**
- d) **Other quantitative and quality factors** (prices, size, vertical integrations, control of infrastructure, economies of scale and scope...)







EU - Selection of Relevant Markets & Remedies

	Relevant Market	SMP Operators	Access and interconnection	Transparency & non-discrimination	Account separation	Price control
	Access to PSTN for residential and non-residential users	<ul style="list-style-type: none"> Fixed incumbents have generally been designated 	<ul style="list-style-type: none"> Can include call origination calls, wholesale line rental, access to and use specific network facilities 	<ul style="list-style-type: none"> Publication is usually imposed Notification is sometimes imposed Non-discriminatory is always imposed 	<ul style="list-style-type: none"> Often imposed with some exceptions 	<ul style="list-style-type: none"> Regulated on the basis of cost (CS/CPS) or retail-minus approach (wholesale line rental)
	Call origination on fixed networks	<ul style="list-style-type: none"> All fixed incumbent operators have been designated 				
	Call termination on fixed networks	<ul style="list-style-type: none"> All fixed operators have been designated FTR 	<ul style="list-style-type: none"> Obligation to provide termination service 	<ul style="list-style-type: none"> Publication usually imposed incumbents Non-discrimination is always imposed 	<ul style="list-style-type: none"> Often imposed incumbents 	<ul style="list-style-type: none"> Fixed incumbents generally price-regulated
	Wholesale network infrastructure access	<ul style="list-style-type: none"> All fixed incumbents have been designated 	<ul style="list-style-type: none"> Always includes local loop unbundling and sharing co-locations and ducts 	<ul style="list-style-type: none"> Publication always imposed Non-discrimination is always imposed 	<ul style="list-style-type: none"> Often imposed incumbents 	<ul style="list-style-type: none"> Price always regulated on cost
	Wholesale broadband access	<ul style="list-style-type: none"> Fixed incumbent (DSL) have generally been designated 	<ul style="list-style-type: none"> Always includes bitstream on copper and in few countries fibre 	<ul style="list-style-type: none"> Publication always imposed Non-discrimination is always imposed 	<ul style="list-style-type: none"> Often imposed incumbents 	<ul style="list-style-type: none"> Price can be regulated on cost or retail-minus basis
	Termination segment of leased lines	<ul style="list-style-type: none"> Fixed incumbent have generally been designated 	<ul style="list-style-type: none"> Leased lines terminating segments Access to ancillary in some countries 	<ul style="list-style-type: none"> Publication usually imposed KPI and QoS in some Non-d always imposed 	<ul style="list-style-type: none"> Often imposed incumbents 	<ul style="list-style-type: none"> Price are usually regulated on cost and some cases retail-minus basis
	Voice call termination on mobile networks	<ul style="list-style-type: none"> All Mobile operators have been designated MTR 	<ul style="list-style-type: none"> Obligation to provide termination service 	<ul style="list-style-type: none"> Publication usually imposed Non-discrimination is always imposed 	<ul style="list-style-type: none"> Often imposed on big mobile operators 	<ul style="list-style-type: none"> Price is regulated of basis of cost

Africa: Market definition & analysis



Africa - Selection of Remedies

	Ex-ante regulated markets	Remedies for SMP operators
 <p>Morocco</p>	<ul style="list-style-type: none"> • Fixed voice termination (including restrict mobility) • Mobile voice/sms termination • Wholesale leased line 	<ul style="list-style-type: none"> • Pricing offers including flat rate, interconnection offer, separate accounts replicability in retail • Pricing offer, separate accounts, reasonable access • Pricing offer and non-discrimination
 <p>Kenya</p>	<ul style="list-style-type: none"> • Retail mobile voice/sms • Call termination (ALL) • SMS termination • Fixed transit 	<ul style="list-style-type: none"> • Price caps • Price caps • Price caps • Price caps
 <p>Tanzania</p>	<ul style="list-style-type: none"> • Call termination (fixed and mobile) 	<ul style="list-style-type: none"> • Interconnection Offer • Obligation to negotiate in good faith • Transparency, non-discrimination • Cost forward-looking long-run increment
 <p>Zambia</p>	<ul style="list-style-type: none"> • NA 	<ul style="list-style-type: none"> • Submit to ZITCA all tariffs to all Operators • Never apply tariffs without the approval of ZICTA
 <p>Botswana</p>	<ul style="list-style-type: none"> • Mobile termination • Fixed termination • Wholesale leased lines • Wholesale ADSL • Wholesale International Internet leased Lines 	<ul style="list-style-type: none"> • Cost oriented termination rates • Cost oriented termination rates • Regulated prices • Regulated prices • Regulated prices
 <p>South Africa</p>	<ul style="list-style-type: none"> • Call termination (fixed and mobile) 	<ul style="list-style-type: none"> • Termination rates • If a licensee provides termination to a mobile location it will be expected to offer termination rate as set for Telkom (fixed) and MTN/Vodacon/CellC (Mobile)

Conclusions of the Benchmark

Section	Detailed remedy
Regarding market definition	<ul style="list-style-type: none"> • The relevant markets defined by the national regulators vary between countries, however all regulators that perform market analysis have defined: <ol style="list-style-type: none"> a. Relatively narrow markets b. At least five separate relevant telecommunication markets • Market definition is also key in selecting the relevant remedies as these have to be related to the boundaries of relevant market • Although both EU and Kenya promote STNL introducing the unified licensing framework, they use an approach based on demand/supply side substitutability
Regarding market analysis	<ul style="list-style-type: none"> • Apart from the EU that provides detailed guidelines (and a list of criteria) to assess the market power and potential dominance of market players, only South Africa has defined a framework that governs the process for performing a market analysis
Regarding remedies	<ul style="list-style-type: none"> • All countries in the benchmark impose regulatory obligations that relate to the scope of market they have previously defined, and there is not a “one size fits all” approach for the selection of remedies; • However, it is clear that remedies range inside of price control, regardless of defining caps or controlling commercial offers, and in some cases obligations to share infrastructure but always regarding with specific market • Moreover, the EU and South Africa framework identify failures of market issues that the relevant regulator is obliged to address • Finally, some regulators explain why they select the remedies they impose on dominant operators



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Comments Approach 1: STN

Criteria	Telecommunications				Broadcasting
	TN	LEO	MTC	
Above 35% MS	Yes	No	Yes		
Control infrastructure	Yes	Yes	Yes		
Able to exercise power in the market	Requires detail analysis				
Has a position in a market that can be used to exercise market power	Requires detail analysis				
Dominant	Yes	Yes	Yes		

- MTC and Telecom Namibia would be dominant
- Leo would be dominant based on the second criteria

Comments Approach 2: TN but NOT SN

	Telecommunications								Broadcasting
	Voice				Data				
Criteria	TN	LEO	MTC	TN	LEO	MTC	
Above 35% MS	Yes	No	Yes		Yes	No	No		
Control infrastructure	Yes	Yes	Yes		Yes	Yes	Yes		
Able to exercise power in the market	Requires detail analysis								
Has a position in a market that can be used to exercise market power	Requires detail analysis								
Dominant	Yes	Yes	Yes		Yes	Yes	Yes		

- TN and MTC would be dominant for Voice and Leo might be declared dominant for Voice as well
- TN would be dominant for Data
- MTC and Leo might be declared dominant for Data, and the biggest ISPs may be dominant as well for Data

Comments Approach 3: STN but distinguished by distribution channels

	Telecommunications							
	Wholesale				Retail			
Criteria	TN	LEO	MTC	ISPs	TN	LEO	MTC	ISPs
Above 35% MS	Yes	No	No	No	No	No	Yes	No
Control infrastructure	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Able to exercise power in the market	Requires detail analysis							
Has a position in a market that can be used to exercise market power	Requires detail analysis							
Dominant	Yes	Yes	Yes	No	Yes	Yes	Yes	No

- MTC would be dominant for retail but TN and Leo may become dominant as well
- TN would be dominant based for wholesale but Leo and MTC qualify as well for wholesale

Comments Approach 4: Demand/Supply-Side

In 2007 a new recommendation simplified from 18 relevant markets for a new list of 7

Criteria	Market	Service	Dominant	Other
Public telephone network access (resident and non-residential)	Retail	Access		
Call origination on the public telephone network	Wholesale	Fixed		
Call termination on individual public telephone network	Wholesale	Fixed		
Unbundled access to metallic (sub-) loops	Wholesale	Access		
Broadband services	Wholesale	Access		
Terminating segments of leased lines	Wholesale	Leased Lines		
Voice call termination on mobile networks	Wholesale	Mobile		

- Not analysed by CRAN

Comments Approach 5: License Categories

Criteria	ECNS			ECS
	TN	LEO	MTC	...
Above 35% MS	Yes	No	No	
Control infrastructure	Yes	Yes	Yes	
Able to exercise power in the market	Requires detail analysis			
Has a position in a market that can be used to exercise market power	Requires detail analysis			
Dominant	Yes	Yes	Yes	

- Similar to the approach 1

Comments on the 4 criteria's

MTC's perspective

Above 35% of
Revenues

- The four criteria are quite wide and can lead to almost any operator being declared “dominant”
- Section 78(4) (a) mentions: “A share of market in the class of telecommunication services in question, such that the operator is able to act independent of its competitors”

Control
Infrastructure

- That is what has been done by the countries presented in the benchmark dominance which implies the capacity to behave independently from competitors and, ultimately, from its customers

Able to exercise
power in the market

- In this context, the number of dominant operators is limited to one player in each relevant market (single dominance) – if dominant operators are able to behave independently from their competitors, two operators cannot be dominant in the same relevant market (except termination of calls because in this service all operators are monopoly)

Has a position in a
market that can be
used to exercise
power

- Furthermore, section 78(5) of the Act explains that the market power of competitors should be taken into account (CRAN does not provide any additional detail about this test)

Comments on the remedies

MTC's perspective

Prohibition of abuse dominant position	<ul style="list-style-type: none"> Numerous automatic remedies imply significant burden on dominant operators and appear to address only specific situations, i.e. “unbundling access to network elements” is generally applied to the incumbent fixed operator but not to alternative fixed operator or mobile as the cost of opening a network is typically high and not justified for all operators
Non-discriminatory access to network elements (?)	
Co-location of equipment to interconnect	<ul style="list-style-type: none"> Under the framework presented in the Notice, such an obligation would be automatically imposed on MTC and Leo if they started to offer fixed services although their market positioning will be very weak initially (and would probably jeopardise such investment initiatives)
Access to unbundled network elements	
Interconnect any feasible point without unreasonable interruption	<ul style="list-style-type: none"> Numerous remedies need to be further defined and detailed, i.e. “infrastructure” is not defined in the “infrastructure sharing” remedy specified in Section 50(1) whereas this term can refer to a wide range of products and obligations: ducts, in-building wiring, local loop/subloop, dark fibre, active transition links, active equipment or even full network. Duct or fibre access can have a significant impact on the development of competition by allowing the reduction of barriers to entry and promoting infrastructure-base competition
Lease any infrastructure to any other carrier to allow install its equipment	
Obligation to resell	<ul style="list-style-type: none"> Conversely, sharing of active equipment promotes more service-based competition and can be used by operators to avoid investment and the financial risk that other player had to take in the past
Co-location of equipment to interconnect	
Separation of Accounts	<ul style="list-style-type: none"> Whereas such obligation can be justified in the case of essential facility and non-replicable assets, the “non-replicable nature” of active equipment and transmission would need to be fully assessed and justified before obligation is imposed
Control of discounts	

Comments Approaches (1)(2) from the Notice

	CRAN perspective	MTC perspective
<p>Approach 1</p> <p>Service and Technology Neutral Market Definition</p>	<ul style="list-style-type: none"> Market definition would be suitable for converged telecommunications sector Practical and simple to implement for CRAN Criteria three and four would only need to be in a few circumstances The approach minimises reporting burden for licensees 	<ul style="list-style-type: none"> This wider approach, which is unprecedented, will turn competition heterogeneous: TN will be dominant in Mobile and MTC in Fixed The converged sector do not imply a single market and maybe will have a null (harmer) effect, i.e. a mobile operator will not invest in fixed line having so wide list obligations including areas where they are weak Although the model will lead to an “easy process”, it will also lead to a significant unnecessary regulation in areas where the dominant have weak market power
<p>Approach 2</p> <p>Technology Neutrality (but not Service)</p>	<ul style="list-style-type: none"> TN and MTC would be dominant in voice and Leo might also, and TN would be dominant in data and MTC and Leo might be also The bigger ISPs may be dominant for data The approach does not improve the ability of CRAN to implement objectives of the Act 	<ul style="list-style-type: none"> Still a wide approach, turning competition heterogeneous: TN will be dominant in Mobile and MTC in Fixed ISPs are ECNS, they have infrastructure and are in the Data wholesale Data is an emerging service, tremendous investments have been done, the market will start to take-of now, therefore it is premature It is not clear what is meant by CRAN’s lack of ability to implement objectives of the Act

Comments Approaches (3)(4)(5) from the Notice

	CRAN perspective	MTC perspective
<p>Approach 3</p> <p>ST Neutrality but distinguished by distribution channel</p>	<ul style="list-style-type: none"> • Only MTC would be dominant for retail and TN and Leo may become as well due to criteria 2 and 3 • Only TN would be dominant for wholesale but Leo and MTC qualify based on criteria 2 • The approach does not improve the ability of CRAN to implement objectives of the Act and not suitable for broadcasting 	<ul style="list-style-type: none"> • The impacts of Approach 1 and 2 have the same effect • How can CRAN calculate the 35% of TN in retail? • It is not clear what is meant by CRAN's lack of ability to implement objectives of the Act
<p>Approach 4</p> <p>Demand/Supply side</p>	<ul style="list-style-type: none"> • CRAN presented the EU oldest version • CRAN would need to analyse each segment • Licensees have to report revenues and cost for each market separately • CRAN would need to verify submitted data against audited financial reports • This market is not service and technology neutral 	<ul style="list-style-type: none"> • CRAN did not presented the guidance of 2009 that is in place (simplified) • Is a model used in EU and also in Africa, avoiding precedents • The approach does not need to have a long list of markets • EU and Kenya promote STNL and introduced unified licensing, but Authorities approach the model of demand/supply-side
<p>Approach 5</p>	<ul style="list-style-type: none"> • TN, and MTC would be dominant based for ECNS but Leo in criteria 2 • The result might have the same result of approach 1 	<ul style="list-style-type: none"> • Some comments of Approach 1



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Suggestion regarding remedies

Without contradiction with the framework set by the 2009 Act, we **suggest that CRAN consider the follow issues:**

- Define **relevant markets that are narrow**, than the overall telecommunications market, in order to **ensure that remedies only apply** to the provision of the well-defined list of services;
- Refine the **precise content of each remedy** so that they are designed to be more focused and as little intrusive and burdensome as possible;

This would aim **to ensure** that the remedies is **adapted to the market conditions**, as well as to the **address potential market issues**, **promote competition** and **predictability to investment** for the **benefits of the customers**.

Suggestion of Remedies based on the Benchmarks (non-exhaustive)

Relevant Market	Market	Service	Dominant	Price control	Infrastructure Sharing
Originated fixed calls	<ul style="list-style-type: none"> • Retail 	<ul style="list-style-type: none"> • Fixed 	<ul style="list-style-type: none"> • TN 	<ul style="list-style-type: none"> • Price-regulated 	<ul style="list-style-type: none"> • Local loop
Originated Mobile voice calls/sms	<ul style="list-style-type: none"> • Retail 	<ul style="list-style-type: none"> • Mobile 	<ul style="list-style-type: none"> • MTC 	<ul style="list-style-type: none"> • Price-regulated 	<ul style="list-style-type: none"> • Base stations
Terminating Fixed/Mobile voice calls	<ul style="list-style-type: none"> • Wholesale 	<ul style="list-style-type: none"> • Fixed • Mobile 	<ul style="list-style-type: none"> • ALL 	<ul style="list-style-type: none"> • Price-regulated 	<ul style="list-style-type: none"> • Provide termination
International Internet and Leased lines	<ul style="list-style-type: none"> • Wholesale 	<ul style="list-style-type: none"> • Lease lines 	<ul style="list-style-type: none"> • TN 	<ul style="list-style-type: none"> • Price always regulated on cost 	<ul style="list-style-type: none"> • Ducts if possible alternatively dirk fibre • Transmission links
Broadband	<ul style="list-style-type: none"> • Wholesale 	<ul style="list-style-type: none"> • Fixed 	<ul style="list-style-type: none"> • No 	<ul style="list-style-type: none"> • Price can be regulated on cost or retail-minus basis 	



Thank You